

AGENDA ITEM MEMO

BOARD MEETING DATE: February 2, 2023

TO: Board Members

THROUGH: Jeff Walker, Executive Administrator
Ashley Harden, General Counsel

FROM: Alexis Lorick, Assistant General Counsel

SUBJECT: Request from Greater Texoma Utility Authority for Amendments to
Certain Contract Revenue Bonds

ACTION REQUESTED

Consider approving by resolution a request from the Greater Texoma Utility Authority approving amendments to outstanding bonds purchased by the Texas Water Development Board and delegating authority to the Executive Administrator and his staff to take any actions necessary to facilitate the request.

BACKGROUND

On December 14, 2022, the Greater Texoma Utility Authority (GTUA) submitted in writing a request for authorization to amend three series of bond resolutions that financed water storage and utility system improvements for the City of Gunter, Texas. The City of Gunter seeks to sell its utility system to Mustang Special Utility District (Mustang SUD) through asset purchase and operations agreements between the City and Mustang SUD that was executed in October 2022.

KEY ISSUES

In 2010 and 2018, the TWDB purchased three series of bonds (collectively, the Outstanding GTUA Bonds) from GTUA financing improvements on behalf of the City of Gunter. The Outstanding GTUA Bonds are:

- Greater Texoma Utility Authority Contract Revenue Bonds, Series 2010 (Lake Texoma Water Storage Project), outstanding principal amount \$9,690,000 (GTUA 2010 Series);

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Jeff Walker, Executive Administrator

- Greater Texoma Utility Authority Contract Revenue Bonds, Series 2018, outstanding principal amount \$1,880,000 (GTUA 2018 Series); and
- Greater Texoma Utility Authority Contract Revenue Bonds, Series 2018A, outstanding principal amount \$3,230,000 (GTUA 2018A Series).

The GTUA 2010 series financed the purchase of additional water storage space and surface water rights in Lake Texoma with multiple other member cities.¹ The GTUA 2018A and 2018 series financed groundwater well, storage, and related disinfection facilities (hereinafter the City of Gunter Projects).

The Outstanding GTUA Bonds are secured with a pledge of contract revenues established through a contract between GTUA and the City of Gunter.² The City of Gunter Projects are complete and the City seeks to convey its utility system, assets, and liabilities to Mustang SUD through an asset purchase and operations agreements dated October 3, 2022 (Attachments 3 and 4). GTUA's legal representatives contacted the TWDB's Office of General Counsel seeking consent for (and approval of the underlying contract for) the sale of City of Gunter's system by Mustang SUD. Over the course of several discussions involving the Office of General Counsel, GTUA, and the Office of Attorney General – Public Finance Division (OAG), GTUA has submitted instead a request to amend the Outstanding GTUA Bonds to substitute, or assign, the contract pledged to the repayment obligation from the City of Gunter to Mustang SUD (Attachments 1 and 2, *see also* "Contract for Water Supply Services," and "Water and Sewer Facilities Contract" draft Exhibits A to Attachments 1 and 2).

Per the covenants of the Outstanding GTUA Bonds, the bonds may be amended by GTUA with the consent of the Board. GTUA would remain the obligor to the TWDB and none of the securities registered with DTC would change.³ The prior contracts will be amended to allow assignment and the City of Gunter will assign its interest in the amended contracts to Mustang SUD.

The Office of General Counsel reviewed documents related to the purchase of the City of Gunter's System, including the bond documents and covenants related to the City of Gunter's Projects and requested two additional confirmations from GTUA, specifically whether: (1) the proposed amendments would be considered a reissuance of its debt under state law, and (2) the proposed amendments would be considered a reissuance of its debt pursuant to applicable federal tax law. In early January 2023, GTUA received confirmation

¹ The participating cities as in the 2010 bond order are: the cities of Collinsville, Denison, Gainesville, Gunter, Lindsay, Pottsboro, Sherman, Southmayd, Whitesboro, Marilee SUD (which has since been acquired by Mustang SUD), the Northwest Grayson County Water Control and Improvement District No. 1, the Red River Authority of Texas, and the Two Way Special Utility District.

² GTUA 2010 series is secured by a Contract for Water Supply between GTUA and the City dated June 14, 2010 (including any amendments thereto) and the GTUA 2018 and 2018A series are secured by a Water and Sewer Facilities Contract dated October 16, 2017 (including any amendments thereto).

³ GTUA will confirm with DTC notation, if any, of the registered securities to reflect its contract for repayment with Mustang SUD of the Outstanding GTUA Bonds.

from the OAG that the proposed amendments would not be a reissuance under state securities laws. Tax counsel for GTUA also has submitted in writing to the TWDB that the proposed amendments would not constitute a reissuance under applicable federal tax law.

Representatives from the TWDB's Financial Compliance Division additionally reviewed publicly available documents from the Municipal Advisory Council of Texas and submitted financial information of Mustang SUD. After review, TWDB's financial examiners have no objections related to the financial condition of Mustang SUD to assume repayment of the City of Gunter's obligations to GTUA.

RECOMMENDATION

The Executive Administrator recommends approval of the amendments to the Outstanding GTUA Bonds and requests a limited delegation of authority to act as necessary to facilitate the amendments, because the proposed amendments do not change the terms of repayment of principal or interest owed to the TWDB or the amortization schedule covenanted to by GTUA.

Attachment(s):

- Attachment 1 – Request for Amendment to GTUA Contract Revenue Bonds, Series 2010
- Attachment 2 – Request for Amendment to GTUA Contract Revenue Bonds, Series 2018 and 2018A
- Attachment 3 – Executed Mustang Asset Purchase Agreement
- Attachment 4 – Executed Mustang Operations Agreement
- Attachment 5 – Resolution of the Texas Water Development Board (23-)



GREATER TEXOMA UTILITY AUTHORITY

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Wednesday, December 14, 2022

Texas Water Development Board
1700 North Congress Avenue
Austin, Texas 78701

Re: Greater Texoma Utility Authority Contract Revenue Bonds, Series 2010 (Lake Texoma Water Storage Project)

To whom it may concern:

The City of Gunter, Texas (the "City") is in the process of transferring its utility system to the Mustang Special Utility District ("Mustang SUD"). The referenced bonds (the "Bonds") are secured by revenues received from the City as a "contracting party" pursuant to a certain "Contract for Water Supply Services" dated as of June 14, 2010 by and between the Greater Texoma Utility Authority (the "Authority") and the City. In order to accommodate the transfer of the City's utility system, the Authority will consider amendments to the resolution which authorized the Bonds in order to substitute Mustang SUD as a contracting party as well as enter into a contract with Mustang SUD to secure the payment of the Bonds to the same extent as the City is obligated to currently. Attached hereto is the proposed amendatory resolution to be adopted by the GTUA Board of Directors (the "Proposed Amendments") in order to accomplish the substitution. There are no changes to the terms of the Bonds.

I am providing this letter, as directed by the Board of Directors of the Authority, as a formal request for the consent of the Texas Water Development Board, as sole holder of the Bonds, to the Proposed Amendments in order to accomplish the substitution. Please note, the amendatory resolution attached is in draft form and is subject to comments from the working group for this transaction.

Please let me know if you will need additional information or documentation regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "P.M. Sigle".

Paul M. Sigle
General Manager

A RESOLUTION amending the resolution authorizing the issuance of “Greater Texoma Utility Authority Contract Revenue Bonds, Series 2010 (Lake Texoma Water Storage Project)”; and resolving other matters incident and related thereto.

WHEREAS, the Board of Directors (the “Board”) of the Greater Texoma Utility Authority (the “Authority”) adopted a resolution (the “Series 2010 Resolution”) on June 10, 2010 authorizing the issuance of “Greater Texoma Utility Authority Contract Revenue Bonds, Series 2010 (Lake Texoma Water Storage Project)” (the “Bonds”); and

WHEREAS, the Series 2010 Resolution provides that the Bonds are payable from and secured by amounts received by the Authority from various “Participants” (as defined in the Series 2010 Resolution) as the “contracting parties” pursuant to contracts identified in Section 10 thereof by and between the Authority and the Participants; and

WHEREAS, the City of Gunter, Texas (the “City”) and Mustang Special Utility District (“Mustang SUD”) entered into a certain “Asset Purchase Agreement”, effective _____, 2022”, transferring and conveying the City’s water and sewer system(the “System”) to Mustang SUD (subject to the terms and conditions therein, including the assumption of the contractual obligations of the City by Mustang SUD); and

WHEREAS, in order to accommodate the transfer of the System to Mustang SUD as requested by the City and Mustang SUD, the Board hereby finds and determines that the 2010 Resolution should be amended to reflect the substitution of Mustang SUD for the City as a Participant for the Project; and

WHEREAS, pursuant to Section 38 of the Series 2010 Resolution, the Authority is authorized to amend the Series 2010 Resolution upon the written consent of bondholders holding a majority in aggregate principal amount of the Bonds Similarly Secured then outstanding; and

WHEREAS, the Texas Water Development Board (the “TWDB”) is the sole holder of the Bonds and the Authority has obtained written consent from the TWDB to amend the Series 2010 Resolution to provide that Mustang SUD will replace the City as a Participant and obligated for the payment of debt service on the Bonds as described in the Water and Sewer Facilities Contract, by and between the Authority and Mustang SUD, effective _____, 2022; and

WHEREAS, the Board hereby finds and determines that Sections 10(e)(iv), 10(k), and Exhibit B-4 of the Series 2010 Resolution should be amended to provide for the substitution of Mustang SUD as a Participant under the 2010 Resolution; now, therefore,

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE GREATER TEXOMA UTILITY AUTHORITY:

SECTION 1: Section 10(e)(iv) of the Series 2010 Resolution is hereby amended to read as follows:

“the Water and Sewer Facilities Contract between the Authority and Mustang Special Utility District, dated as of _____, 2022, together with all amendments thereto (the “Mustang Special Utility District Contract”)”

The Contract referenced above is hereto attached to this Resolution as Exhibit A.

SECTION 2: Section 10(k) of the 2010 Resolution is hereby amended to read as follows:

“The term “Participants” shall mean collectively the City of Collinsville, Texas, the City of Denison, Texas, the City of Gainesville, Texas, Mustang Special Utility District, the City of Lindsay, Texas, the Marilee Special Utility District, the Northwest Grayson County Water Control and Improvement District No. 1, the City of Pottsboro, Texas, the Red River Authority of Texas, the City of Sherman, Texas, the City of Southmayd, the Two Way Special Utility District and the City of Whitesboro, Texas.”

SECTION 3: Exhibit B-4 of the 2010 Resolution is hereby amended to read as follows:

“Mustang Special Utility District Contract

SECTION 12: Any one or more of the President, Vice President, Secretary, and/or Assistant Secretary of the Board of Directors of the Authority, and the General Manager of the Authority, are hereby expressly authorized, empowered and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge and deliver in the name and on behalf of the Authority all agreements, instruments, certificates or other documents, whether mentioned herein or not, as may be necessary or desirable in order to carry out the terms and provisions of this Resolution. In addition, the President, Vice President, Secretary, and/or Assistant Secretary of the Board of Directors of the Authority, and the General Manager of the Authority, and Bond Counsel are each hereby authorized and directed to approve any technical changes or corrections to this Resolution or to any of the documents amended by this Resolution: (i) in order to cure any technical ambiguity, formal defect, or omission in the Resolution or such other document; or (ii) as requested by the Attorney General of the State of Texas or his representative if such officer or counsel determines that such ministerial changes are consistent with the intent and purpose of the Resolution, which determination shall be final. In the event that any officer of the Authority whose signature shall appear on any document shall cease to be such officer before the delivery of such document, such signature nevertheless shall be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

SECTION 13: Except as hereby amended and modified, all of the provisions of the Series 2010 Resolution are hereby ratified, confirmed and readopted.

SECTION 14: It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Texas Government Code, Chapter 551, as amended.

SECTION 15: This Resolution shall be in force and effect from and after its passage on the date shown below.

[remainder of page left blank intentionally]

PASSED AND ADOPTED, this _____.

GREATER TEXOMA UTILITY
AUTHORITY

President, Board of Directors

ATTEST:

Secretary, Board of Directors

(Authority Seal)

EXHIBIT A

CONTRACT FOR WATER SUPPLY SERVICES

THIS CONTRACT FOR WATER SUPPLY SERVICES (“Contract”) is made and entered into as of _____, 20__ (the “Effective Date”) by and between the GREATER TEXOMA UTILITY AUTHORITY (hereinafter referred to as the “Authority”), a conservation and reclamation authority, a governmental agency, a political subdivision of the State of Texas, and a body politic corporate, duly created, existing and acting by virtue of Chapter 97, Acts of the 66th Legislature of Texas, Regular Session, 1979, as amended by Chapter 398 Acts of the 68th Legislature, Regular Session, 1983 and Acts of the 78th Legislature, Regular Session, 2003 (the “Act”), and the MUSTANG SPECIAL UTILITY DISTRICT, a special utility district operating in the County of Denton, Texas (hereinafter referred to as the “Purchaser”), duly created and existing under the laws of the State of Texas:

WITNESSETH:

WHEREAS, the Flood Control Act of 1938 (Public Law HD 541, 75th Congress, 3rd Session), authorized the construction, operation, and maintenance of the Lake Texoma (Denison Dam) on the Red River; and

WHEREAS, Section 838 of the Water Resources Development Act of 1986, Public Law 99-662, authorized the reallocation from hydropower storage to water supply storage, in increments as needed, up to an additional 150,000 acre-feet of water for municipal, industrial, and agricultural water users in the State of Texas, including the Authority; and

WHEREAS, the Department of the Army, through the U.S. Army Corps of Engineers, has reallocated the storage in Lake Texoma accordingly; and

WHEREAS, pursuant to such reallocation, the Authority has contracted with the Department of the Army for 50,000 acre-feet of additional storage in Lake Texoma (the “COE Contract”); and

WHEREAS, the Authority has also filed an application with the Texas Commission on Environmental Quality (“Commission”) for a water right (the “Water Right”) authorizing the diversion and use of up to 56,500 acre-feet of water per annum for municipal, industrial and agricultural purposes, which the Authority’s additional storage in Lake Texoma will yield; and

WHEREAS, the Authority, acting pursuant to the Act, proposes to issue its bonds for the purposes of securing an additional source of supply of water for the Purchaser; and

WHEREAS, certain revenues to be received by the Authority from the Purchaser under this Contract are to be pledged to the payment and security of the bonds to be issued by the Authority and will constitute the basis for the Authority’s credit in financing the acquisition of such storage and securing such water rights and issuing such bonds; and

WHEREAS, the Authority and the Purchaser enter into this Contract so as to secure the financing of the storage space pursuant to the COE Contract and the acquisition of the Water Right; and,

WHEREAS, at such time as the Purchaser needs all or part of the water supply it has contracted to pay for under this Contract, the Authority and the Purchaser may enter into further negotiations for the financing, construction, operation and maintenance of such facilities as are necessary for the diversion, treatment and/or delivery of such supplies; and

WHEREAS, the Authority and the Purchaser, acting through their duly constituted governing bodies pursuant to authority granted by provisions of the Interlocal Cooperation Act, V.T.C.A., Section 791.026, Government Code, as amended, have mutually agreed upon the terms and conditions of this Contract; now, therefore

IN CONSIDERATION of the mutual covenants, agreements and undertakings herein set forth, the parties hereto hereby agree and contract as follows:

ARTICLE I DEFINITIONS

SECTION 1.01. Unless the context shall indicate a contrary meaning or intent, the terms below defined, for all purposes of this Contract and any contract amendatory or supplemental to this Contract shall be construed or used and are intended to have meanings as follows:

- (a) “Authority” shall mean the Greater Texoma Utility Authority, or its successor.
- (b) “Board” and “Board of Directors” shall mean the Board of Directors of the Authority.
- (c) “Bond Resolution” shall mean any resolution of the Board of Directors authorizing the issuance of the Bonds and providing for their security and payment, as such resolution(s) may be amended from time to time as therein permitted, where the proceeds from the sale of the Bonds will be used to discharge the cost of the Project.
- (d) “Bonds” shall mean any bonds payable from revenues to be received by the Authority from the Purchaser under this Contract and to be issued by the Authority for the purpose of providing funds to pay the necessary costs of the Project, whether in one or more series or issues.
- (e) “COE Contract” shall mean that certain contract between the Department of the Army and the Authority authorizing the Authority’s acquisition of 50,000 acre-feet of storage space in Lake Texoma which resulted from the reallocation of hydropower storage to water supply storage.
- (f) “Commission” shall mean the Texas Commission on Environmental Quality.
- (g) “Contract” shall mean this services agreement between the Authority and the Purchaser, which the parties have executed pursuant to Local Government Code Sec. 271.151, et. seq. and Government Code Sec. 791.026.
- (h) “Cost of the Project” shall mean all cost and expense incurred in connection with the acquisition of the Project, including, without limiting the generality of the foregoing, the cost

to the Authority of the acquisition, management, and administration of all storage space in Lake Texoma pursuant to the COE Contract and the costs of securing, managing, and administering the Water Right, the financing charges, interest costs, and the Authority's administrative expenses expected to accrue in connection with such acquisition, the funding of any reserve funds created by the Bond Resolution(s), the cost of engineering and legal services, plans, specifications, surveys, other expenses necessary or incident to the Authority's determination of the feasibility and practicability of acquiring the Project, and such other expenses as may be necessary or incident to the Authority's acquisition and management of the Project, and all legal fees, printing and other cost, fees and expenses necessary for or incident to the issuance of the Bonds.

(i) "Fiscal Year" shall mean the twelve-month operating period (under this Contract) commencing October 1st of each year, provided such twelve-month period may be changed one time in any three calendar year period by agreement of the Authority and the Purchaser (which agreement, if made, shall be attached hereto as an exhibit).

(j) "Maintenance and Operation Expense of the Project" shall mean the Authority's expense of maintenance, management, and operation of the Project including operations and maintenance expenses associated with the COE Contract, all salaries, labor, materials, interest, repairs, and replacements necessary to render efficient services to the Purchaser, or which might be necessary to meet some physical accident or condition which would otherwise impair the security of the Bonds. Such term shall not include depreciation.

(k) "Project" shall mean, collectively, the total water supply authorized to the Authority by way of the Water Right, a portion of which supply is contracted to the Purchaser pursuant to and for the term of this Contract, with such supply being made available to the Authority pursuant to its rights under the COE Contract, which are to be or have been (i) acquired in order to meet the contractual obligations hereunder and (ii) financed by the Authority through the issuance of Bonds, to the extent the same are payable from the money paid or required to be paid by the Purchaser under this Contract or obtained as grant funds, from any source, for the purpose of paying all or part of the Cost of the Project described in each ordinance, order, or resolution of the Purchaser, duly passed prior to or subsequent to the date of this Contract, authorizing the issuance of Bonds by the Authority to finance the Cost of the Project.

(l) "Purchaser" shall mean the Mustang Special Utility District.

(m) "Utility System" shall mean the Purchaser's water and sewer system.

(n) "Water Conservation Plan" shall mean the Authority's water conservation and drought contingency plan, as same may be amended from time to time by the Authority, and as approved by the Commission.

(o) "Water Right" shall mean the water right appropriation issued by the Commission to the Authority authorizing the diversion and use not to exceed 56,500 acre-feet of water per annum for municipal, industrial and agricultural purposes.

ARTICLE II
REPRESENTATIONS AND AGREEMENTS

SECTION 2.01. The Purchaser's Representations and Agreements. The Purchaser represents to the Authority and agrees with the Authority as follows:

(a) It is empowered under applicable laws of Texas to enter into the engagements prescribed for it under this Contract, including the services afforded hereunder, and to perform all obligations which may result therefrom, and its governing body has duly authorized execution of this Contract.

(b) It will timely pay to the Authority the full amount it is required to pay under the provisions of this Contract for the water supply made available by the Project, pursuant to Sec. 3.02 hereof.

(c) It will plan, construct, maintain, operate and finance its own Utility System and set retail rates to individual customers for utility service adequate to pay all Purchaser obligations secured by and made payable from the revenues derived from the operation of the Purchaser's Utility System.

(d) It will cooperate with the Authority in the performance of the duties and responsibilities assigned to the Authority by this Contract.

(e) At such time as the Purchaser needs all or part of the water supply and services it has contracted for under this Contract, the Purchaser will have the right to further contract with the Authority for the financing, construction, operations and maintenance of such facilities as are necessary for the diversion, treatment, and/or delivery of such supplies.

(f) It will comply with the Water Conservation Plan in all respects, and will adopt, implement, and enforce water conservation measures that are consistent with the provisions of the Water Conservation Plan; and, it will comply with all applicable water conservation plan and reporting requirements of the Commission and the Texas Water Development Board.

(g) During the term of this Contract it will continue to own, operate, and manage the Utility System, and it will not sell or convey more than ten percent (10 %) of the water supply it has contracted for under this Contract to non-governmental entities under contracts that would result in a private business use of the Utility System for federal income tax purposes.

(h) Following the Authority's full payment of the principal and interest on the Bonds, the Purchaser will continue to make payments to the Authority for the Authority's operations, maintenance, and administrative costs associated with the Project, for the remaining term of the Contract.

(i) During and following the Purchaser's payment of its portion of the Authority's bonded indebtedness on the Project, the Authority will own the Project in its entirety, and Purchaser shall have the right during the term of this Contract to a supply of water from the Project, in accordance with the provisions of Section 2.03 hereof.

SECTION 2.02. Representations and Agreements of Authority. The Authority represents to the Purchaser and agrees with the Purchaser as follows:

(a) In its capacity as a conservation and reclamation district created by the Act, pursuant to Article XVI, Section 59 of the Texas Constitution, it is empowered under applicable laws of the State of Texas, particularly under the Act, the Interlocal Cooperation Act, V.T.C.A. Government Code, Ch. 791, et. seq., and the Texas Water Code, to enter into the engagements prescribed for it under this Contract, including the services afforded hereunder, and to perform all obligations which may result therefrom, and its governing body has duly authorized execution of this Contract.

(b) It will finance all Cost of the Project on behalf of the Purchaser and the Authority's other customers.

(c) It will cooperate with the Purchaser in the performance of the duties and responsibilities assigned to the Purchaser by this Contract.

(d) At such time as the Purchaser needs all or part of the water supply it has contracted for under this Contract, the Authority will have the right to further contract with the Purchaser for the financing, construction, operations and maintenance of such facilities as are necessary for the diversion, treatment, and/or delivery of such supplies.

SECTION 2.03. Purchase of Supply in Place. The Purchaser shall have the right to 2.00 per cent (%) of the total water supply made available through the Authority's ownership of the Project, up to but not exceeding 1,000 acre-feet of water per annum or 1,008,000 gallons per day ("MGD"), for the term of and subject to the conditions of this Contract. However, the Purchaser recognizes and acknowledges that i) the Project's yield, and therefore the amount of water to which Purchaser is entitled hereunder, may be subject to reduction during the term of this Contract due to force majeure conditions, including drought or siltation conditions, or TCEQ or COE requirements, or other factors beyond the control of the parties, and ii) the services afforded by the Authority hereunder do not include the provision of facilities or infrastructure necessary to divert, treat and/or deliver water to the Purchaser and that a supplemental contract will be required in order for the Authority to divert, treat, and/or deliver water to the Purchaser.

ARTICLE III FISCAL MATTERS

SECTION 3.01. Payment for Service. The Authority will provide from the proceeds received through the issuance and sale of its Bonds such funds as are necessary for the purpose of acquiring the Project. The Purchaser hereby covenants and agrees to make payments to the Authority equal to amounts sufficient to pay 2.00% of the total debt service on the Bonds (together with 2.00% of all other payments, fees, and charges due to the Authority hereunder). It is further understood and agreed that a critical component of the Authority's funds to pay the principal of and interest on its Bonds is from the payments to be made by the Purchaser to the Authority under this Contract, and the Purchaser agrees that it will make to the Authority the following payments, as applicable, following the Effective Date and continuing during the term of this Contract, for the services afforded by the Authority hereunder:

(a) Monthly amortization payment: such amounts, payable monthly on or before the 10th day of each month, in approximately equal installments, as are necessary to pay (i) the principal coming due on the Authority's Bonds on the next succeeding principal payment date; (ii) the interest coming due on the Authority's Bonds on the next succeeding interest payment date; and (iii) the fees and charges of the paying agent(s) for paying or redeeming the Bonds and interest thereon coming due on each applicable date.

(b) Reserve Fund Payment: such amount as is required to be paid into the Reserve Fund from the Revenue Fund (out of payments to be made by the Purchaser) under the Bond Resolution in order to establish, maintain or replenish the Reserve Fund for the security and payment of Bonds.

(c) Administrative Payment: an amount sufficient to pay the administrative and overhead expenses of the Authority, directly attributable and chargeable to the Bonds and the Project, including but not limited to the cost of routine annual accounting reports and the costs of all continuing disclosure undertakings.

(d) Extraordinary Expense Payment: such amounts, as are necessary to pay or reimburse the Authority for any extraordinary or unexpected expenses or costs reasonably and necessarily incurred by the Authority in connection with the Bonds and the Project, such as expenses of litigation, if any, and costs of special studies and special professional services, if and when required by any governmental directive or regulation or as may be agreed between the Purchaser and the Authority.

(e) The cost of Maintenance and Operation Expense of the Project.

SECTION 3.02. Time for Making of Payments. The Purchaser agrees to make the payments required by Section 3.01 at the times hereafter specified:

(a) Monthly Amortization Payments: the Purchaser shall commence making monthly amortization payments at such time as any amount required by the Bond Resolution(s) to be deposited into an escrow account for the payment of interest on the Bonds; provided that such payments shall commence in no event later than the earlier of (i) twelve-months prior to the first principal payment date specified in the Bond Resolution(s), or (ii) six months prior to the first interest payment date for which moneys are not set aside for the payment of the interest coming due on such date from the proceeds of the Bonds. Monthly amortization payments shall continue to be made throughout the term of the Contract until the Bonds are retired and shall be adjusted by the Purchaser so as to provide for the accumulation of the full amount of debt service requirements (principal, interest and paying agent fees due on any given payment date) on or before the first day of the month such debt service requirements become due.

(b) Reserve Fund Payment: the Purchaser shall commence making these payments as may be provided in the Bond Resolution, after the delivery of the initial series of Bonds issued to acquire the Project, and upon the issuance of additional Bonds, if any, shall increase the payments in accordance with the Resolution authorizing such additional Bonds. These payments shall be made until the Bonds are retired.

(c) Administrative Payment: the Purchaser shall commence making the administrative payment on the 10th day of the month following the effective date of this Contract, and thereafter such payment shall be made on the 10th day of each month thereafter throughout the term of this Contract.

(d) Extraordinary Expense Payment: during the term of this Contract, the Purchaser shall make any extraordinary expense payment immediately upon receipt of the statement therefor.

(e) Maintenance and Operation Expense Payment: the Purchaser shall pay the amount which the Authority determines shall be required for Maintenance and Operation Expenses of the Project pursuant to the COE Contract, such payments to be made within thirty (30) days following the receipt by the Purchaser from the Authority of the invoice for such expenses, throughout the term of this Contract. An annual budget shall be prepared by the Authority at least thirty (30) days prior to the beginning of each Fiscal Year; the budget shall then be submitted to the Purchaser which may indicate exceptions or suggestions, which shall then be considered by the Board. If an annual budget is found to be insufficient or excessive, the parties agree the same shall be taken into consideration by an amendment as well as the budget for the following year, with the view that additional payments shall be made or credit shall be given so that expenditures match receipts over the Fiscal Year or an adjustment is made in the following month.

SECTION 3.03. Maintenance and Operation of the Project. Unless otherwise agreed by the parties, it is agreed that the Authority will be responsible for maintaining and operating the Project for the entire term of this Contract, and shall pay all costs and expenses incurred in regard to the maintenance and operation of the Project. The Authority hereby agrees and covenants to operate and maintain the Project in accordance with accepted good business and engineering practices and in accordance with all applicable federal and state laws, including any rules and regulations issued by appropriate agencies in the administration of said laws.

SECTION 3.04. Covenant of Timely Payment. The Purchaser covenants that it will timely make (i) the monthly amortization payments and (ii) the additional payments specified hereunder in accordance with the provisions of this Contract as the same shall become due and payable, irrespective of whether service of the Project has been abandoned or discontinued, or if the Project has been rendered wholly or partially unusable by reason of "force majeure". The Purchaser recognizes the fact that the Authority will use the payment received from the Purchaser hereunder to pay, secure and finance the issuance of the Bonds, and the holders of the Bonds shall be entitled to rely upon the foregoing covenant of payment regardless of any other agreement that may exist between the Authority and the Purchaser.

SECTION 3.05. Late Payment Penalty. Should the Purchaser fail to make any payment at the time herein specified, interest on such amounts shall accrue at the rate of ten percent (10%) per annum from the date such payment becomes due until paid in full with interest as herein specified. In the event such payment is not made within sixty (60) days from the date such payment becomes due, the Authority may institute a proceeding for a mandatory injunction requiring the payment of the amount due and interest thereon, such action to be instituted in a court of competent jurisdiction.

SECTION 3.06. Priority of Charges - Purchaser to Fix Adequate Rates.

(a) The Purchaser represents and covenants that all payments to be made by it hereunder shall constitute “operating expenses” of the Utility System.

(b) The Purchaser further agrees to fix and collect such rates and charges for utility services to its customers as will make possible the prompt payment of all expenses of operating and maintaining the Utility System, including all payments, obligations and indemnities contracted hereunder.

SECTION 3.07. Nature of Obligation of Purchaser. The payments required to be made by the Purchaser under the terms of this Contract shall be due and payable in any and all events and without regard to whether the water supply secured by the Authority pursuant to the Project are ever diverted, treated and/or delivered to the Purchaser for use. The agreements of the Purchaser shall be and are separate and independent covenants and the Purchaser shall have no rights of set off, recoupment, or counterclaim. The Authority shall never have the right to demand payment of any amounts due hereunder by the Purchaser out of funds raised or to be raised by taxation. Any obligations assumed or imposed on either party hereto shall never be construed to be a debt of such party of a kind that would require it to levy and collect taxes to discharge any such obligation, it being expressly understood by the parties hereto that the funds required for all payments due from the Purchaser pursuant to this Contract are to be collected from the sources referenced herein, and from no other source.

ARTICLE IV
MISCELLANEOUS PROVISIONS

SECTION 4.01. Contract Term. The term of this Contract shall commence with the effective date of this Contract, and continue through the period during which the Bonds are outstanding and unpaid and the useful life of the Project.

SECTION 4.02. Useful Life of Project. The Purchaser and Authority agree and mutually find that the anticipated useful life of the Project is the period during which the Lake Texoma/Denison Dam are physically capable of storing the water allocated to the Authority pursuant to the COE Contract, and that such period equals or exceeds the period specified in the Bond Resolution(s) for the maturity of all Bonds authorized to be issued.

SECTION 4.03. Abandonment of Project. The abandonment of the Project shall have no effect upon the obligations of the Purchaser to the Authority provided for by this Contract and all payments provided for by this Contract shall remain obligations of the Purchaser of the same nature as provided for by this Contract.

SECTION 4.04. Modification of Provisions. This Contract may be changed and modified only with the consent of the governing bodies of the Authority and the Purchaser. Such modification may be requested by either party, in which event a joint meeting of the governing bodies or of their duly authorized and appointed representative shall be held not less than thirty (30) days after the giving of such notice. At such joint meeting, the suggested changes or modifications shall be considered, discussed and settled. No such change or modification may be made which will affect adversely the payment when due of all moneys required to be paid by

the Purchaser under the terms of this Contract and no such change will be effective which affects adversely or causes a violation of any covenants contained in the Bond Resolution(s).

SECTION 4.05. Regulatory Provisions. This Contract shall be subject to all valid rules, regulations and laws applicable thereto, as promulgated by the United States of America, the State of Texas, or any other governmental body or agency having lawful jurisdiction or any authorized representative or agency of any of them.

SECTION 4.06. Taxes. In the event any sales or use taxes, or taxes of any nature, are hereafter imposed upon the Project or the Authority on account of the acquisition, existence, ownership, operation and maintenance of the Project, the amount of such taxes shall be treated as operating expenses of the Project.

SECTION 4.07. Title to and Liability for Water. Title to all water storage acquired by the Authority pursuant to the COE Contract and all water supply secured by the Authority pursuant to the Water Right shall be in the Authority. Title to all water supplied to the Purchaser through diversion, treatment, and/or delivery facilities shall be in Authority up to the point water is delivered to Purchaser, at which point title to and liability for such water shall pass to Purchaser.

SECTION 4.08. Notices. Any notice, request, demand, statement or bill provided for in this Contract shall be in writing and shall be considered to have been fully delivered when sent by registered mail, addressed as follows:

To the Authority: 5100 Airport Drive
Denison, Texas 75020
Attention: General Manager

To the Purchaser: 7985 FM 2931
Aubrey, Texas 76227
Attention: General Manager

as the case may be, except that routine communications may be sent by ordinary mail and except that either party, by the filing of an appropriate written notice to the other, may specify some other individual to whom communications thereafter are to be addressed.

SECTION 4.09. Covenant to Enforce Contractual Obligations. The Authority covenants that it will enforce the obligations of the Purchaser hereunder as may be required to accomplish the purpose of this Contract. Either party may enforce any obligations hereunder owed to it by the other party.

SECTION 4.10. Consequences of Purchaser Default. The Authority and the Purchaser agree that in the event of default or threatened default, in the payment of principal of or interest on the Bonds, any court of competent jurisdiction upon petition of the holders of twenty five percent (25%) of the principal amount of the then outstanding Bonds of the Authority shall appoint a receiver with Authority to collect and receive all resources pledged to the payment of the Bonds, enforce all rights arising from default, if any, by the Purchaser in making payment under this Contract, and take charge of the pledged funds on hand and manage

the proprietary affairs of the Authority insofar as such affairs relate to the Project. The court may further vest the receiver with such powers and duties as the court may find necessary for the protection of the holders of the Bonds.

SECTION 4.11. Further Agreements of the Parties. The parties hereto specifically recognize that to the extent the Purchaser has heretofore issued, sold and delivered revenue bonds that were and are payable from and secured by a lien on and pledge of the revenues of its utility system, and to the extent such bonds so issued and delivered are outstanding, the Purchaser has disclosed to the Authority the existence and terms of all such bonds.

Additionally, the Purchaser represents to the Authority that:

- (a) There is no provision in any ordinance of the Purchaser which prohibits the Purchaser from entering into and executing this Contract.
- (b) The execution of this Contract and the operation thereunder will not in any way impair the obligation of contract by and between the Purchaser and any other person. The Project is in furtherance of governmental policy, not inconsistent with the existing contractual obligations of the Purchaser.

SECTION 4.12. Control of Project by Authority. The parties hereto recognize and it is specifically agreed that during the term of this Contract, the Authority shall have the exclusive right to the use and utilization of the Project, for the benefit of the Purchaser and other customers of the Authority; and, that the Authority may control and manage the Project and the services afforded hereunder by the Authority.

Except as specified in this Article, the abandonment of the use of all or part of such Project has no effect upon the obligations of the parties.

SECTION 4.13. Force Majeure.

(a) If for any reason of “force majeure” either of the parties hereto shall be rendered unable wholly or in part to carry out its obligation under this Contract, other than the obligation of Purchaser to make the payments required under the terms of Section 3.01 hereof, then if such party shall give notice and full particulars of such reasons in writing to the other party within a reasonable time after the occurrence of the event, or cause relied upon, the obligation of the party giving such notice, so far as it is affected by such “force majeure” shall be suspended during the continuance of the inability then claimed, but for no longer period, and any such parties shall endeavor to remove or overcome such inability with all reasonable dispatch. The term “force majeure” as employed herein shall mean acts of God, strikes, lock outs, or other industrial disturbances, acts of a public enemy, orders or actions of any kind of the Government of the United States of America or of 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 people, civil disturbances, explosions, breakages or accident to dams, machinery, partial or entire failure of water supply, on account of any other cause not reasonably within the control of the party claiming such inability. It is understood and agreed that the settlement of strikes and lock outs shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any force majeure shall be

remedied with all reasonable dispatch, shall not require the settlement of strikes and lock outs by acceding to the demands of the opposing parties when such settlement is unfavorable to it in the judgment of the party having the difficulty. No failure of Authority to meet any obligation by reason for force majeure shall relieve the Purchaser from its obligations to make the payments required under the terms of Section 3.01 hereof.

(b) No damage shall be recoverable from Authority by reason of the suspension of the Project due to any of the causes above mentioned. If the Authority's ability to own or manage the Project is affected by any of such causes, the Authority shall promptly notify the Purchaser in writing giving the particulars as soon as possible after the occurrence of the cause or causes.

SECTION 4.14. Bond Approval by the Purchaser.

(a) Prior to the issuance and delivery of any Bonds which are (i) payable as to principal, interest or redemption premium out of the debt service payments, or (ii) to provide facilities or service or any item which is to be maintained by the Authority utilizing any part of the base monthly payments, the Purchaser shall approve the issuance thereof as provided in this Section.

(b) If the Bonds are to be sold at a public sale, the governing body of the Purchaser shall, by resolution or ordinance, approve (i) the "Notice of Sale" issued or proposed to be issued by the Authority prior to their delivery; and, (ii) the facilities to be acquired; or, if the Bonds are to be negotiated, or are refunding Bonds, the governing body of the Purchaser shall, by resolution or ordinance approve either (i) the form of purchase agreement or (ii) the resolution authorizing the issuance of the Bonds.

(c) If the Bonds are to be exchanged for property or services or are to be privately placed, the governing body of the Purchaser shall, by resolution or ordinance, approve (i) the form of the resolution adopted or to be adopted by the governing body of the Authority which authorizes the issuance of such Bonds; and (ii) the facilities to be constructed or acquired, or the services to be provided.

(d) The Purchaser and the Authority agree that the holders of the Bonds, and each party deemed a holder of a Bond by virtue of subrogation to the rights of the holders of the Bonds or otherwise, shall be express third-party beneficiaries of this Contract and shall have all available remedies pertaining to enforcement of this Contract.

SECTION 4.15. Severability. The parties hereto agree that if any of the provisions of this Contract contravene or be held invalid under the laws of the State, same shall not invalidate the whole Contract, but it shall be construed as though not containing that particular provision, and the rights and obligations of the parties shall be construed and in force accordingly.

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

GREATER TEXOMA UTILITY AUTHORITY

(Authority Seal)

By: _____
General Manager

MUSTANG SPECIAL UTILITY DISTRICT

(District Seal)

By: _____
President, Board of Directors

ATTEST:

Secretary, Board of Directors

DRAFT



GREATER TEXOMA UTILITY AUTHORITY

5100 Airport Drive
Denison TX 75020
Ph. (903) 786-4433
Fax (903) 786-8211
gtua@gtua.org

Wednesday, December 14, 2022

Texas Water Development Board
1700 North Congress Avenue
Austin, Texas 78701

Re: Greater Texoma Utility Authority Contract Revenue Bonds, Series 2018 (City of Gunter Project) and Greater Texoma Utility Authority Contract Revenue Bonds, Series 2018A (City of Gunter Project)

To whom it may concern:

The City of Gunter, Texas (the "City") is in the process of transferring its utility system to the Mustang Special Utility District ("Mustang SUD"). The referenced bonds (jointly, the "Bonds") are secured by revenues received from the City as the "contracting party" pursuant to a certain "Water and Sewer Facilities Contract" dated as of October 16, 2017 by and between the Greater Texoma Utility Authority (the "Authority") and the City. In order to accommodate the transfer of the City's utility system, the Authority will consider amendments to the resolutions which authorized the Bonds in order to substitute Mustang SUD as the contracting party as well as enter into a contract with Mustang SUD to secure the payment of the Bonds. Attached hereto are the proposed amendatory resolutions to be adopted by the GTUA Board of Directors (the "Proposed Amendments") in order to accomplish the substitution. There are no changes to the terms of the Bonds.

I am providing this letter, as directed by the Board of Directors of the Authority, as a formal request for the consent of the Texas Water Development Board, as sole holder of the Bonds, to the Proposed Amendments in order to accomplish the substitution. Please note, these amendatory resolutions attached are in draft form and are subject to comments from the working group for this transaction.

Please let me know if you will need additional information or documentation regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "P.M. Sigle".

Paul M. Sigle
General Manager

A RESOLUTION amending the resolution authorizing the issuance of the “Greater Texoma Utility Authority Contract Revenue Bonds, Series 2018 (City of Gunter Project)” and resolving other matters incident and related thereto.

WHEREAS, the Board of Directors (the “Board”) of the Greater Texoma Utility Authority (the “Authority”) adopted a resolution (the “Series 2018 Resolution”) on February 19, 2018 authorizing the issuance of “Greater Texoma Utility Authority Contract Revenue Bonds, Series 2018 (City of Gunter Project)” (the “Series 2018 Bonds”); and

WHEREAS, the Series 2018 Resolution provides that the Series 2018 Bonds are payable from and secured by amounts received by the Authority from the City of Gunter, Texas (the “City”) as the “contracting party” pursuant to a certain “Water and Sewer Facilities Contract” dated as of October 16, 2017 by and between the Authority and the City; and

WHEREAS, the City and Mustang Special Utility District (“Mustang SUD”) entered into a certain “Asset Purchase Agreement”, effective ____, 2022”, transferring and conveying the City’s water and sewer system (the “System”) to Mustang SUD, subject to the terms and conditions therein, including the assumption of the contractual obligations of the City by Mustang SUD; and

WHEREAS, in order to accommodate the transfer of the System to Mustang SUD as requested by the City and Mustang SUD, the Board hereby finds and determines that the 2018 Resolution should be amended to reflect the substitution of Mustang SUD as the “contracting party” for the Project, as defined in the Series 2018 Resolution; and

WHEREAS, pursuant to Section 38 of the Series 2018 Resolution, the Authority is authorized to amend the Series 2018 Resolution upon the written consent of the bondholders holding a majority in aggregate principal amount of the Bonds Similarly Secured then outstanding; and

WHEREAS, “Bonds Similarly Secured” refers to, collectively, the Series 2018 Bonds and the bonds authorized by a resolution adopted on December 18, 2018 by the Board of the Authority authorizing issuance of an additional series of bonds in accordance with the Series 2018 Resolution; and

WHEREAS, the Texas Water Development Board (the “TWDB”) is the sole holder of the Bonds Similarly Secured and the Authority has obtained or will obtain written consent from the TWDB to amend the Series 2018 Resolution as provided herein; and

WHEREAS, the Board hereby finds and determines that Sections 10(e), 10(q), 18, 19(c), 20, 21(c), 21(e), 22, 23(d), 26, and 39(b) of the Series 2018 Resolution should be amended to provide for the substitution of Mustang SUD as the “contracting party” under the Water and Sewer Facilities Contract; now, therefore,

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE GREATER TEXOMA UTILITY AUTHORITY:

SECTION 1: Section 10(e) of the Series 2018 Resolution is hereby amended to read as

follows:

“The term "Contract" or "Water and Sewer Facilities Contract" shall mean that certain contract, dated as of the ___ day of _____, 2022, by and between the Authority and the District, together with amendments and supplements thereto (which by the term of such instrument is designated as a supplement to such Contract), a copy of such Contract being attached hereto as **Exhibit B** for the purposes of identification.”

The Contract referenced above is hereto attached to this Resolution as Exhibit A.

SECTION 2: Section 10(q) is hereby added to the Series 2018 Resolution to read as follows:

“The term “District” shall mean the Mustang Special Utility District.”

SECTION 3: Section 18 of the Series 2018 Resolution is hereby amended to read as follows:

“Money remaining in the Revenue Fund, after making the payments required in items (1) through (4) of the last paragraph of Section 13, shall be transferred to any other fund referenced in this Resolution and used as a credit to the amount that would otherwise be required to be paid by the District under Section 3.01 of the Contract.”

SECTION 4: Section 19(c) of the Series 2018 Resolution is hereby amended to read as follows:

“The District shall have approved the resolution(s) authorizing the issuance of the Additional Bonds as to form and content and acknowledged that the payment of principal of and interest on such Additional Bonds is payable, in whole or in part, from payments to be made by the District, under and pursuant to the Contract.”

SECTION 5: Section 20 of the Series 2018 Resolution is hereby amended to read as follows:

“The Authority covenants that it will at all times keep insured such of its plants, structures, buildings, stations, machinery, equipment, apparatus, distribution pipelines and equipment, as are usually insured by corporations operating like properties, with a responsible insurance company or companies, against risks, accidents or casualties against which and to the extent insurance is usually carried by corporations operating like properties, and will also at all times maintain worker’s compensation insurance and insurance against public liability and property damages to the extent permitted by law, in a reasonable amount with a responsible insurance company or companies; provided, however, that any time while the District or any contractor engaged in construction work shall be fully responsible therefor, or the Authority has assumed such responsibility, the Authority shall not be required to carry such insurance. The Authority further covenants that such insurance with respect to the Project shall be in an amount sufficient to protect the Board’s interest in the Project.”

SECTION 6: Section 21(c) of the Series 2018 Resolution is hereby amended to read as follows:

“The Accountant’s comments regarding the manner in which the Authority and the District have complied with the covenants and requirements of this Resolution and the Contract and his recommendations for any changes or improvements in the operation, records and accounts of the Authority.”

SECTION 7: The third paragraph of Section 21(e) of the Series 2018 Resolution is hereby amended to read as follows:

“By its approval of this Resolution, the District agrees (a) to provide the Texas Water Development Board with annual audit reports, to be submitted without charge, within _____ days of the close of each fiscal year, (b) in order to secure its obligations under the Contract, to maintain rates and charges for its utility system sufficient to pay all of its obligations secured by and made payable from the revenues derived from the operation of its utility system and (c) to implement any water conservation program required by the Board until all financial obligations to the Board have been discharged.”

SECTION 8: The first paragraph of Section 22 of the Series 2018 Resolution is hereby amended to read as follows:

“In addition to all the rights and remedies provided by the laws of the State of Texas, the Authority covenants and agrees particularly that in the event the Authority (a) defaults (i) in payments to be made to the Bond Fund or Reserve Fund as required by this Resolution, or (ii) in the observance or performance of any other of the covenants, conditions or obligations set forth in this Resolution or (b) the District defaults under the Contract, any Holder shall be entitled to a writ of mandamus issued by a court of proper jurisdiction compelling and requiring the Board of Directors and other officers of the Authority to observe and perform any covenant, condition or obligation prescribed in this Resolution.”

SECTION 9: Section 23(d) of the Series 2018 Resolution is hereby amended to read as follows:

“The Authority will maintain rates and charges to the District sufficient to meet the debt service requirements on the Outstanding obligations of the Authority that are supported by such revenues and the establishment of the special funds maintained for the payment and security of such obligations.

SECTION 10: The second paragraph of Section 26 of the Series 2018 Resolution is hereby amended to read as follows:

“Moneys on deposit in the Construction Fund shall be disbursed only for payment of the respective Costs of the Project financed. All expenditures for construction, labor, and materials shall be disbursed only upon receipt of a certificate of the Engineer (as defined in the Contract) based upon estimates of work and material furnished as approved by such Engineers and submitted to the Authority and the District’s Engineer for approval prior to payment. The Authority shall keep records of the nature and amount of all Construction Fund expenditures and make the same available to the City and the engineers at all reasonable times. Should there be any balance in the Construction Fund after all such Costs of the Project have been paid, such balance shall be deposited in the Bond Fund or the Reserve Fund subject to tax law limitations.”

SECTION 11: The first paragraph of Section 39(b) of the Series 2018 Resolution is hereby amended to read as follows:

“Annual Reports. The Authority shall provide annually to the MSRB (1) within six (6) months after the end of each Fiscal Year, financial information and operating data of the general type described in **Exhibit D** hereto and (2) if not provided as part of such financial information and operating data, audited financial statements of the Authority and the District, when and if available. Any financial statements so provided shall be prepared in accordance with the accounting principles described in **Exhibit D** hereto, or such other accounting principles as the Authority may be required to employ from time to time pursuant to state law or regulation, and audited, if the Authority commissions an audit of such statements and the audit is completed within the period during which they must be provided. If audited financial statements are not available by the required time, the Authority will provide unaudited financial information of the type included in the final Application for Financial Assistance and described in **Exhibit D** by the required time and audited financial statements when and if such audited financial statements become available.

SECTION 12: Any one or more of the President, Vice President, Secretary, and/or Assistant Secretary of the Board of Directors of the Authority, and the General Manager of the Authority, and the Texas Water Development Board, are hereby expressly authorized, empowered and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge and deliver in the name and on behalf of the Authority all agreements, instruments, certificates or other documents, whether mentioned herein or not, as may be necessary or desirable in order to carry out the terms and provisions of this Resolution. In addition, the President, Vice President, Secretary, and/or Assistant Secretary of the Board of Directors of the Authority, and the General Manager of the Authority, Bond Counsel, and the Texas Water Development Board are each hereby authorized and directed to approve any technical changes or corrections to this Resolution or to any of the documents amended by this Resolution: (i) in order to cure any technical ambiguity, formal defect, or omission in the Resolution or such other document; or (ii) as requested by the Attorney General of the State of Texas or his representative if such officer or counsel determines that such ministerial changes are consistent with the intent and purpose of the Resolution, which determination shall be final. In the event that any officer of the Authority whose signature shall appear on any document shall cease to be such officer before the delivery of such document, such signature nevertheless shall be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

SECTION 13: All terms not herein defined shall have the meaning in the Series 2018 Resolution.

SECTION 14: Except as hereby amended and modified, all of the provisions of the Series 2018 Resolution are hereby ratified, confirmed and readopted.

SECTION 15: It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was

given, all as required by Texas Government Code, Chapter 551, as amended.

SECTION 16: This Resolution shall be in force and effect from and after its passage on the date shown below.

PASSED AND ADOPTED, this _____.

GREATER TEXOMA UTILITY
AUTHORITY

President, Board of Directors

ATTEST:

Secretary, Board of Directors

(Authority Seal)

EXHIBIT A

WATER AND SEWER FACILITIES CONTRACT

THIS CONTRACT ("Contract") is made and entered into as of _____, 202__, between the GREATER TEXOMA UTILITY AUTHORITY (hereinafter referred to as the "Authority"), a conservation and reclamation authority, a governmental agency, a political subdivision of the State of Texas, and a body politic corporate, duly created, existing and acting by virtue of Texas Special District Local Laws Code, Chapter 8283 (the "Act"), and the MUSTANG SPECIAL UTILITY DISTRICT, a Texas political subdivision (hereinafter referred to as the "District"), duly created and existing under the laws of the State of Texas:

W I T N E S S E T H:

WHEREAS, the Authority, acting pursuant to the Act, has issued or proposes to issue, or both, its bonds for the purposes of providing certain water supply facilities and certain sanitary sewer collection and treatment facilities for use by the City; and

WHEREAS, certain revenues to be received by the Authority from the District under this Contract are to be pledged to the payment and security of the bonds issued by the Authority and constitute the basis for the Authority's credit in financing such facilities and issuing such bonds; and

WHEREAS, the Authority and the District, acting through their duly constituted governing bodies pursuant to authority granted by Texas Government Code, Section 791.026, as amended, have mutually agreed upon the terms and conditions of this Contract; now, therefore

IN CONSIDERATION of the mutual covenants, agreements and undertakings herein set forth, the parties hereto hereby agree and contract as follows:

ARTICLE I
DEFINITIONS

SECTION 1.01: Unless the context shall indicate a contrary meaning or intent, the terms below defined, for all purposes of this Contract and any contract amendatory or supplemental to this Contract shall be construed or used and are intended to have meanings as follows:

- (a) "Authority" shall mean the Greater Texoma Utility Authority, or its successor.
- (b) "Board" and "Board of Directors" shall mean the Board of Directors of the Authority.
- (c) "Bond Resolution" shall mean any resolution of the Board of Directors authorizing the issuance of the Bonds and providing for their security and payment, as such resolution(s) may be amended from time to time as therein permitted, where the proceeds from the sale of the Bonds will be used to discharge the cost of the Project.
- (d) "Bonds" shall mean any bonds payable from revenues to be received by the Authority from the District under this Contract and issued by the Authority for the purpose of

providing funds to pay the necessary costs of the Project, whether in one or more series or issues and any bonds issued to refund such bonds.

(e) "Cost of the Project" shall mean all cost and expense incurred in connection with the acquisition, construction, improvements, enlargement, extension and repair of the Project, including, without limiting the generality of the foregoing, the cost of the acquisition of all land, rights-of-way, property rights, easements, and interests, the cost of all machinery and equipment, financing charges, interest and administrative expenses expected to accrue during the period of construction, the funding of any reserve funds created by the Bond Resolution(s), cost of estimates and of engineering and legal services, plans, specifications, surveys, estimates of cost and of revenue, other expenses necessary or incident to determining the feasibility and practicability of acquiring, constructing, improving, enlarging, extending, or repairing the Project, and such other expense as may be necessary or incident to the acquisition, construction, improvement, enlargement, extension or repair of the Project and all legal fees, printing and other cost, fees and expenses necessary for or incident to the issuance of the Bonds.

(f) "District" shall mean the Mustang Special Utility District.

(g) "Engineer" shall mean a registered, professional engineer (who may be the District Engineer or the Authority's Engineer). The District and Authority agree that the Engineer may be a different firm on different aspects of the Project and that any Project will be acquired, constructed, improved, enlarged, extended and repaired in accordance with the plans and specifications prepared under the supervision of the Engineer. It is further agreed that an Engineer may be changed or added and the scope of duties adjusted by the Authority, subject to the consent of the District.

(h) "Fiscal Year" shall mean the twelve month operating period (under this Contract) commencing October 1st of each year, provided such twelve month period may be changed one time in any three calendar year period by agreement of the Authority and the District (which agreement, if made, shall be attached hereto as an exhibit).

(i) "Maintenance and Operation Expense of the Project" shall mean the expense of maintenance and operation of the Project including all salaries, labor, materials, interest, repairs, and replacements necessary to render efficient service, or which might be necessary to meet some physical accident or condition which would otherwise impair the security of the Bonds. Such term shall not include depreciation.

(j) "Operator" shall mean the party to the Contract who is designated, from time to time, by the parties with respect to each Project and, in the absence of such designation, shall mean the District.

(k) "'Project" shall mean, collectively, the Water Project and the Sewer Project.

(l) "Sewer Project" shall mean, collectively, the sewer facilities which are to be (i) constructed or acquired in order to meet the contractual obligations hereunder, and (ii) financed by the Authority through the issuance of bonds or other obligations, to the extent the same are payable from the money paid or required to be paid by the District under this Contract, or obtained as grant funds, from any source, for the purpose of paying all or part of the Cost of the Project described in each ordinance or resolution of the District, duly passed prior to or

subsequent to the date of this Contract, authorizing the issuance of Bonds by the Authority to finance the Costs of the Project.

(m) "State" shall mean the State of Texas.

(n) "Utility System" shall have the meaning assigned to such term in Section 2.01(c) hereto.

(o) "Water Project" shall mean, collectively, the water supply, storage and transmission facilities which are to be (i) constructed or acquired in order to meet the contractual obligations hereunder and (ii) financed by the Authority through the issuance of bonds or other obligations, to the extent the same are payable from the money paid or required to be paid by the District under this Contract or obtained as grant funds, from any source, for the purpose of paying all or part of the Cost of the Project described in each ordinance or resolution of the District, duly passed prior to or subsequent to the date of this Contract, authorizing the issuance of Bonds by the Authority to finance the Costs of the Project.

ARTICLE II REPRESENTATIONS AND AGREEMENTS

SECTION 2.01: The District's Representations and Agreements. In connection with its undertakings hereunder, the District represents to the Authority and agrees with the Authority as follows:

(a) In its capacity as a duly organized political subdivision of the State of Texas, it is empowered under applicable laws of Texas to enter into the engagements prescribed for it under this Contract and to perform all obligations which may result therefrom, and its governing body has duly authorized execution of this Contract. Pursuant to Texas Government Code, Section 791.026, as amended, and to the extent required by the terms of that Section, the District agrees not to obtain water supply or wastewater treatment facilities from any other source than pursuant to this Contract.

(b) It will timely pay to the Authority the full amount it is required to pay under the provisions of this Contract for the services supplied by the Authority for the Project.

(c) That it will plan, construct, maintain, operate and finance its own utility system and set retail rates to individual customers for water and wastewater service adequate to pay all District obligations secured by and made payable from the revenues derived from the operation of the District's Utility System (the "Utility System").

(d) That it will cooperate with the Authority in the performance of the duties and responsibilities assigned to the Authority by this Contract.

SECTION 2.02: Representations and Agreements of Authority. In connection with its undertakings hereunder, the Authority represents to the District and agrees with the District as follows:

(a) In its capacity as a conservation and reclamation district created by the Act, pursuant to Article XVI, Section 59 of the Texas Constitution, it is empowered under applicable laws of the State of Texas, particularly under the Act, the Interlocal Cooperation Act, and the Texas Water Code, to enter into the engagements prescribed for it under this Contract and to

perform all obligations which may result therefrom, and its governing body has duly authorized execution of this Contract.

(b) That it will finance all Costs of the Project not provided by the District and any grant secured for the construction of the Project.

SECTION 2.03: Construction. The Operator agrees to assume responsibility for the construction of the Project and the Authority will enter into such contracts as are necessary to construct the Project. To this end, the Authority and the District agree that:

(a) Unless otherwise agreed by the parties, the District be responsible for the preparation of final plans and specifications for the Project.

(b) Final plans and specifications for the Project shall be subject to the approval of the Authority and the District.

(c) All construction contracts shall be let and awarded pursuant to the laws applicable to the Authority.

(d) The Authority shall let and award all construction contracts, subject to the approval of each contract by the District.

(e) The Authority shall deposit from the proceeds from the sale of its Bonds in a special Construction Fund to be created and established by the Bond Resolution(s), an amount of money which shall be specified in said Bond Resolution(s). The Authority shall draw on and use said Construction Fund to pay the cost of acquiring, constructing, improving, extending, enlarging and repairing the Project.

(f) Unless otherwise agreed by the parties, the District shall be responsible for the acquisition of all land, rights-of-way, property rights, easements and interest required to provide the Project, subject to the approval of the District and the Authority.

ARTICLE III FISCAL MATTERS

SECTION 3.01: Payment for Service. The Authority will provide from the proceeds received through the issuance and sale of its Bonds such funds as are necessary, when coupled with any funds or property provided by the District and any grant received, for the purpose of providing all or part of the Project. It is agreed that the District and its customers shall have the exclusive use of the entire Project for the useful life of the Project. In consideration for the Authority's obligation hereunder, the District recognizes and agrees that the Authority will acquire an undivided interest in the Project equivalent to the percentage of the total cost of the Project provided by the Authority through the issuance and sale of its Bonds. It is further agreed that the District's obligations to make any and all payments specified in this Article and the ownership interest of the Authority in the Project will terminate when all of the Authority's Bonds issued in connection with the Project have been paid in full and retired and are no longer outstanding. It is further understood and agreed that the Authority's only source of funds to pay the principal of and interest on its Bonds is from the payments to be made by the District to the Authority under this Contract, and the District agrees that it will make to the Authority the following payments:

(a) Monthly amortization payment — Such amounts, payable monthly on or before the ___th day of each month, in approximately equal installments, as are necessary to pay (i) the principal coming due on the Authority's Bonds on the next succeeding principal payment date; (ii) the interest coming due on the Authority's Bonds on the next succeeding interest payment date; and, (iii) the fees and charges of the Paying Agent(s) for paying or redeeming the Bonds and interest thereon coming due on each applicable date.

(b) Reserve Fund Payment — Such amount as is required to be paid into the Reserve Fund from the Revenue Fund (out of payments to be made by the District) under the Bond Resolution in order to establish, maintain or replenish the Reserve Fund for the security and payment of Bonds.

(c) Administrative Payment — An amount sufficient to pay the administrative and overhead expenses of the Authority, directly attributable and chargeable to the Bonds and the Project, including the cost of routine annual accounting reports and the costs of all continuing disclosure undertakings.

(d) Extraordinary Expense Payment — Such amounts, as are necessary to pay or reimburse the Authority for any extraordinary or unexpected expenses or costs reasonably and necessarily incurred by the Authority in connection with the Bonds and the Project, such as expenses of litigation, if any, and costs of special studies and special professional services, if and when required by any governmental directive or regulation or as may be agreed between the District and the Authority.

(e) The cost of Maintenance and Operation of the Project (for which provision is made in Section 3.03) if the Authority is the Operator under that Section.

SECTION 3.02: _____ Time for Making of Payments. The District agrees to make the payments required by Section 3.01 at the times hereafter specified:

(a) Monthly Amortization Payments — the District shall commence making monthly amortization payments at such time as any amount required by the Bond Resolution(s) to be deposited into an escrow account for the payment of interest on the Bonds during the Project construction period has been fully exhausted; provided that such payments shall commence in no event later than the earlier of (i) twelve months prior to the first principal payment date specified in the Bond Resolution(s), or (ii) six months prior to the first interest payment date for which moneys are not set aside for the payment of the interest coming due on such date from the proceeds of the Bonds. Monthly amortization payments shall continue to be made throughout the term of the Contract and shall be adjusted by the District so as to provide for the accumulation of the full amount of debt service requirements (principal, interest and paying agent fees due on any given payment date) on or before the first day of the month such debt service requirements become due.

(b) Reserve Fund Payment — the District shall commence making these payments on the ___th day of the following month, as may be provided in the Bond Resolution, after the delivery of the initial series of Bonds issued to provide the Project, and upon the issuance of additional Bonds, shall increase the payments in accordance with the Resolution authorizing such additional Bonds.

(c) Administrative Payment — the District shall commence making the administrative payment on the ___th day of the month following the effective date of this Contract, and

thereafter such payment shall be made on the ___th day of each month thereafter throughout the term of this Contract.

(d) Extraordinary Expense Payment — the District shall make any extraordinary expense payment immediately upon receipt of the statement therefor.

(e) Maintenance and Operating Expenses: (i) if the District is designated as the Operator, such expenses shall be paid by the District as the same become due; or (ii) if the Authority is designated as the Operator, the District shall pay (up to the amount annually budgeted for such expenses) the amount which the Authority determines shall be required in such months, such payments to be made on or before the ___th day of each month after the Project becomes operational. The annual budget shall be prepared by the Authority at least thirty (30) days prior to the date the Project is to become operational, or, thereafter prior to the beginning of each Fiscal Year; the budget shall then be submitted to the District which may indicate exceptions or suggestions, which shall then be considered by the Board. If an annual budget is found to be insufficient or excessive, the parties agree the same shall be taken into consideration by an amendment as well as the budget for the following year, with the view that additional payments shall be made or credit shall be given so that expenditures match receipts over the Fiscal Year or an adjustment is made in the following month.

SECTION 3.03: Maintenance and Operation of the Project. Unless otherwise agreed by the parties, it is agreed that the District will be responsible for maintaining and operating the Project for the entire term of this Contract, and shall pay all costs and expenses incurred in regard to the maintenance and operation of the Project. The District hereby agrees and covenants to operate and maintain the Project in accordance with accepted good business and engineering practices and in accordance with all applicable federal and state laws, including any rules and regulations issued by appropriate agencies in the administration of said laws. If the District is the Operator under this Section, the District agrees, to the extent allowed by law, to indemnify and to save and hold harmless the Authority from any and all, exclusive of costs caused by or associated with the Authority's negligence, claims, damages, losses, costs and expenses, including reasonable attorney fees, arising at any time from the acquisition, existence, ownership, operation and maintenance of the Project.

SECTION 3.04: Insurance. The Operator specifically agrees to carry fire, casualty, public liability, or other insurance on the Project for purposes and in amounts which would ordinarily be carried by a state political subdivision owning and operating such facilities. Such insurance will provide, to the extent feasible and practicable, for the restoration of damages or destroyed properties and equipment so as to minimize the interruption of services of such facilities. All premiums for such insurance shall constitute a Maintenance and Operation Expense of the Project.

SECTION 3.05: Covenant of Timely Payment. The District covenants that it will timely make (i) the monthly amortization payments and (ii) the additional payments specified hereunder in accordance with the provisions of this Contract as the same shall become due and payable, irrespective of whether service of the Project has been abandoned or discontinued, or if the Project has been rendered wholly or partially unusable by reason of "force majeure". The District recognizes the fact that the Authority will use the payment received from the District hereunder to pay, secure and finance the issuance of the Bonds, and the holders of the Bonds shall be entitled to rely upon the foregoing covenant of payment regardless of any other agreement that may exist between the Authority and the District.

SECTION 3.06: Late Payment Penalty. Should the District fail to make any payment at the time herein specified, interest on such amounts shall accrue at the rate of ten percent (10%) per annum from the date such payment becomes due until paid in full with interest as herein specified. In the event such payment is not made within sixty (60) days from the date such payment becomes due, the Authority may institute a proceeding for a mandatory injunction requiring the payment of the amount due and interest thereon, such action to be instituted in a court of competent jurisdiction.

SECTION 3.07: Priority of Charges - District to Fix Adequate Rates.

(a) The District represents and covenants that all payments to be made by it hereunder shall constitute "operating expenses" of the District's Utility System.

(b) The District further agrees to fix and collect such rates and charges for water and services to its customers as will make possible the prompt payment of all expenses of operating and maintaining its Utility System, including all payments, obligations and indemnities contracted hereunder.

SECTION 3.08: Nature of Obligation of District. The payments required to be made by the District under the terms of this Contract shall be due and payable in any and all events regardless of whether there shall be, for any reason, a delay in the completion of all or any part of the Project and regardless of whether the Project shall have been wholly or partially destroyed or damaged. The agreements of the District shall be and are separate and independent covenants and the District shall have no rights of set off, recoupment, or counterclaim. The Authority shall never have the right to demand payment of any amounts due hereunder by the District out of funds raised or to be raised by taxation. Any obligations assumed or imposed on either party hereto shall never be construed to be a debt of such party of a kind that would require it to levy and collect taxes to discharge any such obligation, it being expressly understood by the parties hereto that the funds required for all payments due from the District pursuant to this Contract are to be collected from the sources referenced herein, and from no other source.

ARTICLE IV
MISCELLANEOUS PROVISIONS

SECTION 4.01: Contract Term. The obligation of the District to promptly make all prescribed payments shall commence with the effective date of this Contract and continue for the period during which the Bonds are outstanding and unpaid.

SECTION 4.02: Useful Life of Project. The District and Authority agree and mutually find that the anticipated useful life of the Project equals or exceeds the period specified in the Bond Resolution(s) for the maturity of all Bonds authorized to be issued.

SECTION 4.03: Abandonment of Use of Project. Except as provided by this Contract, the District may not obtain services provided for in this Contract from a source other than a contracting party. It is specifically recognized by the parties hereto that the District, during the term of this Contract, may acquire other facilities so as to make the continued operation of the Project uneconomical so it will be to the best interest of the parties to discontinue the operation of the Project.

Should the District choose to discontinue the operation of all or part of the Project, the District shall have the exclusive right to the salvage of all of the properties and improvements constituting the Project so discontinued. Any cost of salvage will be a maintenance and operating expense of the District, and any money realized from such salvage will serve as a reduction of such expense. The District shall retain the use of the land where the Project is situated and all remaining improvements thereon for its corporate purposes.

The abandonment of the use of the Project shall have no effect upon the obligations of the District to the Authority provided for by this Contract and all payments provided for by this Contract shall remain obligations of the District of the same nature as provided for by this Contract.

SECTION 4.04: Modification of Provisions. This Contract may be changed and modified only with the consent of the governing bodies of the Authority and the District. Such modification may be requested by either party, in which event a joint meeting of the governing bodies or of their duly authorized and appointed representative shall be held not less than thirty (30) days after the giving of such notice. At such joint meeting, the suggested changes or modifications shall be considered, discussed and settled. No such change or modification may be made which will affect adversely the payment when due of all moneys required to be paid by the District under the terms of this Contract and no such change will be effective which affects adversely or causes a violation of any covenants contained in the Bond Resolution(s).

If for any reason the District may desire the construction of additional facilities over and above those now contemplated, and provided the same are within the legal and economic capabilities of the Authority, provision therefor shall be made by means of a supplement hereto, the terms of which are to be negotiated between the District and the Authority.

SECTION 4.05: Regulatory Provisions. This Contract shall be subject to all valid rules, regulations and laws applicable thereto, as promulgated by the United States of America, the State of Texas, or any other governmental body or agency having lawful jurisdiction or any authorized representative or agency of any of them.

SECTION 4.06: Taxes. In the event any sales or use taxes, or taxes of any nature, are hereafter imposed upon the Project or the Authority on account of the acquisition, existence, ownership, operation and maintenance of the Project, the amount of such taxes shall be treated as operating expenses of the Project.

SECTION 4.07: Title to Water and Sewage. Title to all water and sewage put into the Project under this Contract shall be in the District.

SECTION 4.08: Notices. Any notice, request, demand, statement or bill provided for in this Contract shall be in writing and shall be considered to have been fully delivered when sent by registered mail, addressed as follows:

To the Authority: 5100 Airport Drive
Denison, Texas 75020
Attention: President, Board of Directors

To the District: 7985 FM 2931
Aubrey, Texas 76227
Attention: General Manager

as the case may be, except that routine communications may be sent by ordinary mail and except that either party, by the filing of an appropriate written notice to the other, may specify some other individual to whom communications thereafter are to be addressed.

SECTION 4.09: Covenant to Enforce Contractual Obligations. The Authority covenants that it will enforce the obligations of the District hereunder as may be required to accomplish the purpose of this Contract. Either party may enforce any obligations hereunder owed to it by the other party.

SECTION 4.10: Consequences of District Default. The Authority and the District agree that in the event of default or threatened default, in the payment of principal of or interest on the Bonds, any court of competent jurisdiction upon petition of the holders of twenty-five percent (25%) of the principal amount of the then outstanding Bonds of the Authority shall appoint a receiver with authority to collect and receive all resources pledged to the payment of the Bonds, enforce all rights arising from default, if any, by the District in making payment under this Contract, and take charge of the pledged funds on hand and manage the proprietary affairs of the Authority insofar as such affairs relate to the Project. The court may further vest the receiver with such powers and duties as the court may find necessary for the protection of the holders of the Bonds.

SECTION 4.11: Further Agreements of the Parties. The parties hereto specifically recognize that to the extent the District has heretofore issued, sold and delivered revenue bonds that were and are payable from and secured by a lien on and pledge of the net revenues of its Utility System, and to the extent such bonds so issued and delivered are outstanding, the District has disclosed to the Authority the existence and terms of all such bonds.

Additionally, the District represents to the Authority that:

- (a) There is no provision in any resolution or order of the District which prohibits the District from entering into and executing this Contract.
- (b) The execution of this Contract and the operation thereunder will not in any way impair the obligation of contract by and between the District and any other person. The Project is in furtherance of governmental policy, not inconsistent with the existing contractual obligations of the District.

SECTION 4.12: Control of Project by Operator. The parties hereto recognize and it is specifically agreed that after completion of the Project and during the term of this Contract, the District shall have the exclusive right to the use and utilization of the Project, for the benefit of the District; that the District without hindrance from the Authority or the District, or the employees or other agents of either of them, may operate, maintain, repair, enlarge, improve, extend, provide for additions to or otherwise control, manage and keep up the said Project.

Except as specified in this Article, the abandonment of the use of all or part of such Project has no effect upon the obligations of the parties.

SECTION 4.13: Force Majeure.

(a) If for any reason of "force majeure" either of the parties hereto shall be rendered unable wholly or in part to carry out its obligation under this Contract, other than the obligation of District to make the payments required under the terms of Section 3.01 hereof, then if such party shall give notice and full particulars of such reasons in writing to the other party within a reasonable time after the occurrence of the event, or cause relied upon, the obligation of the party giving such notice, so far as it is affected by such "force majeure" shall be suspended during the continuance of the inability then claimed, but for no longer period, and any such parties shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "force majeure" as employed herein shall mean acts of God, strikes, lock-outs, or other industrial disturbances, acts of a public enemy, orders or actions of any kind of the Government of the United States of America or of 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 people, civil disturbances, explosions, breakages or accident to dams, machinery, partial or entire failure of water supply and inability on the part of the Authority to deliver water hereunder or to provide sewage treatment or of the District to receive water or to deliver sewage treatment, on account of any other cause not reasonably within the control of the party claiming such inability. It is understood and agreed that the settlement of strikes and lock-outs shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any force majeure shall be remedied with all reasonable dispatch, shall not require the settlement of strikes and lock-outs by acceding to the demands of the opposing parties when such settlement is unfavorable to it in the judgment of the party having the difficulty. No failure of Authority to meet any obligation by reason for force majeure shall relieve the District from its obligations to make the payments required under the terms of Section 3.01 hereof.

(b) No damage shall be recoverable from Authority by reason of the suspension of the operation of the Project due to any of the causes above mentioned. If Operator's ability to operate the Project is affected by any of such causes, the Operator shall promptly notify the other party in writing giving the particulars as soon as possible after the occurrence of the cause or causes for such interruption.

(c) It is expressly recognized by District that the Operator may be compelled to make necessary alterations, repairs or extensions of new or additional facilities from time to time during the life of this Contract, and any suspensions of the operation of the Project due to such operation shall not be cause for claim of damage on part of the Operator provided all reasonable effort is used by the Operator to provide District with the service afforded by the Project in accordance with this Contract. In such case, the Operator shall give the other party as much advance notice as may be practicable of the suspension of operation and of the estimated duration thereof.

SECTION 4.14: Easements. The District agrees that the Authority may have such easements over any easements, right of way or property held by the District so that the facilities herein anticipated and the placement thereof and of all required equipment may be appropriately provided.

SECTION 4.15: Bond Approval by the District.

(a) Prior to the issuance and delivery of any Bonds which are (i) payable as to principal, interest or redemption premium out of the debt service payments, or (ii) to provide facilities or service or any item which is to be maintained by the Authority utilizing any part of the

base monthly payments, the District shall approve the issuance thereof as provided in this Section.

(b) If the Bonds are to be sold at a public sale, the governing body of the District shall, by resolution or order, approve (i) the "Notice of Sale" issued or proposed to be issued by the Authority prior to their delivery; and, (ii) the facilities to be constructed or acquired; or, if the Bonds are to be negotiated, or are refunding Bonds, the governing body of the District shall, by resolution or order approve either (i) the form of purchase agreement or (ii) the resolution authorizing the issuance of the Bonds.

(c) If the Bonds are to be exchanged for property or services or are to be privately placed, the governing body of the District shall, by resolution or order, approve (i) the form of the resolution adopted or to be adopted by the governing body of the Authority which authorizes the issuance of such Bonds; and (ii) the facilities to be constructed or acquired, or the services to be provided.

(d) The District and the Authority agree that the holders of the Bonds, and each party deemed a holder of a Bond by virtue of subrogation to the rights of the holders of the Bonds or otherwise, shall be express third-party beneficiaries of this Contract and shall have all available remedies pertaining to enforcement of this Contract.

SECTION 4.16: Severability. The parties hereto agree that if any of the provisions of this Contract contravene or be held invalid under the laws of the State, same shall not invalidate the whole Contract, but it shall be construed as though not containing that particular provision, and the rights and obligations of the parties shall be construed and in force accordingly.

[remainder of page left blank intentionally]

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

GREATER TEXOMA UTILITY AUTHORITY

(Authority Seal)

By: _____
President, Board of Directors

ATTEST:

Secretary, Board of Directors

DRAFT

MUSTANG SPECIAL UTILITY DISTRICT

(District Seal)

By: _____
President, Board of Directors

ATTEST:

Secretary, Board of Directors

DRAFT

A RESOLUTION amending the resolution authorizing the issuance of the “Greater Texoma Utility Authority Contract Revenue Bonds, Series 2018A (City of Gunter Project)” and resolving other matters incident and related thereto.

WHEREAS, the Board of Directors (the “Board”) of the Greater Texoma Utility Authority (the “Authority”) adopted a resolution (the “Series 2018A Resolution”) on December 17, 2018 authorizing the issuance of “Greater Texoma Utility Authority Contract Revenue Bonds, Series 2018A (City of Gunter Project)” (the “Series 2018A Bonds”); and

WHEREAS, the Series 2018A Resolution provides that the Series 2018A Bonds are payable from and secured by amounts received by the Authority from the City of Gunter, Texas (the “City”) as the “contracting party” pursuant to a certain “Water and Sewer Facilities Contract” dated as of October 16, 2017 by and between the Authority and the City; and

WHEREAS, the City and Mustang Special Utility District (“Mustang SUD”) entered into a certain “Asset Purchase Agreement”, effective _____, 2022”, transferring and conveying the City’s water and sewer system (the “System”) to Mustang SUD subject to the terms and conditions therein, including the assumption of the contractual obligations of the City by Mustang SUD; and

WHEREAS, in order to accommodate the transfer of the System to Mustang SUD as requested by the City and Mustang SUD, the Board hereby finds and determines that the 2018A Resolution should be amended to reflect the substitution of Mustang SUD as the “contracting party” for the Project, as defined in the Series 2018A Resolution; and

WHEREAS, pursuant to Section 38 of the Series 2018A Resolution, the Authority is authorized to amend the Series 2018A Resolution upon the written consent of the bondholders holding a majority in aggregate principal amount of the Bonds Similarly Secured then outstanding; and

WHEREAS, “Bond Similarly Secured” refers to, collectively, the Series 2018A Bonds and the bonds authorized by a resolution adopted on February 19, 2018 by the Board of the Authority authorizing issuance of a series of bonds in accordance with the Series 2018 Resolution; and

WHEREAS, the Texas Water Development Board (the “TWDB”) is the sole holder of the Bonds Similarly Secured and the Authority has obtained or will obtain written consent from the TWDB to amend the Series 2018A Resolution as provided herein; and

WHEREAS, the Board hereby finds and determines that Sections 10(e), 10(q), 18, 19(c), 20, 21(c), 21(e), 22, 23(d), 26, and 39(b) of the Series 2018A Resolution should be amended to provide for the substitution of Mustang SUD as the “contracting party” under the Water and Sewer Facilities Contract; now, therefore,

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE GREATER TEXOMA UTILITY AUTHORITY:

SECTION 1: Section 10(e) of the Series 2018A Resolution is hereby amended to read

as follows:

“The term "Contract" or "Water and Sewer Facilities Contract" shall mean that certain contract, dated as of the ___ day of _____, 2022, by and between the Authority and the District, together with amendments and supplements thereto (which by the term of such instrument is designated as a supplement to such Contract), a copy of such Contract being attached hereto as Exhibit B for the purposes of identification.”

The Contract referenced above is hereto attached to this Resolution as Exhibit A.

SECTION 2: Section 10(q) is hereby added to the Series 2018A Resolution to read as follows:

“The term “District” shall mean the Mustang Special Utility District.”

SECTION 3: Section 18 of the Series 2018A Resolution is hereby amended to read as follows:

“Money remaining in the Revenue Fund, after making the payments required in items (1) through (4) of the last paragraph of Section 13, shall be transferred to any other fund referenced in this Resolution and used as a credit to the amount that would otherwise be required to be paid by the District under Section 3.01 of the Contract.”

SECTION 4: Section 19(c) of the Series 2018A Resolution is hereby amended to read as follows:

“The District shall have approved the resolution(s) authorizing the issuance of the Additional Bonds as to form and content and acknowledged that the payment of principal of and interest on such Additional Bonds is payable, in whole or in part, from payments to be made by the District, under and pursuant to the Contract.”

SECTION 5: Section 20 of the Series 2018A Resolution is hereby amended to read as follows:

“The Authority covenants that it will at all times keep insured such of its plants, structures, buildings, stations, machinery, equipment, apparatus, distribution pipelines and equipment, as are usually insured by corporations operating like properties, with a responsible insurance company or companies, against risks, accidents or casualties against which and to the extent insurance is usually carried by corporations operating like properties, and will also at all times maintain worker’s compensation insurance and insurance against public liability and property damages to the extent permitted by law, in a reasonable amount with a responsible insurance company or companies; provided, however, that any time while the District or any contractor engaged in construction work shall be fully responsible therefor, or the Authority has assumed such responsibility, the Authority shall not be required to carry such insurance. The Authority further covenants that such insurance with respect to the Project shall be in an amount sufficient to protect the Board’s interest in the Project.”

SECTION 6: Section 21(c) of the Series 2018A Resolution is hereby amended to read as follows:

“The Accountant’s comments regarding the manner in which the Authority and the District have complied with the covenants and requirements of this Resolution and the Contract and his recommendations for any changes or improvements in the operation, records and accounts of the Authority.”

SECTION 7: The third paragraph of Section 21(e) of the Series 2018A Resolution is hereby amended to read as follows:

“By its approval of this Resolution, the District agrees (a) to provide the Texas Water Development Board with annual audit reports, to be submitted without charge, within _____ days of the close of each fiscal year, (b) in order to secure its obligations under the Contract, to maintain rates and charges for its utility system sufficient to pay all of its obligations secured by and made payable from the revenues derived from the operation of its utility system and (c) to implement any water conservation program required by the Board until all financial obligations to the Board have been discharged.”

SECTION 8: The first paragraph of Section 22 of the Series 2018A Resolution is hereby amended to read as follows:

“In addition to all the rights and remedies provided by the laws of the State of Texas, the Authority covenants and agrees particularly that in the event the Authority (a) defaults (i) in payments to be made to the Bond Fund or Reserve Fund as required by this Resolution, or (ii) in the observance or performance of any other of the covenants, conditions or obligations set forth in this Resolution or (b) the District defaults under the Contract, any Holder shall be entitled to a writ of mandamus issued by a court of proper jurisdiction compelling and requiring the Board of Directors and other officers of the Authority to observe and perform any covenant, condition or obligation prescribed in this Resolution.”

SECTION 9: Section 23(d) of the Series 2018A Resolution is hereby amended to read as follows:

“The Authority will maintain rates and charges to the District sufficient to meet the debt service requirements on the Outstanding obligations of the Authority that are supported by such revenues and the establishment of the special funds maintained for the payment and security of such obligations.

SECTION 10: The second paragraph of Section 26 of the Series 2018A Resolution is hereby amended to read as follows:

“Moneys on deposit in the Construction Fund shall be disbursed only for payment of the respective Costs of the Project financed. All expenditures for construction, labor, and materials shall be disbursed only upon receipt of a certificate of the Engineer (as defined in the Contract) based upon estimates of work and material furnished as approved by such Engineers and submitted to the Authority and the District’s Engineer for approval prior to payment. The Authority shall keep records of the nature and amount of all Construction Fund expenditures and make the same available to the City and the engineers at all reasonable times. Should there be any balance in the Construction Fund after all such Costs of the Project have been paid, such balance shall be deposited in the Bond Fund or the Reserve Fund subject to tax law limitations.”

SECTION 11: The first paragraph of Section 39(b) of the Series 2018A Resolution is hereby amended to read as follows:

“Annual Reports. The Authority shall provide annually to the MSRB (1) within six (6) months after the end of each Fiscal Year, financial information and operating data of the general type described in **Exhibit D** hereto and (2) if not provided as part of such financial information and operating data, audited financial statements of the Authority and the District, when and if available. Any financial statements so provided shall be prepared in accordance with the accounting principles described in **Exhibit D** hereto, or such other accounting principles as the Authority may be required to employ from time to time pursuant to state law or regulation, and audited, if the Authority commissions an audit of such statements and the audit is completed within the period during which they must be provided. If audited financial statements are not available by the required time, the Authority will provide unaudited financial information of the type included in the final Application for Financial Assistance and described in **Exhibit D** by the required time and audited financial statements when and if such audited financial statements become available.

SECTION 12: Any one or more of the President, Vice President, Secretary, and/or Assistant Secretary of the Board of Directors of the Authority, and the General Manager of the Authority, and the Texas Water Development Board, are hereby expressly authorized, empowered and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge and deliver in the name and on behalf of the Authority all agreements, instruments, certificates or other documents, whether mentioned herein or not, as may be necessary or desirable in order to carry out the terms and provisions of this Resolution. In addition, the President, Vice President, Secretary, and/or Assistant Secretary of the Board of Directors of the Authority, and the General Manager of the Authority, Bond Counsel, and the Texas Water Development Board are each hereby authorized and directed to approve any technical changes or corrections to this Resolution or to any of the documents amended by this Resolution: (i) in order to cure any technical ambiguity, formal defect, or omission in the Resolution or such other document; or (ii) as requested by the Attorney General of the State of Texas or his representative if such officer or counsel determines that such ministerial changes are consistent with the intent and purpose of the Resolution, which determination shall be final. In the event that any officer of the Authority whose signature shall appear on any document shall cease to be such officer before the delivery of such document, such signature nevertheless shall be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

SECTION 13: All terms not herein defined shall have the meaning in the Series 2018A Resolution.

SECTION 14: Except as hereby amended and modified, all of the provisions of the Series 2018A Resolution are hereby ratified, confirmed and readopted.

SECTION 15: It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was

given, all as required by Texas Government Code, Chapter 551, as amended.

SECTION 16: This Resolution shall be in force and effect from and after its passage on the date shown below.

PASSED AND ADOPTED, this _____.

GREATER TEXOMA UTILITY
AUTHORITY

President, Board of Directors

ATTEST:

Secretary, Board of Directors

(Authority Seal)

EXHIBIT A

WATER AND SEWER FACILITIES CONTRACT

THIS CONTRACT ("Contract") is made and entered into as of _____, 202__, between the GREATER TEXOMA UTILITY AUTHORITY (hereinafter referred to as the "Authority"), a conservation and reclamation authority, a governmental agency, a political subdivision of the State of Texas, and a body politic corporate, duly created, existing and acting by virtue of Texas Special District Local Laws Code, Chapter 8283 (the "Act"), and the MUSTANG SPECIAL UTILITY DISTRICT, a Texas political subdivision (hereinafter referred to as the "District"), duly created and existing under the laws of the State of Texas:

W I T N E S S E T H:

WHEREAS, the Authority, acting pursuant to the Act, has issued or proposes to issue, or both, its bonds for the purposes of providing certain water supply facilities and certain sanitary sewer collection and treatment facilities for use by the City; and

WHEREAS, certain revenues to be received by the Authority from the District under this Contract are to be pledged to the payment and security of the bonds issued by the Authority and constitute the basis for the Authority's credit in financing such facilities and issuing such bonds; and

WHEREAS, the Authority and the District, acting through their duly constituted governing bodies pursuant to authority granted by Texas Government Code, Section 791.026, as amended, have mutually agreed upon the terms and conditions of this Contract; now, therefore

IN CONSIDERATION of the mutual covenants, agreements and undertakings herein set forth, the parties hereto hereby agree and contract as follows:

ARTICLE I
DEFINITIONS

SECTION 1.01: Unless the context shall indicate a contrary meaning or intent, the terms below defined, for all purposes of this Contract and any contract amendatory or supplemental to this Contract shall be construed or used and are intended to have meanings as follows:

- (a) "Authority" shall mean the Greater Texoma Utility Authority, or its successor.
- (b) "Board" and "Board of Directors" shall mean the Board of Directors of the Authority.
- (c) "Bond Resolution" shall mean any resolution of the Board of Directors authorizing the issuance of the Bonds and providing for their security and payment, as such resolution(s) may be amended from time to time as therein permitted, where the proceeds from the sale of the Bonds will be used to discharge the cost of the Project.
- (d) "Bonds" shall mean any bonds payable from revenues to be received by the Authority from the District under this Contract and issued by the Authority for the purpose of

providing funds to pay the necessary costs of the Project, whether in one or more series or issues and any bonds issued to refund such bonds.

(e) "Cost of the Project" shall mean all cost and expense incurred in connection with the acquisition, construction, improvements, enlargement, extension and repair of the Project, including, without limiting the generality of the foregoing, the cost of the acquisition of all land, rights-of-way, property rights, easements, and interests, the cost of all machinery and equipment, financing charges, interest and administrative expenses expected to accrue during the period of construction, the funding of any reserve funds created by the Bond Resolution(s), cost of estimates and of engineering and legal services, plans, specifications, surveys, estimates of cost and of revenue, other expenses necessary or incident to determining the feasibility and practicability of acquiring, constructing, improving, enlarging, extending, or repairing the Project, and such other expense as may be necessary or incident to the acquisition, construction, improvement, enlargement, extension or repair of the Project and all legal fees, printing and other cost, fees and expenses necessary for or incident to the issuance of the Bonds.

(f) "District" shall mean the Mustang Special Utility District.

(g) "Engineer" shall mean a registered, professional engineer (who may be the District Engineer or the Authority's Engineer). The District and Authority agree that the Engineer may be a different firm on different aspects of the Project and that any Project will be acquired, constructed, improved, enlarged, extended and repaired in accordance with the plans and specifications prepared under the supervision of the Engineer. It is further agreed that an Engineer may be changed or added and the scope of duties adjusted by the Authority, subject to the consent of the District.

(h) "Fiscal Year" shall mean the twelve month operating period (under this Contract) commencing October 1st of each year, provided such twelve month period may be changed one time in any three calendar year period by agreement of the Authority and the District (which agreement, if made, shall be attached hereto as an exhibit).

(i) "Maintenance and Operation Expense of the Project" shall mean the expense of maintenance and operation of the Project including all salaries, labor, materials, interest, repairs, and replacements necessary to render efficient service, or which might be necessary to meet some physical accident or condition which would otherwise impair the security of the Bonds. Such term shall not include depreciation.

(j) "Operator" shall mean the party to the Contract who is designated, from time to time, by the parties with respect to each Project and, in the absence of such designation, shall mean the District.

(k) "'Project" shall mean, collectively, the Water Project and the Sewer Project.

(l) "Sewer Project" shall mean, collectively, the sewer facilities which are to be (i) constructed or acquired in order to meet the contractual obligations hereunder, and (ii) financed by the Authority through the issuance of bonds or other obligations, to the extent the same are payable from the money paid or required to be paid by the District under this Contract, or obtained as grant funds, from any source, for the purpose of paying all or part of the Cost of the Project described in each ordinance or resolution of the District, duly passed prior to or

subsequent to the date of this Contract, authorizing the issuance of Bonds by the Authority to finance the Costs of the Project.

(m) "State" shall mean the State of Texas.

(n) "Utility System" shall have the meaning assigned to such term in Section 2.01(c) hereto.

(o) "Water Project" shall mean, collectively, the water supply, storage and transmission facilities which are to be (i) constructed or acquired in order to meet the contractual obligations hereunder and (ii) financed by the Authority through the issuance of bonds or other obligations, to the extent the same are payable from the money paid or required to be paid by the District under this Contract or obtained as grant funds, from any source, for the purpose of paying all or part of the Cost of the Project described in each ordinance or resolution of the District, duly passed prior to or subsequent to the date of this Contract, authorizing the issuance of Bonds by the Authority to finance the Costs of the Project.

ARTICLE II REPRESENTATIONS AND AGREEMENTS

SECTION 2.01: The District's Representations and Agreements. In connection with its undertakings hereunder, the District represents to the Authority and agrees with the Authority as follows:

(a) In its capacity as a duly organized political subdivision of the State of Texas, it is empowered under applicable laws of Texas to enter into the engagements prescribed for it under this Contract and to perform all obligations which may result therefrom, and its governing body has duly authorized execution of this Contract. Pursuant to Texas Government Code, Section 791.026, as amended, and to the extent required by the terms of that Section, the District agrees not to obtain water supply or wastewater treatment facilities from any other source than pursuant to this Contract.

(b) It will timely pay to the Authority the full amount it is required to pay under the provisions of this Contract for the services supplied by the Authority for the Project.

(c) That it will plan, construct, maintain, operate and finance its own utility system and set retail rates to individual customers for water and wastewater service adequate to pay all District obligations secured by and made payable from the revenues derived from the operation of the District's Utility System (the "Utility System").

(d) That it will cooperate with the Authority in the performance of the duties and responsibilities assigned to the Authority by this Contract.

SECTION 2.02: Representations and Agreements of Authority. In connection with its undertakings hereunder, the Authority represents to the District and agrees with the District as follows:

(a) In its capacity as a conservation and reclamation district created by the Act, pursuant to Article XVI, Section 59 of the Texas Constitution, it is empowered under applicable laws of the State of Texas, particularly under the Act, the Interlocal Cooperation Act, and the Texas Water Code, to enter into the engagements prescribed for it under this Contract and to

perform all obligations which may result therefrom, and its governing body has duly authorized execution of this Contract.

(b) That it will finance all Costs of the Project not provided by the District and any grant secured for the construction of the Project.

SECTION 2.03: Construction. The Operator agrees to assume responsibility for the construction of the Project and the Authority will enter into such contracts as are necessary to construct the Project. To this end, the Authority and the District agree that:

(a) Unless otherwise agreed by the parties, the District be responsible for the preparation of final plans and specifications for the Project.

(b) Final plans and specifications for the Project shall be subject to the approval of the Authority and the District.

(c) All construction contracts shall be let and awarded pursuant to the laws applicable to the Authority.

(d) The Authority shall let and award all construction contracts, subject to the approval of each contract by the District.

(e) The Authority shall deposit from the proceeds from the sale of its Bonds in a special Construction Fund to be created and established by the Bond Resolution(s), an amount of money which shall be specified in said Bond Resolution(s). The Authority shall draw on and use said Construction Fund to pay the cost of acquiring, constructing, improving, extending, enlarging and repairing the Project.

(f) Unless otherwise agreed by the parties, the District shall be responsible for the acquisition of all land, rights-of-way, property rights, easements and interest required to provide the Project, subject to the approval of the District and the Authority.

ARTICLE III FISCAL MATTERS

SECTION 3.01: Payment for Service. The Authority will provide from the proceeds received through the issuance and sale of its Bonds such funds as are necessary, when coupled with any funds or property provided by the District and any grant received, for the purpose of providing all or part of the Project. It is agreed that the District and its customers shall have the exclusive use of the entire Project for the useful life of the Project. In consideration for the Authority's obligation hereunder, the District recognizes and agrees that the Authority will acquire an undivided interest in the Project equivalent to the percentage of the total cost of the Project provided by the Authority through the issuance and sale of its Bonds. It is further agreed that the District's obligations to make any and all payments specified in this Article and the ownership interest of the Authority in the Project will terminate when all of the Authority's Bonds issued in connection with the Project have been paid in full and retired and are no longer outstanding. It is further understood and agreed that the Authority's only source of funds to pay the principal of and interest on its Bonds is from the payments to be made by the District to the Authority under this Contract, and the District agrees that it will make to the Authority the following payments:

(a) Monthly amortization payment — Such amounts, payable monthly on or before the ___th day of each month, in approximately equal installments, as are necessary to pay (i) the principal coming due on the Authority's Bonds on the next succeeding principal payment date; (ii) the interest coming due on the Authority's Bonds on the next succeeding interest payment date; and, (iii) the fees and charges of the Paying Agent(s) for paying or redeeming the Bonds and interest thereon coming due on each applicable date.

(b) Reserve Fund Payment — Such amount as is required to be paid into the Reserve Fund from the Revenue Fund (out of payments to be made by the District) under the Bond Resolution in order to establish, maintain or replenish the Reserve Fund for the security and payment of Bonds.

(c) Administrative Payment — An amount sufficient to pay the administrative and overhead expenses of the Authority, directly attributable and chargeable to the Bonds and the Project, including the cost of routine annual accounting reports and the costs of all continuing disclosure undertakings.

(d) Extraordinary Expense Payment — Such amounts, as are necessary to pay or reimburse the Authority for any extraordinary or unexpected expenses or costs reasonably and necessarily incurred by the Authority in connection with the Bonds and the Project, such as expenses of litigation, if any, and costs of special studies and special professional services, if and when required by any governmental directive or regulation or as may be agreed between the District and the Authority.

(e) The cost of Maintenance and Operation of the Project (for which provision is made in Section 3.03) if the Authority is the Operator under that Section.

SECTION 3.02: _____ Time for Making of Payments. The District agrees to make the payments required by Section 3.01 at the times hereafter specified:

(a) Monthly Amortization Payments — the District shall commence making monthly amortization payments at such time as any amount required by the Bond Resolution(s) to be deposited into an escrow account for the payment of interest on the Bonds during the Project construction period has been fully exhausted; provided that such payments shall commence in no event later than the earlier of (i) twelve months prior to the first principal payment date specified in the Bond Resolution(s), or (ii) six months prior to the first interest payment date for which moneys are not set aside for the payment of the interest coming due on such date from the proceeds of the Bonds. Monthly amortization payments shall continue to be made throughout the term of the Contract and shall be adjusted by the District so as to provide for the accumulation of the full amount of debt service requirements (principal, interest and paying agent fees due on any given payment date) on or before the first day of the month such debt service requirements become due.

(b) Reserve Fund Payment — the District shall commence making these payments on the ___th day of the following month, as may be provided in the Bond Resolution, after the delivery of the initial series of Bonds issued to provide the Project, and upon the issuance of additional Bonds, shall increase the payments in accordance with the Resolution authorizing such additional Bonds.

(c) Administrative Payment — the District shall commence making the administrative payment on the ___th day of the month following the effective date of this Contract, and

thereafter such payment shall be made on the ___th day of each month thereafter throughout the term of this Contract.

(d) Extraordinary Expense Payment — the District shall make any extraordinary expense payment immediately upon receipt of the statement therefor.

(e) Maintenance and Operating Expenses: (i) if the District is designated as the Operator, such expenses shall be paid by the District as the same become due; or (ii) if the Authority is designated as the Operator, the District shall pay (up to the amount annually budgeted for such expenses) the amount which the Authority determines shall be required in such months, such payments to be made on or before the ___th day of each month after the Project becomes operational. The annual budget shall be prepared by the Authority at least thirty (30) days prior to the date the Project is to become operational, or, thereafter prior to the beginning of each Fiscal Year; the budget shall then be submitted to the District which may indicate exceptions or suggestions, which shall then be considered by the Board. If an annual budget is found to be insufficient or excessive, the parties agree the same shall be taken into consideration by an amendment as well as the budget for the following year, with the view that additional payments shall be made or credit shall be given so that expenditures match receipts over the Fiscal Year or an adjustment is made in the following month.

SECTION 3.03: Maintenance and Operation of the Project. Unless otherwise agreed by the parties, it is agreed that the District will be responsible for maintaining and operating the Project for the entire term of this Contract, and shall pay all costs and expenses incurred in regard to the maintenance and operation of the Project. The District hereby agrees and covenants to operate and maintain the Project in accordance with accepted good business and engineering practices and in accordance with all applicable federal and state laws, including any rules and regulations issued by appropriate agencies in the administration of said laws. If the District is the Operator under this Section, the District agrees, to the extent allowed by law, to indemnify and to save and hold harmless the Authority from any and all, exclusive of costs caused by or associated with the Authority's negligence, claims, damages, losses, costs and expenses, including reasonable attorney fees, arising at any time from the acquisition, existence, ownership, operation and maintenance of the Project.

SECTION 3.04: Insurance. The Operator specifically agrees to carry fire, casualty, public liability, or other insurance on the Project for purposes and in amounts which would ordinarily be carried by a state political subdivision owning and operating such facilities. Such insurance will provide, to the extent feasible and practicable, for the restoration of damages or destroyed properties and equipment so as to minimize the interruption of services of such facilities. All premiums for such insurance shall constitute a Maintenance and Operation Expense of the Project.

SECTION 3.05: Covenant of Timely Payment. The District covenants that it will timely make (i) the monthly amortization payments and (ii) the additional payments specified hereunder in accordance with the provisions of this Contract as the same shall become due and payable, irrespective of whether service of the Project has been abandoned or discontinued, or if the Project has been rendered wholly or partially unusable by reason of "force majeure". The District recognizes the fact that the Authority will use the payment received from the District hereunder to pay, secure and finance the issuance of the Bonds, and the holders of the Bonds shall be entitled to rely upon the foregoing covenant of payment regardless of any other agreement that may exist between the Authority and the District.

SECTION 3.06: Late Payment Penalty. Should the District fail to make any payment at the time herein specified, interest on such amounts shall accrue at the rate of ten percent (10%) per annum from the date such payment becomes due until paid in full with interest as herein specified. In the event such payment is not made within sixty (60) days from the date such payment becomes due, the Authority may institute a proceeding for a mandatory injunction requiring the payment of the amount due and interest thereon, such action to be instituted in a court of competent jurisdiction.

SECTION 3.07: Priority of Charges - District to Fix Adequate Rates.

(a) The District represents and covenants that all payments to be made by it hereunder shall constitute "operating expenses" of the District's Utility System.

(b) The District further agrees to fix and collect such rates and charges for water and services to its customers as will make possible the prompt payment of all expenses of operating and maintaining its Utility System, including all payments, obligations and indemnities contracted hereunder.

SECTION 3.08: Nature of Obligation of District. The payments required to be made by the District under the terms of this Contract shall be due and payable in any and all events regardless of whether there shall be, for any reason, a delay in the completion of all or any part of the Project and regardless of whether the Project shall have been wholly or partially destroyed or damaged. The agreements of the District shall be and are separate and independent covenants and the District shall have no rights of set off, recoupment, or counterclaim. The Authority shall never have the right to demand payment of any amounts due hereunder by the District out of funds raised or to be raised by taxation. Any obligations assumed or imposed on either party hereto shall never be construed to be a debt of such party of a kind that would require it to levy and collect taxes to discharge any such obligation, it being expressly understood by the parties hereto that the funds required for all payments due from the District pursuant to this Contract are to be collected from the sources referenced herein, and from no other source.

ARTICLE IV
MISCELLANEOUS PROVISIONS

SECTION 4.01: Contract Term. The obligation of the District to promptly make all prescribed payments shall commence with the effective date of this Contract and continue for the period during which the Bonds are outstanding and unpaid.

SECTION 4.02: Useful Life of Project. The District and Authority agree and mutually find that the anticipated useful life of the Project equals or exceeds the period specified in the Bond Resolution(s) for the maturity of all Bonds authorized to be issued.

SECTION 4.03: Abandonment of Use of Project. Except as provided by this Contract, the District may not obtain services provided for in this Contract from a source other than a contracting party. It is specifically recognized by the parties hereto that the District, during the term of this Contract, may acquire other facilities so as to make the continued operation of the Project uneconomical so it will be to the best interest of the parties to discontinue the operation of the Project.

Should the District choose to discontinue the operation of all or part of the Project, the District shall have the exclusive right to the salvage of all of the properties and improvements constituting the Project so discontinued. Any cost of salvage will be a maintenance and operating expense of the District, and any money realized from such salvage will serve as a reduction of such expense. The District shall retain the use of the land where the Project is situated and all remaining improvements thereon for its corporate purposes.

The abandonment of the use of the Project shall have no effect upon the obligations of the District to the Authority provided for by this Contract and all payments provided for by this Contract shall remain obligations of the District of the same nature as provided for by this Contract.

SECTION 4.04: Modification of Provisions. This Contract may be changed and modified only with the consent of the governing bodies of the Authority and the District. Such modification may be requested by either party, in which event a joint meeting of the governing bodies or of their duly authorized and appointed representative shall be held not less than thirty (30) days after the giving of such notice. At such joint meeting, the suggested changes or modifications shall be considered, discussed and settled. No such change or modification may be made which will affect adversely the payment when due of all moneys required to be paid by the District under the terms of this Contract and no such change will be effective which affects adversely or causes a violation of any covenants contained in the Bond Resolution(s).

If for any reason the District may desire the construction of additional facilities over and above those now contemplated, and provided the same are within the legal and economic capabilities of the Authority, provision therefor shall be made by means of a supplement hereto, the terms of which are to be negotiated between the District and the Authority.

SECTION 4.05: Regulatory Provisions. This Contract shall be subject to all valid rules, regulations and laws applicable thereto, as promulgated by the United States of America, the State of Texas, or any other governmental body or agency having lawful jurisdiction or any authorized representative or agency of any of them.

SECTION 4.06: Taxes. In the event any sales or use taxes, or taxes of any nature, are hereafter imposed upon the Project or the Authority on account of the acquisition, existence, ownership, operation and maintenance of the Project, the amount of such taxes shall be treated as operating expenses of the Project.

SECTION 4.07: Title to Water and Sewage. Title to all water and sewage put into the Project under this Contract shall be in the District.

SECTION 4.08: Notices. Any notice, request, demand, statement or bill provided for in this Contract shall be in writing and shall be considered to have been fully delivered when sent by registered mail, addressed as follows:

To the Authority: 5100 Airport Drive
Denison, Texas 75020
Attention: President, Board of Directors

To the District: 7985 FM 2931
Aubrey, Texas 76227
Attention: General Manager

as the case may be, except that routine communications may be sent by ordinary mail and except that either party, by the filing of an appropriate written notice to the other, may specify some other individual to whom communications thereafter are to be addressed.

SECTION 4.09: Covenant to Enforce Contractual Obligations. The Authority covenants that it will enforce the obligations of the District hereunder as may be required to accomplish the purpose of this Contract. Either party may enforce any obligations hereunder owed to it by the other party.

SECTION 4.10: Consequences of District Default. The Authority and the District agree that in the event of default or threatened default, in the payment of principal of or interest on the Bonds, any court of competent jurisdiction upon petition of the holders of twenty-five percent (25%) of the principal amount of the then outstanding Bonds of the Authority shall appoint a receiver with authority to collect and receive all resources pledged to the payment of the Bonds, enforce all rights arising from default, if any, by the District in making payment under this Contract, and take charge of the pledged funds on hand and manage the proprietary affairs of the Authority insofar as such affairs relate to the Project. The court may further vest the receiver with such powers and duties as the court may find necessary for the protection of the holders of the Bonds.

SECTION 4.11: Further Agreements of the Parties. The parties hereto specifically recognize that to the extent the District has heretofore issued, sold and delivered revenue bonds that were and are payable from and secured by a lien on and pledge of the net revenues of its Utility System, and to the extent such bonds so issued and delivered are outstanding, the District has disclosed to the Authority the existence and terms of all such bonds.

Additionally, the District represents to the Authority that:

- (a) There is no provision in any resolution or order of the District which prohibits the District from entering into and executing this Contract.
- (b) The execution of this Contract and the operation thereunder will not in any way impair the obligation of contract by and between the District and any other person. The Project is in furtherance of governmental policy, not inconsistent with the existing contractual obligations of the District.

SECTION 4.12: Control of Project by Operator. The parties hereto recognize and it is specifically agreed that after completion of the Project and during the term of this Contract, the District shall have the exclusive right to the use and utilization of the Project, for the benefit of the District; that the District without hindrance from the Authority or the District, or the employees or other agents of either of them, may operate, maintain, repair, enlarge, improve, extend, provide for additions to or otherwise control, manage and keep up the said Project.

Except as specified in this Article, the abandonment of the use of all or part of such Project has no effect upon the obligations of the parties.

SECTION 4.13: Force Majeure.

(a) If for any reason of "force majeure" either of the parties hereto shall be rendered unable wholly or in part to carry out its obligation under this Contract, other than the obligation of District to make the payments required under the terms of Section 3.01 hereof, then if such party shall give notice and full particulars of such reasons in writing to the other party within a reasonable time after the occurrence of the event, or cause relied upon, the obligation of the party giving such notice, so far as it is affected by such "force majeure" shall be suspended during the continuance of the inability then claimed, but for no longer period, and any such parties shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "force majeure" as employed herein shall mean acts of God, strikes, lock-outs, or other industrial disturbances, acts of a public enemy, orders or actions of any kind of the Government of the United States of America or of 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 people, civil disturbances, explosions, breakages or accident to dams, machinery, partial or entire failure of water supply and inability on the part of the Authority to deliver water hereunder or to provide sewage treatment or of the District to receive water or to deliver sewage treatment, on account of any other cause not reasonably within the control of the party claiming such inability. It is understood and agreed that the settlement of strikes and lock-outs shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any force majeure shall be remedied with all reasonable dispatch, shall not require the settlement of strikes and lock-outs by acceding to the demands of the opposing parties when such settlement is unfavorable to it in the judgment of the party having the difficulty. No failure of Authority to meet any obligation by reason for force majeure shall relieve the District from its obligations to make the payments required under the terms of Section 3.01 hereof.

(b) No damage shall be recoverable from Authority by reason of the suspension of the operation of the Project due to any of the causes above mentioned. If Operator's ability to operate the Project is affected by any of such causes, the Operator shall promptly notify the other party in writing giving the particulars as soon as possible after the occurrence of the cause or causes for such interruption.

(c) It is expressly recognized by District that the Operator may be compelled to make necessary alterations, repairs or extensions of new or additional facilities from time to time during the life of this Contract, and any suspensions of the operation of the Project due to such operation shall not be cause for claim of damage on part of the Operator provided all reasonable effort is used by the Operator to provide District with the service afforded by the Project in accordance with this Contract. In such case, the Operator shall give the other party as much advance notice as may be practicable of the suspension of operation and of the estimated duration thereof.

SECTION 4.14: Easements. The District agrees that the Authority may have such easements over any easements, right of way or property held by the District so that the facilities herein anticipated and the placement thereof and of all required equipment may be appropriately provided.

SECTION 4.15: Bond Approval by the District.

(a) Prior to the issuance and delivery of any Bonds which are (i) payable as to principal, interest or redemption premium out of the debt service payments, or (ii) to provide facilities or service or any item which is to be maintained by the Authority utilizing any part of the

base monthly payments, the District shall approve the issuance thereof as provided in this Section.

(b) If the Bonds are to be sold at a public sale, the governing body of the District shall, by resolution or order, approve (i) the "Notice of Sale" issued or proposed to be issued by the Authority prior to their delivery; and, (ii) the facilities to be constructed or acquired; or, if the Bonds are to be negotiated, or are refunding Bonds, the governing body of the District shall, by resolution or order approve either (i) the form of purchase agreement or (ii) the resolution authorizing the issuance of the Bonds.

(c) If the Bonds are to be exchanged for property or services or are to be privately placed, the governing body of the District shall, by resolution or order, approve (i) the form of the resolution adopted or to be adopted by the governing body of the Authority which authorizes the issuance of such Bonds; and (ii) the facilities to be constructed or acquired, or the services to be provided.

(d) The District and the Authority agree that the holders of the Bonds, and each party deemed a holder of a Bond by virtue of subrogation to the rights of the holders of the Bonds or otherwise, shall be express third-party beneficiaries of this Contract and shall have all available remedies pertaining to enforcement of this Contract.

SECTION 4.16: Severability. The parties hereto agree that if any of the provisions of this Contract contravene or be held invalid under the laws of the State, same shall not invalidate the whole Contract, but it shall be construed as though not containing that particular provision, and the rights and obligations of the parties shall be construed and in force accordingly.

[remainder of page left blank intentionally]

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

GREATER TEXOMA UTILITY AUTHORITY

(Authority Seal)

By: _____
President, Board of Directors

ATTEST:

Secretary, Board of Directors

DRAFT

MUSTANG SPECIAL UTILITY DISTRICT

(District Seal)

By: _____
President, Board of Directors

ATTEST:

Secretary, Board of Directors

DRAFT

**ASSET PURCHASE AGREEMENT BY AND BETWEEN
CITY OF GUNTER, TEXAS
AND
MUSTANG SPECIAL UTILITY DISTRICT**

THIS ASSET PURCHASE AGREEMENT (this “*Agreement*”) by and between the CITY OF GUNTER, TEXAS (“*City*”), a general law municipality in Grayson County, Texas, and MUSTANG SPECIAL UTILITY DISTRICT (“*MSUD*”), a conservation and reclamation district and political subdivision of the State of Texas, is made and entered into effective the 3 day of ~~October~~ 2022 (the “*Effective Date*”).

RECITALS

WHEREAS, MSUD owns a water supply, treatment, and distribution utility that serves customers in Collin, Denton, and Grayson counties, and provides wastewater collection and treatment services; and

WHEREAS, the City owns a water supply and distribution utility that serves customers within Grayson County, and provides wastewater services; and

WHEREAS, the City desires and believes it is in its best interest to transfer and convey the City’s water and sewer system to MSUD subject to the terms and conditions set forth herein, including that the City’s debt related to its water and sewer system will be defeased or transferred to MSUD at or prior to the consummation of the transactions contemplated by this Agreement; and

WHEREAS, all real and personal property acquired by MSUD from the City will be used for a purpose that benefits the public interest; and

WHEREAS, the actions to be taken by the City and MSUD under this Agreement are authorized by, among other laws, section 791.026 of the Texas Government Code, section 552.014 of the Texas Local Government Code, and section 49.226 of the Texas Water Code.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth and other good and valuable consideration, MSUD and the City (together, the “*Parties*”) hereto agree as follows:

**ARTICLE I
RECITALS AND DEFINITIONS**

Section. 1.1. **Recitals.** The Parties agree that the recitals above, including defined terms, are incorporated herein by reference for all purposes as if copied verbatim.

Section. 1.2. **Definitions.**

A. **Definitions.** Terms as used in this Agreement will have the following meanings:

“*Agreement*” has the meaning assigned to such term on the first page hereof.

“*Assets*” has the meaning assigned to such term in Section 3.1(A).

“*Assignment*” has the meaning assigned to such term in Section 9.3(B).

“*Assumed Liabilities*” has the meaning assigned to such term in Section 3.4.

“*Cash Portion*” has the meaning assigned to such term in Section 5.1(F).

“*City*” has the meaning set forth on the first page hereof.

“*City Debt*” means the City’s current and future debt obligations attributable to the Assets as described in Section 5.1(A).

“*City Required Consents*” has the meaning assigned to such term in Section 7.1.

“*Closing Certificate*” means a document provided to City by MSUD containing the items listed in Section 9.5.

“*Closing*” has the meaning set forth in Section 9.1.

“*Closing Date*” has the meaning set forth in Section 9.1.

“*Contracts*” has the meaning assigned to such term in Section 3.2(B).

“*Deed*” has the meaning assigned to such term in Section 9.3(A).

“*Defeasance Amount*” has the meaning assigned to such term in Section 5.1(B).

“*Effective Date*” has the meaning set forth on the first page hereof.

“*Emergency Improvements*” mean those improvements to the Assets as determined by MSUD to be necessary to prevent imminent harm to public health or safety, or to the environment, or to the Assets.

“*Excluded Assets*” shall be those items described in Section 3.3.

“*Facilities*” mean those items described in Section 3.2(A).

“*Impact Fee Funds*” means those monetary funds collected by City in accordance with Chapter 395 of the Texas Local Government Code to fund the capital improvements identified in its most recent and effective impact fee studies for water and wastewater service.

“*Insurance Proceeds*” has the meaning assigned to such term in Section 8.1.

“*MSUD*” has the meaning assigned to such term set forth on the first page hereof.

“*MSUD CCN*” has the meaning set forth in Section 7.3(B).

“*MSUD Closing Certificate*” means a document provided to MSUD by the City containing the items listed in Section 9.3.

“*MSUD Required Consents*” has the meaning assigned to such term in Section 7.2.

“*Operation Services Agreement*” has the meaning assigned to such term in Section 2.1.

“*Operations Transfer Date*” has the meaning assigned to such term in Section 2.1.

“*Other Assets*” has the meaning assigned to such term in Section 3.2(D).

“*Permitted Exceptions*” has the meaning assigned to such term in Section 4.4.

“*Planned Improvements*” means the list of improvements contained in Exhibit H.

“*Property*” means the property described in Section 3.2(C).

“*Purchase Price*” has the meaning assigned to such term in Section 5.1(F).

“*Required Consents*” mean those items described in Section 7.2.

“*Required Improvements*” means those improvements required by applicable local, state or federal regulations.

“*Review Items*” has the meaning assigned to such term in Section 4.1.

“*Review Period*” has the meaning assigned to such term in Section 4.2.

“*Tangible Assets*” has the meaning assigned to such term in Section 3.2(A).

“*TCEQ*” has the meaning assigned to such term in Section 7.4(C).

“*Title Objections*” has the meaning assigned to such term in Section 4.4.

B. Construction. When required by the context, the gender of words in this Agreement includes the masculine, feminine and neuter genders, and the singular includes the plural (and vice-versa). Unless otherwise specified, references in this Agreement to (i) Articles and Sections are to Articles and Sections of this Agreement, (ii) Schedules, Exhibits or Annexes are to those attached hereto, each of which is incorporated herein and made a part hereof for all purposes, (iii) Article and Section headings are for convenience only and shall not affect the interpretation of this Agreement, (iv) the terms “herein,” “hereof,” “hereinafter” or similar derivations are to this Agreement as a whole and not to any particular Article or Section, and (v) the terms “include,” “including” or similar derivations are without limitation.

**ARTICLE II
OPERATIONS TRANSFER**

Section. 2.1. **Operations Transfer.** Subject to receipt of the Required Consents, on the thirty-first day after the Effective Date, unless otherwise delayed by mutual written agreement of the Parties, but in no event later than _____ (the "***Operations Transfer Date***"), MSUD shall provide operational services to the City's water and wastewater systems pursuant to the terms and conditions set forth in the Operation Services Agreement, in substantially the form set forth on **Exhibit A** (the "***Operation Services Agreement***"), until the earlier of: i) the Closing Date, or ii) the termination of the Operation Services Agreement. MSUD shall operate the Facilities substantially in compliance with local, state, and federal regulations and in a manner generally consistent with accepted industry standards and in compliance with any of the City's existing agreements. The operation of the Facilities by the MSUD shall be subject to the provisions of the Operations Services Agreement until the Closing Date.

Section. 2.2. **Rate-Making.** Upon the effective date of the Operation Services Agreement, MSUD shall maintain rate-making authority over the water and wastewater system until, and after, the Closing Date.

Section. 2.3. **[Reserved.]**

Section. 2.4. **Capital Projects and Repairs by the City Pending Operations Transfer.** The Parties agree that between the Effective Date and the Closing Date: (i) the City may design, engineer or construct any Planned Improvements, any Required Improvements or any Emergency Improvements; and, (ii) otherwise, the City will not design, engineer or construct any changes to the Facilities without the prior express written consent of MSUD. Any contracts related to construction of Planned Improvements, Required Improvements or Emergency Improvements that remain in effect on the Closing Date will be assigned by the City to MSUD at Closing. This section shall not be construed to prevent the City from accepting ownership of improvements to the Facilities constructed by developers of real property or other third parties pursuant to the Contracts entered into prior to the Effective Date, and any such improvements shall be deemed part of the Facilities to be conveyed by the City to MSUD at Closing for purposes of this Agreement. A list of Planned Improvements and Required Improvements is attached as **Exhibit H**. Any other Planned Improvements or Required Improvements shall require written consent of MSUD.

Section. 2.5. **Planned Improvements, Required Improvements and Emergency Improvements Designed or Constructed Prior to Closing.** The City will provide MSUD with a written report on a quarterly basis after the Effective Date describing the status of the plans for, or design or construction of, any Planned Improvements, Required Improvements or Emergency Improvements, including the estimated cost and cost-to-date thereof. Within five (5) days prior to the Closing Date, the City shall provide MSUD with a final report regarding same.

Section. 2.6. **Rights of Ownership, Possession and Assumption of Liabilities.** Upon and after the Closing Date, MSUD shall own and possess the Assets, including the Property, and shall use the Assets and Property for potable water and treated wastewater services to retail and wholesale customers served by the Assets in accordance with: (i) this Agreement; and (ii) the terms and conditions of Contracts assigned by the City to MSUD at Closing. In accordance with such

ownership and possession, upon and after the Closing Date, MSUD shall have all of the rights necessary to own, operate, control, use, replace, repair, upgrade, and expand the Assets as needed for the provision of retail and wholesale water and wastewater services to the public in accordance with this Agreement and the Contracts assigned by the City to MSUD at Closing. Any debt utilized by MSUD to defease the Assumed Liabilities shall be issued in accordance with Section 6.4.

Section. 2.7. **Prohibition on Conveying Interests in Property.** During the term of this Agreement, and except in the case that MSUD provides an express written consent, the City agrees and covenants to MSUD not to transfer the City's rights in this Agreement or the City's rights in the Property under this Agreement or to create any lien on the City's rights in the Property under this Agreement as long as MSUD timely performs MSUD's obligations under this Agreement.

Section. 2.8. **Raw Water Supply.** Until the Closing Date, the City shall continue to pay the cost necessary to maintain the existing reservation and supply of raw water for the Assets, if any.

ARTICLE III TRANSFER OF MSUD ASSETS AND LIABILITIES

Section. 3.1. **Transfer of the City's Assets to MSUD.** Subject and pursuant to the terms and conditions set forth in this Agreement, on the Closing Date, the City will transfer and convey to MSUD, and MSUD will receive and accept from the City, all of the City's right, title, and interest in, to and under all of the assets, properties, and rights of every kind and nature, whether real, personal, or mixed, tangible or intangible (including goodwill), wherever located and whether now existing or hereafter acquired which comprise, or are used or held for use in connection with, the water and wastewater service provided by the City (collectively, the "**Assets**"). The Assets will be transferred on the Closing Date, AS-IS with no warranties, representations, guarantees, other than third-party warranties related to status or condition of the Assets to the extent same are assignable; and *provided, however*, the conveyance of Property on which material Facilities are located shall be by special warranty conveyance instrument. The City shall use its best efforts to identify by not later than sixty (60) days after the Operations Transfer Date in writing to MSUD all third-party warranties related to the Facilities that are assignable to MSUD as part of the Contracts below. Specifically, except for the limited warranty of title set forth in the special warranty deed and the representations and warranties of the City set forth in Section 7.2, the City makes no representations to MSUD about the Assets or the Assumed Liabilities with respect to any defects, impairments, impediments, defaults, breaches, encumbrances or other similar problems existing, including but not limited to problems with:

- A. the quality, design, construction, layout, or physical condition or state of repair of the Assets;
- B. the location of the Assets in any flood plain, flood way, or flood prone hazard area;
- C. the Assets' compliance with any laws, rules, ordinances, statutes, or regulations of any applicable governmental authority or regulatory agency, including zoning and other land use regulations; and

- D. the Assets' compliance with any applicable lawful, enforceable environmental protection, pollution, or related or similar land-use laws, rules, regulations, orders or requirements.

Section. 3.2. **Description of Assets.** The Assets include, without limitation, the Facilities, Contracts, Property, and Other Assets as follows:

- A. **Facilities.** All of the (i) water treatment, water lines, and distribution system facilities owned by the City, together with all improvements, structures, storage facilities, service pumps, lift stations, air compressors, electrical equipment, machines, and other equipment and tangible assets; and (ii) the wastewater treatment, collection, and disposal system owned by the City, together with all improvements, structures, lateral lines, service pumps, lift stations, air compressors, electrical equipment, machines, and other equipment and tangible assets (collectively the "**Facilities**"). "**Tangible assets**" shall include, but is not limited to, all equipment owned by the City to directly or indirectly operate, own, maintain, acquire, or utilize the Facilities other than the equipment listed in Exhibit I.
- B. **Contracts.** All contracts, leases, option rights, permits, certificates, licenses, reimbursement rights, service agreements, deposits, warranties from vendors or manufacturers or other third parties, regulatory correspondence, as-built plans and specifications, engineering reports, files, records, information, data, and other such assets of the City that are related to the ongoing operation and ownership of the Assets, including but not limited to those more particularly described on Exhibit B-1 attached hereto and incorporated herein for all purposes (collectively referred to herein as the "**Contracts**"). The City will cooperate with MSUD to obtain all necessary approvals for the assignment of any such assets. The Contracts will be transferred on the Closing Date, **AS-IS with no warranties, representations or guarantees**, other than third-party warranties related to the Facilities to the extent same are assignable.
- C. **Property.** All land and interests therein, excluding right-of-way and street easements but otherwise including without limitation contract rights, easements, licenses and rights-of-way owned or held by the City, including but not limited to the land and interests more particularly described on Exhibit B-2 attached hereto and incorporated herein by reference for all purposes, together with all and singular the rights, privileges, and appurtenances, if any, pertaining to said land and interests therein, together with any improvements, fixtures, and personal property of the City situated on and attached to said land and interests therein (collectively referred to herein as the "**Property**"). The Property will be transferred, on the Closing Date, AS-IS, with no warranties, representations or guarantees; *provided, however*, the conveyance will be by special warranty conveyance instrument.
- D. **Cash, Marketable Securities, and Other Assets.** All customer deposits, whether in the form of cash, cash equivalents, stocks, or bonds owned or held on behalf of the City for the benefit of its customers, which are the assets listed on Exhibit B-3 attached hereto and incorporated herein by reference for all purposes (collectively

referred to as “*Other Assets*”). Other assets will be transferred on the Closing Date, AS-IS, with no warranties, representations, or guarantees.

Section. 3.3. Excluded Assets. Notwithstanding anything to the contrary contained in Section 3.2, the City shall retain the assets listed in Exhibit I (the “*Excluded Assets*”) and such Excluded Assets are not part of the sale and purchase contemplated hereunder, are excluded from the Assets, and shall remain the property of the City after the Closing.

Section. 3.4. Assumption of Liabilities. Subject to the terms and conditions set forth herein, on the Closing Date, MSUD, shall assume and pay, perform and discharge all of the City’s known liabilities, obligations or commitments, including but not limited to the Defeasance Amount and the City’s obligations under the Contracts (collectively, the “*Assumed Liabilities*”), which obligation shall survive termination of this Agreement and Closing.

ARTICLE IV REVIEW ITEMS

Section. 4.1. Review Items. Following the Effective Date, the City will make available at MSUD’s request for reasonable inspection and copying (at MSUD’s expense) by MSUD during normal working hours at the Facilities or at the offices of the City or its agents, the following (the “*Review Items*”):

- A. Copies of all books, records, operating reports, trade account reports, financial records, audits, accounts payable and receivable lists, utility service agreements, plans and specifications, deeds, easements, surveys, plats or descriptions, vendor contracts, management agreements, maintenance records, purchase or sale contracts, regulatory records and correspondence, violations, enforcement actions, deeds, easements, licenses, permits, certificates, soil reports, inspection reports, and engineering reports (including, without limitation, endangered species, environmental, and governmental inspection reports of the City related to the ownership or operation of the Assets or relating to or in respect of the physical condition or operation of the Assets); and,
- B. Copies of work papers which reflect the revenues, expenses, cash flows, assets, and liabilities of the Assets and the City’s most recent budget and forecast related to the Assets; and
- C. Copies of any other documents related to the Assets, excluding confidential attorney-client work product and privileged attorney-client communications of the City. However, it is acknowledged that said items shall be conveyed to MSUD at Closing.

Section. 4.2. Asset Review. For a period of sixty (60) days beginning on the Effective Date (the “*Review Period*”), MSUD will have the right, during normal business hours and upon reasonable prior notice to the City, to conduct any and all reviews, investigations, environmental assessments and/or examinations of the Review Items and the Assets, which MSUD determines necessary in MSUD’s discretion. In the event that MSUD substantially disturbs or substantially disrupts any of the Assets during the Review Period, MSUD will be obligated to restore the Assets,

at MSUD's sole cost and expense, or any item related thereto substantially to its prior condition to the extent MSUD's review, investigation, or examination changed same and this obligation will survive any termination of this Agreement. MSUD's review shall not disrupt or impair the provision of continuous and adequate water service by the Facilities. The City may, at the City's option, accompany MSUD during any such inspections. Notwithstanding any provisions herein or elsewhere to the contrary, MSUD will be entitled to terminate this Agreement on or before the expiration of the Review Period upon written notice to the City.

Section. 4.3. **Electronic Provision of Review Items.** The City will use reasonable efforts to make the Review Items available to MSUD in electronic format so that the Review Items may be viewed remotely. MSUD agrees that, for any Review Item that the City makes available to the City in electronic format, the City will have satisfied its obligations under this Section and Section 4.1; *provided, however*, that the City will make available to MSUD at the Facilities or offices of the City any hard copies of the Review Items at Closing. The City represents, warrants, and covenants that, to the best of its knowledge, all Review Items provided to MSUD in connection with MSUD's investigation and due diligence of the Assets shall, in the case of documents and materials, be originals or true and correct copies of the originals or, in the case of other information, be materially true, correct, and complete.

Section. 4.4. **Title Commitment.** During the Review Period, MSUD, within its sole discretion and at its sole cost and expense, may also procure a commitment for title insurance on any of the Property set forth on Exhibit B-2. The City shall not be required to provide an owner's policy of title insurance for any portions of the Property, but the City shall otherwise cooperate with MSUD in the review by MSUD of any title commitment applied for, or obtained by, MSUD. MSUD will have fourteen (14) days after receipt of the title commitment with respect to any particular portion of the Property to review such title commitment and to deliver to the City written notice by hand delivery or overnight delivery, receipt requested, of any objections to the matters set forth in such title commitment if such title matters demonstrate that the City has made any false or misleading covenants or representations in this Agreement. Any items to which MSUD does not object within this 14-day period will be deemed to be "***Permitted Exceptions***." As to items to which MSUD timely makes objections to in writing to the City ("***Title Objections***"), the City shall have a period of twenty (20) business days during which it may cooperate with MSUD to attempt to effectuate the cure of such objections such that the City's covenants or representations in this Agreement are not false and misleading. At the end of said fourteen (14) day period (if no objections are made by MSUD) or the twenty (20) business day period (if objections are made by MSUD), MSUD will have the right, as its sole and exclusive remedies, solely with respect to Title Objections not cured by the City that could reasonably be expected to have a material adverse effect on the operation of the Assets, to terminate this Agreement; all other Title Objections shall be deemed to have been waived by MSUD.

**ARTICLE V
PURCHASE PRICE AND CITY DEBT**

Section. 5.1. **Purchase Price Calculation, Estimates, and True-Up of Defeasance Amount.**

- A. **City Debt.** The debt issued by the Greater Texoma Utility Authority (“GTUA”) associated with the Assets include the following (collectively referred to the “***City Debt***”):
- (i) Greater Texoma Utility Authority Contract Revenue Bonds, Series 2010, (Lake Texoma Water Storage Project) (the “GTUA 2010 Bonds”): \$197,000 outstanding principal amount;
 - (ii) Greater Texoma Utility Authority Contract Revenue Bonds, Series 2018A (the “GTUA 2018A Bonds”): \$3,230,000 outstanding principal amount and the City is contractually obligated to pay two percent (2%) of the GTUA debt service and all other payments, fees, and charges due to GTUA under the contract related to the GTUA 2010 Bonds;
 - (iii) Greater Texoma Utility Authority Contract Revenue Bonds, Series 2018 (City of Gunter Project) (the “GTUA 2018 Bonds”): \$1,880,000 outstanding principal amount; and
 - (iv) Combination Tax and Revenue Refunding Bond, Series 2013 (“City 2013 Bonds”): \$105,000 outstanding principal amount.

For purposes of this Agreement, the GTUA 2010 Bonds, GTUA 2018A Bonds, GTUA 2018 Bonds are collectively referred to as the “***GTUA Bonds.***” The GTUA 2010 Bonds, GTUA 2018A Bonds, GTUA 2018 Bonds, and City 2013 Bonds are collectively referred to as the “***Outstanding City Bonds.***”

- B. **Assumption and Payment.** As of the Closing Date, MSUD shall (i) assume the contractual obligations of the City to GTUA related to the GTUA Bonds and (ii) provide the City with funds sufficient to defease the City 2013 Bonds. Concurrently with the Closing, the City will receive confirmation from GTUA that the City is no longer obligated to provide contractual payments to GTUA in support of the GTUA Bonds and the provisions of the contracts related to the GTUA Bonds are terminated and cancelled as they relate to the City’s obligations to GTUA related to the GTUA Bonds. Additionally, concurrently with the Closing, the City will receive funds from MSUD which have been determined to be sufficient, together with any investment earnings therein, to allow the City to defease the City 2013 Bonds. The City will establish an escrow agreement with an authorized escrow agent to hold the funds received from MSUD to effect the defeasance of the City 2013 Bonds and the City shall cause a notice of redemption to be given to the

holders of the City 2013 Bonds calling those bonds for redemption at the earliest available redemption date.

C. Estimate of Long-Term Debt.

- (i) The City confirms that the total amount of the outstanding long-term debt of the City related to the City's water and sewer system is projected to be \$5,412,000 as of August 23, 2022, as shown in Exhibit C.
- (ii) The City agrees to provide MSUD at least twenty-one (21) days before the Closing Date with an updated Exhibit C using the same format as shown in Exhibit C. At this same time, the City shall provide MSUD a copy of a verification report from the City's verification agent reflecting the amount needed to defease the City 2013 Bonds. The City acknowledges that MSUD will rely on the updated Exhibit C delivered at least twenty-one (21) days before the Closing Date in issuing debt necessary to defease the City 2013 Bonds and confirms that the updated Exhibit C delivered at least twenty-one (21) days before the Closing Date will be true and correct in all respects. At Closing, the Outstanding City Bonds will be assumed by MSUD in the case of the GTUA Bonds or will be defeased in the case of the City 2013 Bonds and City 2013 Bonds will no longer be considered outstanding.

D. The City agrees to provide MSUD at least twenty-one (21) days before the Closing Date and again at least three (3) business days before the Closing Date any updated information related to the long-term City Debt as shown in Exhibit C and as discussed above and third-party expenses, for which actual invoices the City will provide to MSUD promptly after the City receives such invoices.

E. Purchase Price. The purchase price to be paid by MSUD is the sum of Three Million Two Hundred Fifty Thousand Dollars (\$3,250,000) (the "*Cash Portion*") plus the amount needed, if any, to assume the GTUA Bonds and to defease the City 2013 Bonds (collectively the "*Transfer Amount*") (the Cash Portion and the Transfer Amount are together the "*Purchase Price*"). The Amount shall be satisfied as set forth in this Article V and Section 3.4. The Cash Portion shall be paid as set forth in Section 5.1(F) below.

F. MSUD Payment of Cash Portion. City agrees that MSUD may pay the Cash Portion over a twelve (12) year period as described in the paragraph. From and after the Closing Date, within thirty (30) days of the end of each calendar quarter, MSUD shall remit to City an amount equal to Five Hundred Dollars (\$500) for every water meter set, with the number of water meters to be no less than the number of living unit equivalents served by the meters) within the boundary of the City's corporate limits and extraterritorial jurisdiction, during the quarter. The balance of the Cash Portion shall be reduced by the amount of each quarterly payment. Any remaining balance of the Cash Portion, after being reduced by the quarterly payments, shall be due in full from MSUD to City on December 31, 2033. The Cash Portion may be paid early by MSUD with no penalties.

**ARTICLE VI
OTHER PROVISIONS**

Section. 6.1. **Transfer.** The Assets and Assumed Liabilities are to be granted, transferred, assigned, or otherwise provided to MSUD, upon the Closing Date, in exchange for the Purchase Price.

Section. 6.2. **Customer Rates.** Rates to customers acquired through this Agreement and all future customers within the City's corporate limits and ETJ shall be charged the same retail rates as other similarly situated customers. No additional premiums, surcharges, or other fee shall be applied to customers acquired through this Agreement and all future customers within the City's corporate limits and ETJ, unless similarly imposed on all other customers of MSUD.

Section. 6.3. **Restriction on Transfer of CCN to Third-Party.** After the Closing, no portion of the MSUD CCN acquired herein, and no material part of the Facilities, shall be transferred to a third-party utility which is required to hold a CCN, or that holds a CCN, without the approval of a majority of the then existing customers of the City who participate in a vote on the subject transfer after proper notice. For the purpose of this section, an election by a method approved by the City shall suffice for this determination. An election compliant with the Texas Election Code is not necessary in order to comply with this section.

Section. 6.4. **Franchise Fee.** MSUD shall pay the City a franchise fee of ten percent of gross water and sewer revenue for the use of the City's rights of way and street easements within the corporate limits or extraterritorial jurisdiction of the City and will be addressed by separate agreement.

Section. 6.5. **Protection of Customer Interests.** In connection with the ownership, operation, management, maintenance, repair, financing and expansion of the Assets, provision of service to retail customers, and exercise of other duties and rights provided in this Agreement, MSUD will not undertake, or fail to take, any actions, formally or informally, that would be preferential to MSUD and its retail customers relative to the interests of the retail customers of the City. This provision shall not be construed to prevent the cost of improvements or services from being paid only by those customers or entities benefitted by such improvements or services.

Section. 6.6. **Billing Services and Reimbursement Agreement.**

- A. MSUD and the City agree to enter into a contract for MSUD to provide billing services to the City for the City's solid waste, trash and recycling collection, stormwater utility/drainage fees, service fees for emergency police, fire/ambulance services, franchise fees, UTRWD fees, and other fees that need to be collected by the City from MSUD utility customers. The billing services agreement shall allow MSUD to retain up to a three percent (3%) billing service fee and require MSUD to remit payment to the City of City fees collected within thirty (30) days of the end of each billing cycle.
- B. The contract for billing services shall also include a reimbursement fee, or equivalent fee collected from new construction meter sets as allowed by law, of Five hundred Dollars (\$500) per lot within the corporate limits and/or

extraterritorial jurisdiction of the City ("*Reimbursement Fee*"). The Reimbursement Fees collected each month by MSUD shall be remitted on a monthly basis in the same manner and at the same time as the City fees, or as otherwise set forth in the contract between the Parties. Notwithstanding, MSUD shall not be required to pay Reimbursement Fees to the City until the earlier of January 1, 2033 or the date the Cash Portion balance is paid in full. Reimbursement Fees shall be collected until December 31, 2052.

- C. The imposition, remittance, and collection of the Reimbursement Fee shall survive expiration or termination of this Agreement.

Section. 6.7. **Water Towers.** Existing City owned water tower (Bledsoe Rd.) and future water towers constructed within the corporate limits of extraterritorial jurisdiction of the City shall include the City's logo, in a style, and color approved by the City, painted onto the water tower. Further, all facilities in the City shall meet the City's landscaping and fencing requirements. Future water towers constructed in accordance with this provision shall be of a design, color, and placement of proportionate tank size logos per Mustang design standards and specifications. City logo style and color requirements shall be communicated to MSUD on a facility by facility basis by the City's Mayor or City Manager.

Section. 6.8. **MSUD Standards for Water and Sewer Infrastructure:** City agrees that MSUD design and detail standards for water and wastewater infrastructure and facilities, which may be amended from time to time in accordance with TCEQ approved standards, or industry accepted standards and practices, shall be accepted within the current corporate limits, future corporate limits, and ETJ, as applicable.

Section. 6.9. **Annexation.** Within thirty (30) days of being requested to do so by the City, MSUD agrees to submit a voluntary annexation petition for any property it owns within the ETJ of the City. MSUD agrees to execute and supply any and all instruments and/or other documentation necessary for the City to annex such property(ies) into the City's corporate limits. This Agreement constitutes the service plan agreement for providing City services to any annexed property(ies). If the City is unable to complete the annexation of a property for any reason, including but not limited to procedural error or legal challenge, MSUD shall execute another voluntary annexation petition for such property within ten (10) days of being requested to do so.

ARTICLE VII REPRESENTATIONS AND COVENANTS

Section. 7.1. **City's Representations and Warranties.** The City represents and warrants to MSUD that the following are true, accurate, and complete as of the Effective Date: (a) each of the persons executing this Agreement on behalf of the City is duly authorized to do so by action of the City Council; (b) the City has full right and authority to enter into this Agreement and to consummate the transaction described in this Agreement; (c) this Agreement constitutes the valid and legally binding obligations of the City and is enforceable against the City in accordance with its terms, subject to applicable law; (d) neither the execution or delivery of this Agreement nor the performance of the City's obligations under this Agreement violates, or will violate, any contract or agreement to which the City is a party or by which the City is otherwise bound; (e) other

than as set forth in Exhibit D (the “*City Required Consents*”), there are no consents or approvals needed for the City to consummate the transactions contemplated by this Agreement; and (f) neither the execution or delivery of this Agreement nor the performance of the City’s obligations under this Agreement shall cause, or require, MSUD to increase retail rates to former City customers as a part of closing the transaction described in this Agreement.

Section. 7.2. **MSUD’s Representations and Warranties.** MSUD represents and warrants to the City that the following are true, accurate, and complete as of the Effective Date: (a) each of the persons executing this Agreement on behalf of MSUD is duly authorized to do so by action of the MSUD Board of Directors; (b) MSUD has full right and authority to enter into this Agreement and to consummate the transaction described in this Agreement; (c) this Agreement constitutes the valid and legally binding obligations of MSUD and is enforceable against MSUD in accordance with its terms, subject to applicable law; and (d) neither the execution or delivery of this Agreement nor the performance of MSUD’s obligations under this Agreement violates, or will violate, any contract or agreement to which MSUD is a party or by which MSUD is otherwise bound; and, (e) other than as set forth in Exhibit E (the “*MSUD Required Consents*” and together with the City Required Consents, the “*Required Consents*”), there are no consents or approvals needed for MSUD to consummate the transactions contemplated by this Agreement.

Section. 7.3. **Consents and Approvals.**

- A. The Parties acknowledge that the Required Consents must be obtained as a condition of the City’s assignment of said agreements, conveyance of infrastructure that is subject to said Assets or Property portions, and MSUD’s assumption of the City’s rights and obligations under said Assets or Property portions. Beginning on the Effective Date, MSUD shall use commercially reasonable efforts to obtain all Required Consents (except those for which the City is responsible for securing under this Agreement) and keep the City informed of the status of same. The City agrees to cooperate with and assist MSUD in obtaining the Required Consents; *provided, however*, that such cooperation and assistance will not require any third-party expenditures or cash expenditures by the City.
- B. The Parties shall use their respective best efforts to obtain PUC approval for the transfer of the City certificate of convenience and necessity numbers 13105 and 20951 (“*City CCNs*”) and the Assets to MSUD. MSUD shall be responsible to prepare and file the application to the PUC regarding the transfer of the CCN and Assets, as set forth in Section 7.5(A).

Section. 7.4. **City’s Covenants.** In addition to MSUD’s and the City’s other agreements and undertakings hereunder, the City hereby covenants and agrees with MSUD that:

- A. Notices Received. The City, at its sole cost and expense, will promptly deliver to MSUD copies of any written notices or promptly inform MSUD of any other notices received or of which the City gains actual knowledge and possession alleging the occurrence of any default or alleged default under any of the contracts included in the Assets, or any violation or alleged violation of any law, regulation,

order, or other requirement of any governmental authority having jurisdiction over the Assets, including a proposed compliance order, or any tort claims relating to the City's ownership or operation of the Assets.

- B. Ongoing Construction Projects. Except with respect to the Required Improvements or Planned Improvements, the City agrees that it will not enter into any new contracts or amendments to existing contracts with third parties for design, engineering, construction and/or other similar construction matters related to the Facilities or Assets after the Effective Date without the express written consent of MSUD unless necessary to meet regulatory requirements or the City's obligations under existing Contracts, in which event the City will provide written notice of and estimates for the improvements necessary to meet regulatory requirements. This provision does not preclude the City from using or hiring such professionals as deemed necessary by the City to continue its operations and meet the terms of this Agreement, including professionals such as legal counsel, bond counsel, financial advisors and financial accountants.
- C. Excluded Assets. Within one hundred and eighty (180) days of the Closing Date, the City shall return to MSUD any Excluded Assets if any.

Section. 7.5. **MSUD Covenants**. In addition to MSUD's and the City's other agreements and undertakings hereunder, MSUD hereby covenant and agree with the City that:

- A. Notice and Application to Public Utility Commission of Texas ("PUC"). MSUD, at MSUD's sole cost and expense, will deliver to PUC all required notices and applications for approval, if any, with respect to the proposed change in ownership of the Assets within sixty (60) days of the Effective Date. MSUD will seek diligently any PUC approval, if required, of same. The City will have the right to review any filings made with the PUC by MSUD prior to the filing of same. The City will otherwise cooperate and assist MSUD to the extent reasonably necessary in obtaining such approvals.

Section. 7.6. **Closing Updates**.

- A. At Closing, the City will provide to MSUD the City Closing Certificate (so called herein) which will certify, represent, and warrant to MSUD, as of the date of Closing, that (i) each covenant contained in Section 7.4 has been fully satisfied, and (ii) each of the representations and warranties contained in Section 7.2 are and continue to be true and correct on the date of Closing, *provided*, should an event occurring during the pendency of this Agreement make any of such representations and warranties not correct on the date of Closing, such noncompliance will be indicated and described on the City Closing Certificate. In addition, the City will provide to MSUD a certified copy of the City resolution determining that the Assets are no longer necessary, convenient, or of beneficial use to the business of the City. The obligation of MSUD to close this transaction is expressly conditioned upon the representations and warranties contained in Section 7.2 hereof being true and

correct on the date of Closing and the covenants contained in Section 7.4 hereof being fully satisfied on the date of Closing.

- B. At Closing, MSUD will provide to the City a MSUD Closing Certificate (so called herein) which will certify, represent and warrant to the City, as of the date of Closing, that (i) each covenant contained in Section 7.5(A) and (B) has been fully satisfied, and (ii) each of the representations and warranties contained in Section 7.1 are and continue to be true and correct on the date of Closing, *provided*, should an event occurring during the pendency of this Agreement make any of such representations and warranties not correct on the date of Closing, such noncompliance will be indicated and described on the MSUD Closing Certificate. The obligation of the City to close this transaction is expressly conditioned upon the representations and warranties contained on Section 7.1 being true and correct on the date of Closing and the covenants contained in Section 7.5(A) and (B) being fully satisfied on the date of Closing.

ARTICLE VIII CASUALTY PRIOR TO CLOSING

Section. 8.1. **Casualty.** In the event the Assets or any part thereof should be damaged by any casualty prior to Closing, the City will provide to MSUD, at Closing or any date of receipt of said funds after Closing, any funds actually received by the City from its third-party insurer or risk pool as proceeds relating to such casualty (the "*Insurance Proceeds*") for repair or replacement of the damaged property, and the sale will be closed without the City repairing any such damage if repair or replacement is not necessary for continued operation of the Assets pending Closing. If repair or replacement is necessary for the continued operation of the Assets pending Closing, at MSUD's option or if required to meet regulatory requirements, the City will repair or replace any damaged property necessary for continued operation of the Assets, subject to MSUD's review and approval of the plans for and execution of the repair or replacement. The City will apply proceeds received, if any, in replacement of the damaged property to such repair or replacement.

ARTICLE IX CLOSING

Section. 9.1. **Time and Place of Closing.** The closing of the transaction contemplated by this Agreement (the "*Closing*") shall take place on the later of (i) the first Tuesday after the date on which the City Debt is defeased and all other Required Consents are obtained, or (ii) such other date as may be agreed between the Parties or as provided in Section 9.2 below (such date, the "*Closing Date*"). The Closing will be held at 10:00 a.m., local time on the Closing Date, at the offices of the City or at such other time and place as may be agreed between Parties. All matters to take place at the Closing will take place simultaneously, and no delivery will be considered to have been made until all such proceedings have been completed.

Section. 9.2. **Conditions to Closing.** Notwithstanding anything in this Agreement to the contrary, it is specifically agreed that neither MSUD nor the City will be under any obligation to close the transaction(s), or any portion thereof, contemplated by this Agreement, until:

- A. MSUD has been able to issue, sell, deliver, and receive payment for its bonds or other debt obligations or otherwise obtain funds in an amount sufficient to provide MSUD with the funds necessary to pay the Defeasance Amount;
- B. all required notices or governmental approvals, if any, including, without limitation, any notification to, consent by, or approval from PUC, have been given or obtained;
- C. the closing deliveries set forth in Section 9.3 and Section 9.5 have been delivered by the applicable Party; and
- D. all Required Consents have been obtained by the City and MSUD, as applicable.

If any or all of these conditions have not occurred by the Closing Date, the Closing Date will be extended for a reasonable period of time (not to exceed two years from the Effective Date) in order to allow the unresolved condition to be satisfied, in order to effectuate the transfer of necessary environmental permits, certificates and/or licenses, if applicable, the City will continue to contract with MSUD and MSUD shall continue to contract with the City to operate and/or manage the Assets until Closing absent further agreement of the Parties.

Section. 9.3. **City Delivery.** At the Closing, the City will deliver or cause to be delivered to MSUD, at the City's sole cost and expense, each of the following items:

- A. A duly executed and acknowledged Special Warranty Deed in substantially the form attached hereto as Exhibit F (the "*Deed*").
- B. A Bill of Sale and Assignment, in substantially the form attached hereto as Exhibit G ("*Assignment*"), duly executed by the City.
- C. The City Closing Certificate duly executed and acknowledged by the City.
- D. Any other additional documents and instruments as in the mutual opinion of the City's counsel and MSUD's counsel are reasonably necessary to the proper consummation of this transaction.
- E. All combinations and/or keys to all locks related to the Assets.
- F. To the extent reasonably available, the originals of all matters agreed to be transferred to MSUD at Closing, unless otherwise noted, pursuant to Section 4.1.

Section. 9.4. **CITY'S Disclaimer of Warranty.** NOTWITHSTANDING ANYTHING THIS AGREEMENT TO THE CONTRARY, MSUD ACKNOWLEDGES AND AGREES THAT UPON THE CLOSING, IT IS ACCEPTING THE ASSETS IN THEIR "AS-IS, WHERE-IS" CONDITION "WITH ALL FAULTS" AND DEFECTS AS OF THE CLOSING AND SPECIFICALLY AND EXPRESSLY WITHOUT ANY WARRANTIES, REPRESENTATIONS, OR GUARANTEES, EITHER EXPRESS OR IMPLIED, AS TO THEIR LOCATION, CONDITION, FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY, OR ANY OTHER WARRANTY OF ANY KIND, NATURE, OR TYPE

WHATSOEVER FROM OR ON BEHALF OF MSUD OTHER THAN THIRD-PARTY WARRANTIES RELATED TO THE SYSTEM TO THE EXTENT SAME ARE ASSIGNABLE. Any instruments of transfer for the Assets will reference this agreement by MSUD.

Section. 9.5. **MSUD Delivery.** At the Closing, MSUD will deliver to the City the following items:

- A. The MSUD's Closing Certificate.
- B. The Assignment duly executed by MSUD.
- C. The Deed duly executed by MSUD.
- D. The Defeasance Amount, in good funds, based on the estimate of the Defeasance Amount provided by the City at least three (3) business days before the Closing Date.
- E. Evidence satisfactory to the City that MSUD has assumed, paid or defeased the City Debt and any costs and expenses associated with the defeasance, assumption or repayment of the City Debt.
- F. Such evidence or documents as may reasonably be required by the City evidencing the authority of the person or persons who are executing the various documents on behalf of MSUD in connection with the sale of the Assets.
- G. Copies of documents evidencing that the City and MSUD have obtained all Required Consents listed in Exhibits D and E.
- H. Evidence that each agreement to which the City is a party will either terminate or assign to MSUD the rights and obligations of the underlying agreement and such termination or assignment will release and fully discharge the City from any obligations under or related to the underlying agreement.
- I. Closing Payment as provided in Section 11.02 below.
- J. Any other additional documents or instruments as in the mutual opinion of the City's counsel and MSUD's counsel are reasonably necessary to the proper consummation of this transaction.

Section. 9.6. **Title and Possession.** Title and possession of the Assets will be delivered to MSUD by the City at the Closing.

Section. 9.7. **Costs and Expenses.** Unless otherwise set forth herein, the costs and expenses in connection with the transaction contemplated by this Agreement related to defeasing the City's outstanding debt shall be borne by MSUD.

**ARTICLE X
TERMINATION & REMEDIES**

Section. 10.1. **Termination Prior to Closing.** Notwithstanding anything in this Agreement to the contrary, this Agreement may not be terminated, except prior to Closing as follows:

- A. by mutual consent in writing of the City and the MSUD;
- B. by the City, if MSUD breaches in any material respect any of the representations, warranties, covenants or other agreements of MSUD contained in this Agreement, which breach has not been waived in writing or cannot be or has not been cured within fifteen (15) days after the giving of written notice by the City to MSUD specifying such breach;
- C. by MSUD, if the City breaches in any material respect any of the representations or warranties, covenants or other agreements of the City contained in this Agreement, which breach has not been waived in writing or cannot be or has not been cured within fifteen (15) days after the giving of written notice by MSUD to the City specifying such breach;
- D. by either MSUD or the City, if any court or any other governmental authority issues an order restraining or prohibiting such Party from consummating the sale and purchase of the Assets as provided herein;
- E. by either MSUD or the City, if satisfaction of any of the conditions in Section 9.2 is or becomes impossible and the other Party has not waived such condition in writing; *provided*, that in each case the failure to satisfy the applicable condition or conditions has occurred by reason other than (i) through the failure of terminating Party to comply with its obligations under this Agreement or (ii) the terminating Party's failure to provide its closing deliveries on the Closing Date as a result of the terminating Party not being ready, willing and able to close the transaction contemplated in this Agreement on the Closing Date;
- F. by either MSUD or the City if the Closing has not occurred by the third anniversary of the Effective Date; and
- G. by MSUD pursuant to Section 4.4.

Section. 10.2. **Effect of Termination.** In the event that this Agreement is terminated pursuant to Section 10.1, all further obligations of the Parties under this Agreement shall terminate without further liability of any party to another; *provided*, that (a) the provisions of this Section 10.2 and of Article XI shall survive any such terminations and (b) in the event this Agreement is terminated pursuant to Section 10.1(b) or Section 10.1(c) nothing in this Section 10.2 shall relieve the City or MSUD of any liability for an intentional breach of any representation, warranty, covenant or other agreement herein on or prior to the date of termination and the Parties shall be entitled to seek the remedy of specific performance of this Agreement.

**ARTICLE XI
OTHER RENUMBERATION**

Section. 11.1. **Additional Renumeration.** In addition to the defeasance of the City Debt as described in Article V above, MSUD shall provide the City additional renumeration as provided in this Article.

Section. 11.2. **One Time Payment.** At Closing, MSUD shall tender a check to the City in the amount of five hundred thousand dollars and zero cents (\$500,000.00) in consideration of the transaction ("Closing Payment").

Section. 11.3. **Quarterly Payment.** After Closing, MSUD agrees to pay the City an additional three million two hundred fifty thousand dollars and zero cents (\$3,250,000.00) ("Additional Payments") to be paid as follows:

- A. At Closing and thereafter, MSUD shall increase its tap fees to all new service connections within its service territory by \$500.00 per tap ("Additional Tap Fee").
- B. MSUD shall collect the Additional Tap Fee for remittance to the City on a quarterly basis. On the first business day of the month following the end of a calendar quarter, MSUD shall account for the collected Additional Tap Fee and remit such amount the City ("Quarterly Payment").
- C. MSUD shall maintain such obligation until the City is paid Quarterly Payments up to the Additional Payments amount. The payments of the Additional Payments and the Quarterly Payments by MSUD to the City shall survive Closing.
- D. However, if the Additional Payments are not paid in full through the Quarterly Payments by the tenth anniversary of the Closing Date, MSUD shall pay to the City on such anniversary date the difference between the Additional Payments and the Quarterly Payments made to the City.

**ARTICLE XII
GENERAL PROVISIONS**

Section. 12.1. **Notices.** All notices and other communications hereunder will be in writing and will be delivered by one of the following means: hand delivery; expedited courier delivery; mailed by registered or certified mail, return receipt requested, postage prepaid; or, electronic mail, *provided*, that a duplicate of the same notice or communication is also mailed by first-class mail on the same date of the electronic mail. All notices and communications hereunder will be addressed as follows, and will be effective upon actual delivery if delivered by hand or by expedited courier delivery or, if mailed, three (3) business days after deposit in the United States mail:

(a) If to MSUD, to:

General Manager
Mustang Special Utility District
7985 FM 2931
Aubrey, TX 76227

(b) If to City, to:

Attn: City Manager
City of Gunter
105 N. 4th Street
Gunter, TX 75085
TEL: (903) 433-5185

With a copy to:

Julie Fort
Messer, Fort, & McDonald, PLLC
6371 Preston Road, Suite 200
Frisco, Texas 75034
TEL: (972) 668-6400

Any party may change its address for receiving notice by giving notice of a new address in the manner herein; *provided, however*, if mailed, notice of such new address will be effective only upon actual receipt by the other parties.

Section. 12.2. **Headings and Defined Terms.** Descriptive headings are for convenience only and will not control or affect the meaning or construction of any provision of this Agreement.

Section. 12.3. **Assignment.** Assignment of this Agreement by the Parties is prohibited without the prior written consent of the other party, which consent will not be unreasonably withheld or delayed. This Agreement will be binding upon and inure to the benefit of the Parties and their successors and assigns.

Section. 12.4. **Governing Law and Forum.** This Agreement will be construed and interpreted in accordance with the law of the State of Texas and the obligations of the Parties hereto are and will be performable in Grayson County. By executing this Agreement, each party hereto expressly (a) consents and submits to personal jurisdiction and venue consistent with the previous sentence, (b) waives, to the fullest extent permitted by law, all claims and defenses that such jurisdiction and venue are not proper or convenient, and (c) consents to the service of process in any manner authorized by Texas law.

Section. 12.5. **No Oral Modification.** This Agreement may not be modified or amended, except by an agreement in writing signed by both the MSUD and the City.

Section. 12.6. **No Oral Waiver.** The parties may waive any of the conditions contained herein or any of the obligations of the other party hereunder, but any such waiver will be effective

only if in writing and signed by the party waiving such conditions or obligations. No waiver or waivers of any breach or default (or any breaches or defaults) of any term, covenant, condition or liability under this contract, or of performance by the other parties of any duty or obligation under this contract, will be deemed or construed to be a waiver of subsequent breaches or defaults of any kind, under any circumstances.

Section. 12.7. **Time of Essence.** Time is of the essence of this Agreement.

Section. 12.8. **Entire Agreement.** This Agreement, including the Exhibits hereto, constitutes the entire agreement among the Parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings of the Parties in connection therewith. No representation, warranty, covenant, agreement, or condition not expressed in this Agreement will be binding upon the Parties hereto or will affect or be effective to interpret, change, or restrict the provisions of this Agreement except by an amended agreement in writing signed by both the Parties.

Section. 12.9. **Partial Invalidity.** If any clause or provision of this Agreement is or should ever be held to be illegal, invalid, or unenforceable under any present or future law applicable to the terms hereof, then and in that event, it is the intention of the Parties hereto that the remainder of this Agreement will not be affected thereby, and that in lieu of each such clause or provision of this Agreement that is illegal, invalid, or unenforceable, there be added as part of this Agreement a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable such that the intention of the Parties is effected as closely as is possible.

Section. 12.10. **Counterpart Execution.** This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which shall constitute but one agreement. Delivery of a signature to this Agreement by facsimile transmission or electronic mail in “portable document format” shall have the same effect as physical delivery of the paper document bearing the original signature.

Section. 12.11. **Holidays.** In the event that the date upon which any duties or obligations hereunder to be performed will occur upon a Saturday, Sunday or legal holiday, then, in such event, the due date for performance of any duty or obligation will thereupon be automatically extended to the next succeeding business day.

Section. 12.12. **Exhibits.** The following Exhibits are attached hereto:

- Exhibit A Operations Services Agreement
- Exhibit B-1 Contracts and Agreements
- Exhibit B-2 Property
- Exhibit B-3 Other Assets
- Exhibit C City Debt
- Exhibit D City Required Consents
- Exhibit E MSUD Required Consents
- Exhibit F Specialty Warranty Deed
- Exhibit G Bill of Sale and Assignment

Exhibit H Planned Improvements
Exhibit I Tangible Assets to be retained by City

IN WITNESS WHEREOF, each party hereto has signed this Agreement or caused this Agreement to be signed in its corporate name by its officer thereunto duly authorized, all as of the date first above written.

Mustang Special Utility District

By: 

Name: CHRIS BOYD

Title: GEN. MGR.

City of Gunter, Texas

By: 

Name: Mark Miller

Title: Mayor

EXHIBIT A—OPERATIONS SERVICES AGREEMENT

**AGREEMENT BY AND BETWEEN
CITY OF GUNTER, TEXAS AND
MUSTANG SPECIAL UTILITY DISTRICT**

STATE OF TEXAS §
 § **KNOW ALL MEN BY THESE PRESENT**
COUNTY OF GRAYSON §

THIS AGREEMENT is made and entered into by and between City of Gunter, Texas, a Texas general law municipality, hereinafter referred to as “City”, and Mustang Special Utility District, a special utility district created under the laws of Texas, hereinafter referred to as “MSUD.” City and MSUD are collectively referred to herein as “the Parties.”

WHEREAS, City owns, operates and maintains water supply, treatment, and distribution facilities and a sewer collection and treatment facilities; and

WHEREAS, MSUD owns, operates, and maintains a water supply, treatment, and distribution utility that serves customers in Collin, Denton, and Grayson counties, and provides wastewater collection and treatment services; and

WHEREAS, City and MSUD have agreed that MSUD will acquire the assets of the City, as described in the Asset Purchase Agreement by and Between the City of Gunter, Texas and Mustang Special Utility District, effective on even date herewith (“Asset Purchase Agreement”); and

WHEREAS, the Parties have determined that it would be advantageous for MSUD to manage, maintain, and operate the City’s water supply, treatment and distribution facilities and certain wastewater collection and treatment facilities during the pendency of the acquisition process;

NOW THEREFORE, City and MSUD, their successors and assigns, in consideration of the mutual covenants and agreements contained herein, enter into this agreement (“Agreement”) and agree as follows:

I. GENERAL TERMS

- 1.01 This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas.
- 1.02 This Agreement shall be binding upon the successors and assigns of each of the parties, but neither party shall assign this Agreement without the prior written consent of the other party. Consent shall not be unreasonably withheld.
- 1.03 **Notice.** Any notice to be given hereunder to a party shall be in writing and effected by certified mail, return receipt requested.

If to MSUD, to:

General Manager
Mustang Special Utility District
7985 FM 2931
Aubrey, TX 76227

With a copy to:

John Carlton
Carlton Law Firm
4301 Westbank Drive, Suite B-130
Austin, Texas 78746

(b) If to City, to:
Attn: City Manager
City of Gunter
105 N. 4th Street
Gunter, TX 75085
TEL: (903) 433-5185

With a copy to:

Julie Fort
Messer, Fort, & McDonald, PLLC
6371 Preston Road, Suite 200
Frisco, Texas 75034
TEL: (972) 668-6400

Any party may change its address for receiving notice by giving notice of a new address in the manner herein; *provided, however*, if mailed, notice of such new address will be effective only upon actual receipt by the other party.

II. MSUD'S OBLIGATIONS

- 2.01 **Personnel.** MSUD shall provide the City with professional services for the operation and maintenance of the City's system in compliance with Appendix A.
- 2.02 **Training.** MSUD shall provide ongoing training and education for MSUD personnel providing service to the City in all necessary areas of operations, maintenance, safety, customer service, and supervisory skills.
- 2.03 **Safety.** MSUD will utilize the MSUD employee safety program in compliance with all applicable laws, rules, regulations and make recommendations to the City regarding the

need, if any, for the City to rehabilitate, expand or modify its water or sewer utility to comply with governmental safety regulations applicable to the City's operations.

- 2.04 **Reports.** As required by law, permit, license, certificate, or court order, MSUD will prepare and review reports as required by state or federal law or required pursuant to any permit or certificate held by the City.
- 2.05 **Testing.** MSUD shall review the results of all laboratory testing and sampling required by statute, rules and regulations, ordinances, permit, certificate, or licensing requirements or judicial or regulatory orders or decrees.
- 2.06 **Repair and Maintenance.** MSUD will review and authorize all maintenance and repairs for the City's water and sewer utility, up to the amount budgeted by the City's City Council. MSUD shall authorize all emergency repairs and report the cost to the City's City Manager. Any non-emergency maintenance and repairs required above the amount budgeted by the City may not authorized without express approval by the City's City Manager. MSUD's responsibility for management of repairs and maintenance shall include all facilities owned by the City to operate its water utility.
- 2.07 **Connections.** MSUD shall be responsible for managing customer meter installation, connection setting, and removal process.
- 2.08 MSUD shall perform the services stated in this Agreement and all Appendices hereto with the degree of skill and diligence normally employed by operations and maintenance personnel performing the same and similar duties.

III. CITY'S RIGHTS AND OBLIGATIONS

- 3.01 **Ownership.** All land, buildings, facilities, easements, licenses, structures, rights-of-way, equipment and vehicles presently or hereafter acquired by the City shall remain the exclusive property of the City unless specifically provided for otherwise in this Agreement. The City shall maintain and renew all warranties, guarantees, easements, permits, authorizations, and licenses that have been granted to the City for such property, to the extent the maintenance thereof is not a responsibility of MSUD hereunder.
- 3.02 **Capital Expenditures.** The City shall fund all necessary capital expenditures, in compliance with the Asset Purchase Agreement. Any loss, damage, or injury resulting from the City's failure to provide capital improvements and/or funds for such expenditures shall be the sole responsibility of the City.

IV. TERM

- 4.01 The term of this Agreement shall begin on October 3, 2022, or on another date mutually agreed upon by the Parties until the Parties close on the Asset Purchase Agreement or a termination provision in said Asset Purchase Agreement is exercised.
- 4.02 Either party may terminate this Agreement for a material breach of this Agreement by the other party after giving written notice of the breach and allowing the other party a

reasonable time to correct the breach. Excepting breaches by the City for non-payment of MSUD's invoices, neither party shall terminate this Agreement without giving the other party thirty (30) days' written notice of intent to terminate for failure of the other party to correct the breach within a reasonable.

- 4.03 Upon termination of this Agreement, MSUD will return the responsibility for the services provided hereunder to the City. Equipment and other personal property purchased by MSUD for use in the routine operation or maintenance practices of the Service provided hereunder and either included in the compensation or otherwise directly billed to the City shall become property of the City upon termination of this Agreement, provided that the City has reimbursed MSUD for such equipment and other personal property. However, any equipment or personal property that is purchased by MSUD and not included in the compensation or otherwise billed to the City shall be the property of MSUD and shall be removed by MSUD at the termination of this Agreement.

V. COMPENSATION

- 5.01 As compensation for services rendered under this Agreement, MSUD shall be compensated for services provided hereunder through collection of water sales sold on and after the effective date of this agreement. The water rates shall be per Mustang's approved Rate Order. All uncollected water rates accrued during the term of this Agreement shall be the sole responsibility of MSUD. MSUD shall have the sole responsibility of collecting all billings for water sold during the term of this agreement. The collection of water rates shall be MSUD's sole compensation for the scope of work hereunder.
- 5.02 Compensation for changes in scope not included as part of the services described herein or in any Appendices shall be provided at cost to the City and shall be due and payable by the City commencing the month following the date the expense is invoiced.

VI. LIABILITY

- 6.01 City's liability to MSUD under this Agreement specifically excludes any and all indirect, special or consequential damages arising from the City's scope of services under this Agreement, unless caused by the negligence or willful act of City. These damages are limited to the proportion that such negligence or willful act contributed to the loss.
- 6.02 MSUD shall not be liable for fines or civil penalties which may be imposed by a regulatory or enforcement agency for violations occurring on or after the Effective Date, as a result of the failure to comply with the terms and conditions of any duly authorized permit, court order, administrative order, law, statute, or ordinance.

VII. UNFORSEEN CIRCUMSTANCES

- 7.01 Neither party shall be liable for damages, delays, or failure to perform its obligations under this Agreement if such failure is due to any Unforeseen Circumstance beyond its reasonable control. The party invoking this clause shall notify the other party immediately by verbal communication and in writing of the nature and extent of the Unforeseen Circumstance

within ten (10) working days after its occurrence, and shall take reasonable measures to mitigate any impact of an Unforeseen Circumstance.

- 7.02 In the case of Unforeseen Circumstances, the City agrees to pay any Costs incurred by MSUD in connection with the Unforeseen Circumstance, to the extent that such occurrence results in the increase of the costs to MSUD.

VIII. MISCELLANEOUS

- 8.01 **Access to Facilities.** The City will make its facilities accessible to MSUD as required for MSUD's performance of its services, and will secure access to any other City property necessary for performance of MSUD's services.
- 8.02 **Modification.** This Agreement may be changed or modified only with the consent of the governing bodies of City and MSUD.
- 8.03 **Effective Date.** The Effective Date of this Agreement is October 3, 2022
- 8.04 **Severability.** This Agreement is subject to all applicable Federal, state, and local laws, and any applicable permits, rules, orders, and regulations of any local, state, or federal governmental authority having jurisdiction. In addition, the parties hereto specifically agree that in case any one or more of the provisions of the Agreement should be, or should be held to be, for any reason, invalid or unconstitutional, under the laws or the constitutions of the State or the United States of America, or in contravention in any such laws or constitutions, such invalidity, unconstitutionality or contravention shall not effect any other provisions of this Agreement.
- 8.05 **Force Majeure.** If by reason of force majeure any party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement, then if such party shall give notice and full particulars of such force majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied on, the obligation of the party giving such notice, so far as it is affected by such force majeure, shall be suspended during the continuance of the inability claimed, but for no longer period, and any such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "force majeure" as employed herein shall mean acts of God, strike, lockouts, or other industrial disturbances, acts of public enemy, orders of any kind of the government of the United States or the State of Texas, or any civil or military authority, insurrection, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, partial or entire failure of water supply, or on account of any other causes not reasonable within the control of the party claiming such inability.
- 8.06 **Regulatory Bodies and Laws.** This Agreement is subject to all applicable Federal and State laws and any applicable permits, ordinances, rules, orders, and regulations of any local, state, or federal government authority having or asserting jurisdiction, but nothing contained herein shall be construed as a waiver of any right to question or contest any such law, ordinance, order, rule, or regulation in any forum, having jurisdiction.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF GRAYSON §

This instrument was acknowledged before me on this ____ day of _____, 2022,
by _____.

Notary Public, State of Texas

APPENDIX A-SCOPE OF SERVICES

A. MSUD shall perform the following services:

1. Provide sufficient number of qualified employees who possess the managerial, administrative, and technical skills to perform the services specified in this Agreement, and where appropriate, the certification requirements mandated by the appropriate regulatory body with jurisdiction. Services shall be provided in the following areas:
 - a. General Management
 - b. Engineering Director
 - c. Financial Management
 - d. Operations Management
 - e. GIS Management
 - f. Project Management
2. Manage the City's operation, maintenance, and facilities during the City's water and sewer utilities during the normal operating hours and during emergency periods.
3. Evaluate and recommend preventative maintenance and repairs to the City's facilities.
4. Make recommendations for capital improvements in writing for capacity expansion, operational improvement, regulatory compliance, and safety improvement to the City, if necessary.
5. Ensure that the facilities remain clean and in regulatory compliance.

B. Scope Changes. A change in the scope of services shall occur when and as MSUD's costs of providing services under this agreement change as a result of:

A request by City to MSUD, with MSUD's consent, to provide additional services. MSUD shall provide the additional services to City at the MSUD's rate for said service.

EXHIBIT B-1

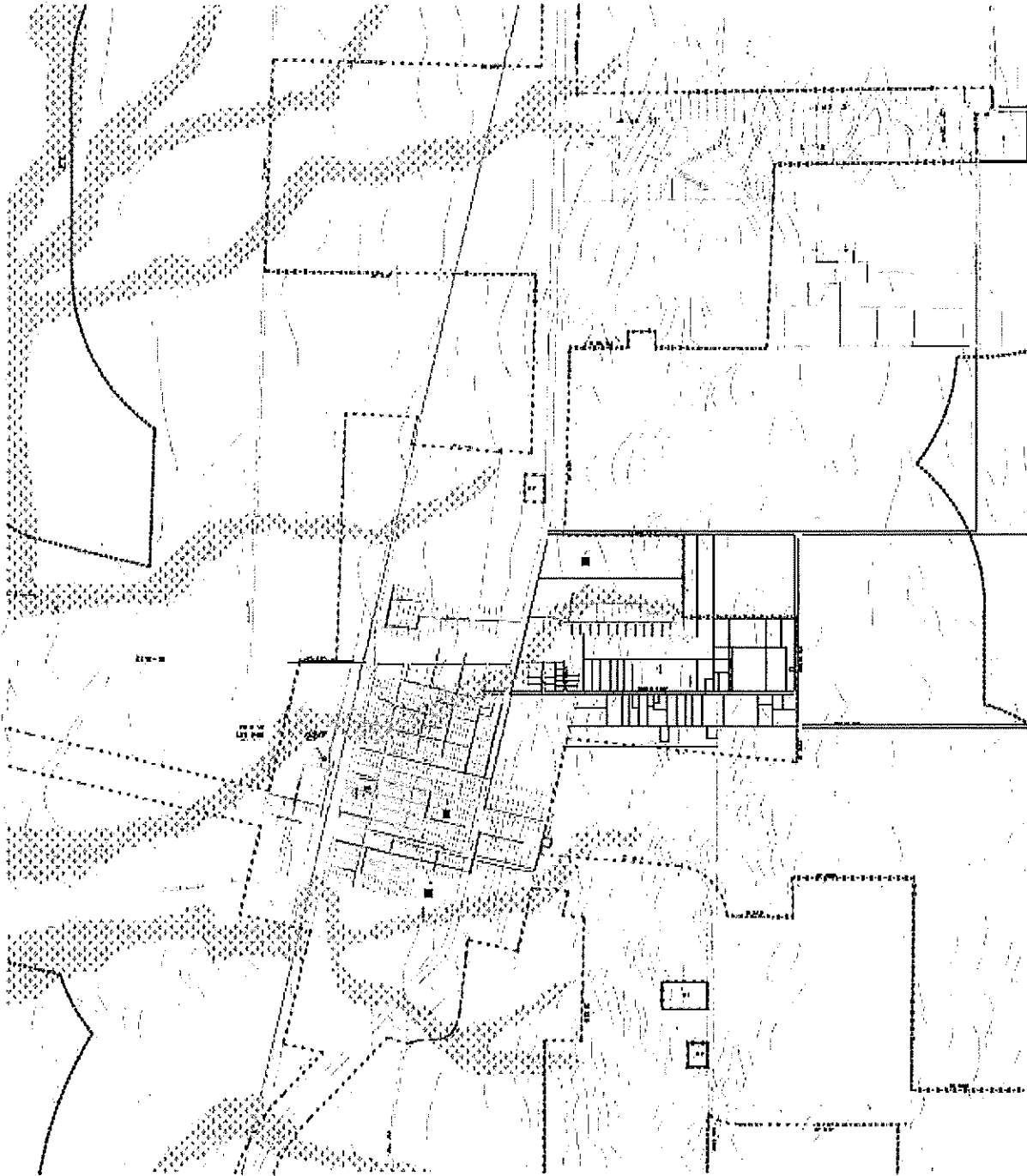
CONTRACTS AND AGREEMENTS

1. Ground and Tower Lease Agreement between City and Gunter ISD, effective January 22, 2019
2. Professional Services Agreement Wastewater treatment plant improvements between City and Freeman-Millican, effective January 21, 2021
3. Communication Facilities License Agreement between City and Grayson County, Texas, effective on or about August 23, 2022
4. All contracts evidencing the Greater Texoma Utility Authority Contract Revenue Bonds, Series 2010, (Lake Texoma Water Storage Project) (the "GTUA 2010 Bonds"): \$9,690,000 outstanding principal amount
5. All contracts evidencing the Greater Texoma Utility Authority Contract Revenue Bonds, Series 2018A (the "GTUA 2018A Bonds"): \$3,230,000 outstanding principal amount and the City is contractually obligated to pay two percent (2%) of the GTUA debt service and all other payments, fees, and charges due to GTUA under the contract related to the GTUA 2010 Bonds
6. All contracts evidencing the Greater Texoma Utility Authority Contract Revenue Bonds, Series 2018 (City of Gunter Project) (the "GTUA 2018 Bonds"): \$1,880,000 outstanding principal amount
7. All contracts evidencing the Combination Tax and Revenue Refunding Bond, Series 2013 ("City 2013 Bonds"): \$105,000 outstanding principal amount.





EXHIBIT B-2

PROPERTY


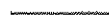








City of Gunter Wastewater Lines:



LEGEND

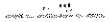
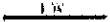

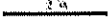
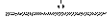
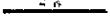
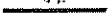
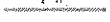










-  CITY PARK
-  WATER TOWER
-  GROUND STORAGE
-  SCHOOL

EXISTING WASTEWATER SYSTEM

-  EXISTING 6" WASTEWATER LINE
-  EXISTING 6" WASTEWATER LINE
-  EXISTING 8" WASTEWATER LINE
-  EXISTING 10" WASTEWATER LINE
-  EXISTING 12" WASTEWATER LINE
-  EXISTING 15" WASTEWATER LINE
-  FORCE MAIN
-  EXISTING MANHOLE
-  EXISTING LIFT STATION
-  CLEAN OUT

City of Gunter Water Lines:

LEGEND

-  - 1/2" INCH WATER LINE
-  - 1 INCH WATER LINE
-  - 1-1/2 INCH WATER LINE
-  - 2 INCH WATER LINE
-  - 3 INCH WATER LINE
-  - 4 INCH WATER LINE
-  - 6 INCH WATER LINE
-  - 8 INCH WATER LINE
-  - 10 INCH WATER LINE
-  - 12 INCH WATER LINE
-  - FIRE HYDRANT
-  - WATER VALVE
-  - EXIST. GROUND STORAGE TANK
-  - EXIST. WELL SITE
-  - EXIST. ELEVATED STORAGE TANK
-  - CITY LIMITS
-  - FEMA 100-YEAR FLOODPLAIN (ZONE A)
-  - CITY OF GUNTER ETJ



Real Property with Improvements:

- Downtown WWTP and the property it sits on +/- 10.19 acres. CAD Property ID 151742
- Elevated storage tank and water well #4 on Bledsoe RD +/- 2.09 acres. CAD Property ID 134196

- Ground storage tank, well #5, Stanley Creek WWTP(Bridges) and approximately 24 acres. The total acreage is 28.78 acres but the city will retain 4 acres, as selected in the City's sole discretion no later than sixty (60) days of being requested to do so by MSUD, for a future fire station site. CAD Property ID 134369

Improvements without underlying Real Property:

- Bridges Lift Station located on The Bridges Golf Club LLC property, being CAD Property ID 134558. Access to this area cuts across a portion of property owned by Godwin Investments LTD., being CAD Property ID 364800.
- Small Lift Station located on S. 4th ST about 100 feet South of FM 121. This is located within the City's ROW (ROW being retained by City).
- Water well #3 and pump station located behind Gunter City Hall. This real property is not being transferred to MSUD. The Parties agree to enter a ground lease to provide MSUD access to the real property.

EXHIBIT B-3
OTHER ASSETS

Other Assets to be conveyed by City to MSUD include only the following:

1. Customer utility account deposits, being approximately \$130,000

[Remainder of page intentionally left blank]

EXHIBIT C—CITY DEBT

1. Greater Texoma Utility Authority Contract Revenue Bonds, Series 2010, (Lake Texoma Water Storage Project) (the “GTUA 2010 Bonds”): \$197,000 outstanding principal amount;
2. Greater Texoma Utility Authority Contract Revenue Bonds, Series 2018A (the “GTUA 2018A Bonds”): \$3,230,000 outstanding principal amount and the City is contractually obligated to pay two percent (2%) of the GTUA debt service and all other payments, fees, and charges due to GTUA under the contract related to the GTUA 2010 Bonds;
3. Greater Texoma Utility Authority Contract Revenue Bonds, Series 2018 (City of Gunter Project) (the “GTUA 2018 Bonds”): \$1,880,000 outstanding principal amount; and
4. Combination Tax and Revenue Refunding Bond, Series 2013 (“City 2013 Bonds”): \$105,000 outstanding principal amount.

EXHIBIT D

REQUIRED CITY CONSENTS

1. City Council
2. Greater Texoma Utility Authority
3. Texas Water Development Board
4. Any consents that may be required as a term or condition of the documents evidencing or related to the City Debt

EXHIBIT E
MSUD REQUIRED CONSENTS

MSUD required consents include only the following:

1. Approval of the MSUD Board of Directors by majority vote

[Remainder of page intentionally left blank]

EXHIBIT F

SPECIAL WARARNTY DEED

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVERS' LICENSE NUMBER.

SPECIAL WARRANTY DEED

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF GRAYSON §

THAT the CITY OF GUNTER, TEXAS, a Texas General Law municipality (hereinafter referred to as "Grantor" or "City"), for and in consideration of the sum of TEN AND NO/100 (\$10.00) DOLLARS and other valuable consideration to the undersigned paid by MUSTANG SPECIAL UTILITY DISITRCT, ("Grantee"), the receipt and sufficiency of which are hereby acknowledged and confessed, and upon and subject to the exceptions, encumbrances, terms, provisions and reservations hereinafter set forth and described, has GRANTED, BARGAINED, AND CONVEYED, and these present does hereby GRANT, BARGAIN, and CONVEY unto Grantee that certain tract or parcel of land located in Grayson County, Texas, as more particularly described on Exhibit "A", attached hereto and incorporated herein by reference for all purposes, together with all improvements thereon (collectively referred to as the "Property").

This conveyance is made and accepted subject to (a) zoning laws and regulations and ordinances of municipal and other governmental authorities, if any, affecting the Property, and (b) all matters affecting the Property and filed of record in the real property records of Grayson County, Texas (hereinafter collectively referred to as the "Permitted Exceptions").

TO HAVE AND TO HOLD the above described premises, together with all and singular the rights and appurtenances thereof in anywise belonging unto Grantee, its successors and assigns forever, and Grantor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND, all and singular such premises unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under the Grantor, but not otherwise, subject, however to the Permitted Exceptions.

(Signature on the following page)

EXECUTED on the date of the acknowledgment, but to be EFFECTIVE as of the _____ day of _____, 2022.

CITY OF GUNTER, TEXAS,
a Texas municipality

By: _____
Name: _____
Title: _____

STATE OF TEXAS §
 §
COUNTY OF GRAYSON §

This instrument was acknowledged before me on the _____ day of _____, 2022, by _____, _____ of CITY OF GUNTER, TEXAS, a Texas municipality, on its behalf.

Notary Public – State of Texas

After Recording, Return to:

EXHIBIT G

BILL OF SALE AND ASSIGNMENT

THE STATE OF TEXAS §
 § KNOW ALL PERSONS BY THESE PRESENTS:
COUNTY OF GRAYSON §

This Bill of Sale and Assignment (“Assignment”) is made by and between City of Gunter, Texas (“Assignor”), and Mustang Special Utility District (“Assignee”). Assignor and Assignee are sometimes referred to in this Assignment individually as a “Party” and collectively as the “Parties.”

RECITALS

A. Assignor, as seller, and Assignee, as purchaser, are parties to that certain “Asser Purchase Agreement” dated effective as of _____, 2022 (the “Contract”).

B. Contemporaneously herewith, Assignor has, in accordance with the terms of the Contract, sold and conveyed to Assignee that certain real property which is described on Exhibit A attached to and incorporated in this Assignment by reference, together with all improvements thereon, all fixtures attached thereto and all rights appurtenant thereto (collectively, the “Real Property”).

C. Under the terms of the Contract, Assignor has agreed, to the extent, if at all, such may be owned by Assignor, to convey to Assignee all of Assignor’s right, title and interest, if any, in and to the Plans and Reports, Claims and Causes of Action, Warranties, Governmental Approvals and Permits, Utility Service Permits, and Utility Service Rights described on Exhibit B attached to and incorporated in this Assignment by reference (collectively, the “Personal Property”).

D. For purposes of this Assignment, the Real Property and the Personal Property are sometimes referred to collectively as the “Property.”

NOW, THEREFORE, for and in consideration of the premises stated in this Assignment and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, Assignor and Assignee do hereby agree as follows:

1. Assignment. Assignor has this day BARGAINED, SOLD, ASSIGNED, TRANSFERRED, CONVEYED AND DELIVERED and by these presents does hereby BARGAIN, SELL, ASSIGN, TRANSFER, CONVEY AND DELIVER unto Assignee the entire right, title and interest of Assignor in and to the Personal Property TO HAVE AND TO HOLD, the Personal Property, together with all and singular the rights and appurtenances thereto in anywise belonging unto Assignee, Assignee’s successors and assigns, forever and Assignor does hereby bind Assignor and Assignor’s successors and assigns to warrant and forever defend, all and singular, the Personal Property, against every person whomsoever lawfully claiming or to claim the same or any part thereof by, through or under Assignor, but not otherwise.

1. As Is. IN CONNECTION WITH THE CONVEYANCE OF THE PERSONAL PROPERTY AS PROVIDED FOR HEREIN, AND EXCEPT FOR THE SPECIAL WARRANTY OF TITLE, THE REPRESENTATIONS AND THE OTHER WARRANTIES SET FORTH IN THIS ASSIGNMENT AND ASSIGNOR'S REPRESENTATIONS, WARRANTIES, AND COVENANTS EXPRESSLY SET FORTH IN THE CONTRACT (THE "EXPRESS WARRANTIES"), ASSIGNOR HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATIONS, WARRANTIES OR COVENANTS OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE PERSONAL PROPERTY. Assignee accepts the Personal Property in its present AS-IS condition WITH ALL FAULTS, subject to the Express Warranties.

2. Legal Expenses. If either Party to this Assignment brings suit or otherwise becomes involved in any legal proceedings seeking to enforce the terms of this Assignment, or to recover damages for their breach, the prevailing Party will be entitled to recover its costs and expenses (including reasonable fees of attorneys, expert witnesses, accountants, court reporters and others) incurred in connection therewith including all such costs and expenses incurred: (a) in trial and appellate court proceedings, (b) in connection with any and all counterclaims asserted by one Party to this Assignment against another where such counterclaims arise out of or are otherwise related to this Assignment, (c) in bankruptcy or other insolvency proceedings, and (d) in post-judgment collection proceedings.

3. Authority of Parties. The execution and delivery of this Assignment and the performance of the transactions contemplated thereby have been duly authorized by all necessary corporate and governmental action of the Parties. This Assignment has been duly executed and delivered by each Party, and constitutes a legal, valid, and binding obligation of each Party enforceable in accordance with the terms as of the Effective Date (defined below) of this Assignment.

4. Governing Law and Venue. It is agreed that: (a) the laws of the State of Texas will govern this Assignment; and (b) venue for any suit under the terms of this Assignment will be in the City of Gunter, Grayson County, Texas.

5. Binding Agreement. This Assignment will: (a) be construed as a "covenant running with the land" (insofar as the same relates to or concerns the Property) and will be binding upon and inure to the benefit of Assignee and all other present and future owners of the Property; and (b) will be binding upon and inure to the benefit of Assignor and Assignor's successors and assigns. No assignment of this Assignment by a Party will release or limit the liabilities or obligations of such Party under this Assignment.

6. Partial Invalidity. A determination that any provision of this Assignment is unenforceable or invalid will not affect the enforceability or the validity of any other provision.

7. Entire Agreement. This Assignment and the Contract contain the entire agreement between the Parties as to the Personal Property and the same supersede all prior negotiations, representations or agreements, either written or oral, regarding such subject matter. In the event of any inconsistency between the Contract and this Assignment, the terms and provisions of this Assignment will control (but only to the extent of the inconsistency, it being agreed that the

Contract and the Assignment will be construed together, with effect being given to both documents to the maximum extent possible). No amendments or modifications to this Assignment and no other statements, agreements or other understandings regarding the subject matter of this Assignment will be recognized or enforced unless the same are in writing and signed by both Parties subsequent to the Effective Date of this Assignment.

8. Execution. To facilitate execution, this instrument may be executed in any number of counterparts as may be convenient or necessary, and it will not be necessary that the signatures of all Parties be contained in any one counterpart hereof. Additionally, the Parties hereby covenant and agree that, for purposes of facilitating the execution of this instrument: (a) the signature pages taken from separate individually executed counterparts of this instrument may be combined to form multiple fully executed counterparts; and (b) a signature delivered by electronic mail will be deemed to be an original signature for all purposes. All executed counterparts of this instrument will be deemed to be originals, but all such counterparts, when taken together, will constitute one and the same agreement.

EXECUTED AND DELIVERED by Assignee and Assignor on the counterpart signature pages attached to this Assignment, each to be effective as of _____, 2022 (the “**Effective Date**”).

ASSIGNOR:

ASSIGNEE:

Exhibit A

Real Property Description

Exhibit B

The Personal Property

1. **“Plans and Reports”** means and refers to, to the extent transferrable, all construction plans and specifications, engineering reports, environmental reports, technical reports, drawings, surveys, utility studies, market studies, appraisals, and/or any other reports or data covering or relating the Property which are in the possession of Assignor or Assignor’s reasonable control, including, without limitation, all work product and file materials of any third party consultants (other than attorneys) who have done work in connection with the Property.

2. **“Claims and Causes of Action”** means and refers to all claims and causes of action relating to the Property.

3. **“Warranties”** means and refers to all warranties, guarantees, and indemnities relating to the Property, and all claims thereunder.

4. **“Governmental Approvals and Permits”** means and refers to, to the extent transferrable, all approvals, permits, licenses, and/or applications of any kind or nature which have been issued by or which are on file with any governmental agencies, departments or authorities with respect to the Property, including, without limitation, all zoning approvals, subdivision approvals, special permit approvals, land development permits, building permits, and/or certificates of occupancy.

5. **“Utility Service Permits”** means and refers to, to the extent transferrable, all water, wastewater, electric, gas, cable television, telephone, and other utility service rights, permits, and/or applications relating to or benefiting the Property, including, without limitation, all utility taps, utility commitments, and/or utility meters.

6. **“Utility Service Rights”** means and refers to all easements, ownership rights and other rights of any kind or nature of Assignor in or relating to any off-site waterlines, wastewater lines, and all other lines, facilities or improvements of any kind or nature which provide water, wastewater, electric, natural gas, cable television, telephone, high speed internet access and/or other services to the Property. Without limitation on the generality of the foregoing, the Utility Service Rights include all of the right, title, and interest of Assignor in and to all utility lines or improvements arising by virtue of the Utility Service Permits, and all rights of reimbursement for expended costs or costs to be incurred in the future arising from any agreements with any person, governmental entity, or privately owned entity, if any.

EXHIBIT H
PLANNED IMPROVEMENTS

Stanley Creek Waste Water Treatment plant is under design for a new permanent plant, with design approximately 90% complete.

[Remainder of page intentionally left blank]

EXHIBIT I
TANGIBLE ASSETS TO BE RETAINED BY CITY

No tangible assets are being transferred by City to MSUD. Representative list of assets being retained by City is on following page.

Asset	Property Description	Date In Service	Book Method	Days	Life	Cost		Accumulated Depreciation			
						Balance 3/30/2020	Additional/Retires/Reclass	Balance 3/30/2021	Balance 3/30/2020	Current Depreciation	Balance 3/30/2021
Equipment											
	Water Truck Radios	12/12/88	S/L	365	5	474	-	474	474	-	474
	Steel Wire Box	12/12/88	S/L	365	10	1,200	-	1,200	1,200	-	1,200
	Radio & Speaker	8/02/89	S/L	365	5	474	-	474	474	-	474
	Barn Heater	5/02/90	S/L	365	5	248	-	248	248	-	248
	Utility Billing System	4/12/91	S/L	365	5	1,000	-	1,000	1,000	-	1,000
	Computer	4/12/91	S/L	365	5	2,140	-	2,140	2,140	-	2,140
	Printer	4/12/91	S/L	365	5	557	-	557	557	-	557
	Utility Billing	5/01/91	S/L	365	5	585	-	585	585	-	585
	Computer Software	2/11/93	S/L	365	5	958	-	958	958	-	958
	75 Hp 480 V Franklin Motor	3/03/93	S/L	365	10	9,810	-	9,810	9,810	-	9,810
	Copier	3/22/98	S/L	365	5	750	-	750	750	-	750
	Aerator & Pumps	3/31/99	S/L	365	10	22,812	-	22,812	22,812	-	22,812
	Tractor	5/01/78	S/L	365	10	4,850	-	4,850	4,850	-	4,850
	Loader	5/01/77	S/L	365	10	2,214	-	2,214	2,214	-	2,214
	Mower	5/01/81	S/L	365	5	225	-	225	225	-	225
	Tank	5/01/83	S/L	365	10	1,415	-	1,415	1,415	-	1,415
	Metal Detector	5/01/88	S/L	365	5	150	-	150	150	-	150
	Sewer Machine	5/01/87	S/L	365	10	14,400	-	14,400	14,400	-	14,400
	Sewer Camera & mount	9/01/19	S/L	365	10	5,280	-	5,280	573	529	1,102
	Case Backhoe 580 L	12/08/00	S/L	365	10	47,234	-	47,234	47,234	-	47,234
	Water Billing Software	10/01/01	S/L	365	5	2,584	-	2,584	2,584	-	2,584
	Tractor	2/24/09	S/L	365	10	35,930	-	35,930	35,930	-	35,930
	Mower Boom	2/24/09	S/L	365	10	19,557	-	19,557	19,557	-	19,557
	Mower (Rotary Cutter)	9/03/09	S/L	365	10	10,736	-	10,736	10,736	-	10,736
	2011 F350	5/17/11	S/L	365	5	23,732	-	23,732	23,732	-	23,732
	Well Pump Start/soft stop system	8/10/19	S/L	365	10	7,844	-	7,844	850	784	1,834
	Water Well Motor and Pump	9/23/14	S/L	365	10	18,779	-	18,779	11,268	1,878	13,148
	Kawasaki Muletrons for Public Works Dept. - Serial JK1AFCR17GB528546	10/04/16	S/L	365	10	10,000	-	10,000	4,000	1,000	5,000
	to rebuild WWTP Lift Station	5/18/17	S/L	365	10	10,000	-	10,000	3,000	1,000	4,000
	PT280 Yamaha MX Mower	4/04/18	S/L	365	10	6,817	-	6,817	2,373	982	3,354
	Case IH Model 2500 compact track loader	9/01/21	S/L	365	10		57,480	57,480		1,915	1,915
Total Equipment						285,571	57,480	322,031	225,605	8,098	233,993

General Manager
Mustang Special Utility District
7985 FM 2931
Aubrey, TX 76227

With a copy to:

John Carlton
Carlton Law Firm
4301 Westbank Drive, Suite B-130
Austin, Texas 78746

(b) If to City, to:
Attn: City Manager
City of Gunter
105 N. 4th Street
Gunter, TX 75085
TEL: (903) 433-5185

With a copy to:

Julie Fort
Messer, Fort, & McDonald, PLLC
6371 Preston Road, Suite 200
Frisco, Texas 75034
TEL: (972) 668-6400

Any party may change its address for receiving notice by giving notice of a new address in the manner herein; *provided, however*, if mailed, notice of such new address will be effective only upon actual receipt by the other party.

II. MSUD'S OBLIGATIONS

- 2.01 **Personnel.** MSUD shall provide the City with professional services for the operation and maintenance of the City's system in compliance with Appendix A.
- 2.02 **Training.** MSUD shall provide ongoing training and education for MSUD personnel providing service to the City in all necessary areas of operations, maintenance, safety, customer service, and supervisory skills.
- 2.03 **Safety.** MSUD will utilize the MSUD employee safety program in compliance with all applicable laws, rules, regulations and make recommendations to the City regarding the need, if any, for the City to rehabilitate, expand or modify its water or sewer utility to comply with governmental safety regulations applicable to the City's operations.

- 2.04 **Reports.** As required by law, permit, license, certificate, or court order, MSUD will prepare and review reports as required by state or federal law or required pursuant to any permit or certificate held by the City.
- 2.05 **Testing.** MSUD shall review the results of all laboratory testing and sampling required by statute, rules and regulations, ordinances, permit, certificate, or licensing requirements or judicial or regulatory orders or decrees.
- 2.06 **Repair and Maintenance.** MSUD will review and authorize all maintenance and repairs for the City's water and sewer utility, up to the amount budgeted by the City's City Council. MSUD shall authorize all emergency repairs and report the cost to the City's City Manager. Any non-emergency maintenance and repairs required above the amount budgeted by the City may not be authorized without express approval by the City's City Manager. MSUD's responsibility for management of repairs and maintenance shall include all facilities owned by the City to operate its water utility.
- 2.07 **Connections.** MSUD shall be responsible for managing customer meter installation, connection setting, and removal process.
- 2.08 MSUD shall perform the services stated in this Agreement and all Appendices hereto with the degree of skill and diligence normally employed by operations and maintenance personnel performing the same and similar duties.

III. CITY'S RIGHTS AND OBLIGATIONS

- 3.01 **Ownership.** All land, buildings, facilities, easements, licenses, structures, rights-of-way, equipment and vehicles presently or hereafter acquired by the City shall remain the exclusive property of the City unless specifically provided for otherwise in this Agreement. The City shall maintain and renew all warranties, guarantees, easements, permits, authorizations, and licenses that have been granted to the City for such property, to the extent the maintenance thereof is not a responsibility of MSUD hereunder.
- 3.02 **Capital Expenditures.** The City shall fund all necessary capital expenditures, in compliance with the Asset Purchase Agreement. Any loss, damage, or injury resulting from the City's failure to provide capital improvements and/or funds for such expenditures shall be the sole responsibility of the City.

IV. TERM

- 4.01 The term of this Agreement shall begin on October 3, 2022, or on another date mutually agreed upon by the Parties until the Parties close on the Asset Purchase Agreement or a termination provision in said Asset Purchase Agreement is exercised.
- 4.02 Either party may terminate this Agreement for a material breach of this Agreement by the other party after giving written notice of the breach and allowing the other party a reasonable time to correct the breach. Excepting breaches by the City for non-payment of MSUD's invoices, neither party shall terminate this Agreement without giving the other

party thirty (30) days' written notice of intent to terminate for failure of the other party to correct the breach within a reasonable.

- 4.03 Upon termination of this Agreement, MSUD will return the responsibility for the services provided hereunder to the City. Equipment and other personal property purchased by MSUD for use in the routine operation or maintenance practices of the Service provided hereunder and either included in the compensation or otherwise directly billed to the City shall become property of the City upon termination of this Agreement, provided that the City has reimbursed MSUD for such equipment and other personal property. However, any equipment or personal property that is purchased by MSUD and not included in the compensation or otherwise billed to the City shall be the property of MSUD and shall be removed by MSUD at the termination of this Agreement.

V. COMPENSATION

- 5.01 As compensation for services rendered under this Agreement, MSUD shall be compensated for services provided hereunder through collection of water sales sold on and after the effective date of this agreement. The water rates shall be per Mustang's approved Rate Order. All uncollected water rates accrued during the term of this Agreement shall be the sole responsibility of MSUD. MSUD shall have the sole responsibility of collecting all billings for water sold during the term of this agreement. The collection of water rates shall be MSUD's sole compensation for the scope of work hereunder.
- 5.02 Compensation for changes in scope not included as part of the services described herein or in any Appendices shall be provided at cost to the City and shall be due and payable by the City commencing the month following the date the expense is invoiced.

VI. LIABILITY

- 6.01 City's liability to MSUD under this Agreement specifically excludes any and all indirect, special or consequential damages arising from the City's scope of services under this Agreement, unless caused by the negligence or willful act of City. These damages are limited to the proportion that such negligence or willful act contributed to the loss.
- 6.02 MSUD shall not be liable for fines or civil penalties which may be imposed by a regulatory or enforcement agency for violations occurring on or after the Effective Date, as a result of the failure to comply with the terms and conditions of any duly authorized permit, court order, administrative order, law, statute, or ordinance.

VII. UNFORSEEN CIRCUMSTANCES

- 7.01 Neither party shall be liable for damages, delays, or failure to perform its obligations under this Agreement if such failure is due to any Unforeseen Circumstance beyond its reasonable control. The party invoking this clause shall notify the other party immediately by verbal communication and in writing of the nature and extent of the Unforeseen Circumstance within ten (10) working days after its occurrence, and shall take reasonable measures to mitigate any impact of an Unforeseen Circumstance.

7.02 In the case of Unforeseen Circumstances, the City agrees to pay any Costs incurred by MSUD in connection with the Unforeseen Circumstance, to the extent that such occurrence results in the increase of the costs to MSUD.

VIII. MISCELLANEOUS

8.01 **Access to Facilities.** The City will makes its facilities accessible to MSUD as required for MSUD's performance of its services, and will secure access to any other City property necessary for performance of MSUD's services.

8.02 **Modification.** This Agreement may be changed or modified only with the consent of the governing bodies of City and MSUD.

8.03 **Effective Date.** The Effective Date of this Agreement is October 3, 2022

8.04 **Severability.** This Agreement is subject to all applicable Federal, state, and local laws, and any applicable permits, rules, orders, and regulations of any local, state, or federal governmental authority having jurisdiction. In addition, the parties hereto specifically agree that in case any one or more of the provisions of the Agreement should be, or should be held to be, for any reason, invalid or unconstitutional, under the laws or the constitutions of the State or the United States of America, or in contravention in any such laws or constitutions, such invalidity, unconstitutionality or contravention shall not effect any other provisions of this Agreement.

8.05 **Force Majeure.** If by reason of force majeure any party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement, then if such party shall give notice and full particulars of such force majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied on, the obligation of the party giving such notice, so far as it is affected by such force majeure, shall be suspended during the continuance of the inability claimed, but for no longer period, and any such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "force majeure" as employed herein shall mean acts of God, strike, lockouts, or other industrial disturbances, acts of public enemy, orders of any kind of the government of the United States or the State of Texas, or any civil or military authority, insurrection, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, partial or entire failure of water supply, or on account of any other causes not reasonable within the control of the party claiming such inability.

8.06 **Regulatory Bodies and Laws.** This Agreement is subject to all applicable Federal and State laws and any applicable permits, ordinances, rules, orders, and regulations of any local, state, or federal government authority having or asserting jurisdiction, but nothing contained herein shall be construed as a waiver of any right to question or contest any such law, ordinance, order, rule, or regulation in any forum, having jurisdiction.

8.07 **Venue.** All amounts due under this Agreement, including, but not limited to, payments under this Agreement or damages for breach of this Agreement, shall be paid and due in

Grayson County, Texas, which is the county in which the principal administrative offices of City are located. It is specifically agreed among the parties to this Agreement that this Agreement is fully performable in Grayson County, Texas.

- 8.08 **Headings.** The headings contained in this Agreement are for convenience only and shall in no way enlarge, limit, or otherwise modify the scope or the meaning of the language herein.
- 8.09 **No Third Party Beneficiaries.** This Agreement gives no rights or benefits to anyone other than to City and MSUD and has no third party beneficiaries.
- 8.10 **Authority.** Both parties represent and warrant to the other party that the execution, delivery, and performance of this Agreement has been duly authorized by the responsible parties thereof. Both parties warrant that all required approvals have been obtained and the executing party below has such authority to bind the party.

MUSTANG SPECIAL UTILITY DISTRICT

By: *Chris Boyd*
Chris Boyd

Title: General Manager

CITY OF GUNTER, TEXAS

By: *Mark Mier*

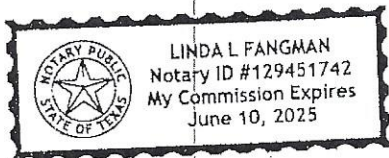
Title: Mayor

ACKNOWLEDGEMENTS

STATE OF TEXAS §
 §
COUNTY OF GRAYSON §

This instrument was acknowledged before me on this 11 day of October, 2022,
by Chris Boyd.

Linda L Fangman
Notary Public, State of Texas

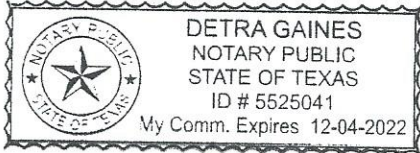



STATE OF TEXAS

§
§

COUNTY OF GRAYSON §

This instrument was acknowledged before me on this 11 day of October, 2022,
by Detra Gaines.





Notary Public, State of Texas

APPENDIX A-SCOPE OF SERVICES

A. MSUD shall perform the following services:

1. Provide sufficient number of qualified employees who possess the managerial, administrative, and technical skills to perform the services specified in this Agreement, and where appropriate, the certification requirements mandated by the appropriate regulatory body with jurisdiction. Services shall be provided in the following areas:
 - a. General Management
 - b. Engineering Director
 - c. Financial Management
 - d. Operations Management
 - e. GIS Management
 - f. Project Management
2. Manage the City's operation, maintenance, and facilities during the City's water and sewer utilities during the normal operating hours and during emergency periods.
3. Evaluate and recommend preventative maintenance and repairs to the City's facilities.
4. Make recommendations for capital improvements in writing for capacity expansion, operational improvement, regulatory compliance, and safety improvement to the City, if necessary.
5. Ensure that the facilities remain clean and in regulatory compliance.

B. Scope Changes. A change in the scope of services shall occur when and as MSUD's costs of providing services under this agreement change as a result of:

A request by City to MSUD, with MSUD's consent, to provide additional services. MSUD shall provide the additional services to City at the MSUD's rate for said service.

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
AUTHORIZING AMENDMENTS TO
CERTAIN CONTRACT REVENUE BONDS
ISSUED BY GREATER TEXOMA UTILITY AUTHORITY AND
DELEGATING AUTHORITY RELATED TO THE AMENDMENTS

(23-)

WHEREAS, the Texas Water Development Board (TWDB), by TWDB Resolution Nos. 10-12 and 18-116, committed financial assistance to the Greater Texoma Utility Authority (Authority) financing certain water supply and infrastructure projects (Projects) issued by GTUA on behalf of the City of Gunter, Texas (City or City of Gunter); and

WHEREAS, the Authority and the TWDB mutually closed on these commitments and the TWDB's purchased three (3) series of bonds financing the Projects as follows: the Authority's 2010 Contract Revenue Bonds, the Authority's 2018 Contract Revenue Bonds, and the Authority's 2018A Contract Revenue bonds, all of which remain outstanding (the Outstanding Bonds); and

WHEREAS, construction of these Projects financed by the TWDB have been completed and in accordance with TWDB rules and regulations, the Projects have undergone a final accounting; and

WHEREAS, the City of Gunter in October 2022 entered into agreements with Mustang Special Utility District (Mustang SUD) relating to the City's full transfer and conveyance of the assets, liabilities, and operations of the City's water supply, treatment and distribution utility system to Mustang SUD; and

WHEREAS, the Authority has determined that to accommodate the transfer of the City's utility system to Mustang SUD, the Outstanding Bonds should be amended by "Amendatory Resolutions" and submitted a written request and draft amendments to the Executive Administrator of the TWDB dated December 14, 2022; and

WHEREAS, the TWDB is the sole holder of the Outstanding Bonds and as the sole bond holder must grant written consent to the Authority for any amendments to the Outstanding Bonds; and

WHEREAS, the Executive Administrator of the TWDB has considered the Authority's request and recommends that the TWDB consent to the Authority's request as it is appropriate and in the public interest and also requests a limited delegation of authority to effectuate the Authority's request as necessary.

NOW THEREFORE, based on these considerations and findings, the TWDB resolves as follows:

1. The TWDB consents to amendments to the Outstanding Bonds as proposed by the Amendatory Resolutions submitted by GTUA on December 14, 2022. The Amendatory Resolutions may be subject to review and approval by the Office of Attorney General and the TWDB consents to any additional changes for all required approvals of the Amendatory Resolutions that do not impair the obligations owed to and interests of the TWDB.
2. The Executive Administrator, the Debt Portfolio and Development Fund Manager, the Chief Financial Officer, and the General Counsel are authorized to approve and execute, for and on behalf of the TWDB, all other documents, instruments, agreements, representations necessary and related to the Amendatory Resolutions.
3. All other terms and conditions of TWDB Resolution Nos. 10-12 and 18-116 not affected by the terms of the Amendatory Resolutions shall remain in full force and effect.

APPROVED and ordered of record this 2nd day of February 2023.

TEXAS WATER DEVELOPMENT BOARD

Brooke T. Paup, Chairwoman

DATE SIGNED: _____

ATTEST:

Jeff Walker, Executive Administrator