AGREEMENT FOR OPERATION, MAINTENANCE, AND MANAGEMENT SERVICES FOR WATER AND WASTEWATER TREATMENT PLANTS, COLLECTION AND DISTRIBUTION SYSTEMS AND METER READING BETWEEN

THE MUSTANG IMPROVEMENT AUTHORITY

AND

TBD

July, 2017
OPERATION AND MAINTENANCE SERVICE AGREEMENT

THIS AGREEMENT is entered into as of the ___ day of July, 2017, and effective the ___ day of July, 2017, by and between:

Mustang Improvement Authority, a public trust created under the laws of the State of Oklahoma ("AUTHORITY") whose sole beneficiary is the City of Mustang, Oklahoma, a municipal corporation created under the laws of the State of Oklahoma, ("CITY"), both with a principal address at 1501 N. Mustang Road, Mustang, Oklahoma 73064 (collectively hereinafter, "OWNER");

and

TBD

authorized to do business in Oklahoma, with a local address at 1520 W. SW 59th Street, Mustang, Oklahoma (hereinafter "CONTRACTOR").

WITNESSETH:

WHEREAS, the CITY owns, and the AUTHORITY leases and contracts for the operation and maintenance of, certain land, buildings and equipment which include but are not limited to water wells, water distribution systems, sewage lift stations, water collection systems, wastewater treatment facilities, and maintenance facilities more particularly described in APPENDIX B, Facilities and Facilities Description;

WHEREAS, AUTHORITY desires to utilize the services of CONTRACTOR in the operation, maintenance and management of the Facilities, all as more specifically set forth herein, and the CONTRACTOR desires to provide such services to AUTHORITY for the compensation provided herein.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and conditions contained herein, IT IS HEREBY AGREED:
ARTICLE I
GENERAL PROVISIONS

1.1 DEFINITIONS. Definitions of words or phrases used in this Agreement are contained in APPENDIX A, DEFINITIONS.

1.2 FACILITIES OWNERSHIP. All land, buildings, Facilities, easements, licenses, rights-of-way and related equipment presently or hereinafter acquired or owned by the OWNER shall remain the exclusive property of OWNER unless specifically provided for otherwise in this Agreement.

1.3 GOVERNING LAW. This Agreement shall be governed by and interpreted in accordance with the Laws of the State of Oklahoma applicable to contracts made and performed entirely within this State and to municipalities and public trusts. The parties agree that venue for any legal action relating to or arising out of this Agreement shall lie in the District Court in and for Canadian County, Oklahoma.

1.4 BINDING EFFECT AND ASSIGNMENT. Neither party may assign this agreement without the prior written consent of the other party; provided, CONTRACTOR may assign this Agreement, without OWNER's prior consent, in conjunction with a merger, consolidation or sale of substantially all of the assets of CONTRACTOR. CONTRACTOR shall provide prior written notice to OWNER of any such transfer, along with evidence of the technical and financial ability of the transferee. Any other transfer or assignment by either CONTRACTOR or OWNER of this agreement shall be null and void unless authorized by the other party in writing prior to any assignment. This Agreement shall be binding on each of the parties' successors and assigns.

1.5. NOTICES. All notices shall be in writing and transmitted to the parties at the addresses set forth below. All notices shall be deemed effective and given (a) when delivered, if delivered personally or by courier mail service, i.e., Federal Express or United Parcel Service; or (b) three (3) days after such notice has been deposited in the United States mail, postage prepaid, if mailed by certified mail, return receipt requested; or (c) when received by the party to which notice is directed, if given in any manner other than as set forth in (a) and (b), above. The addresses for notice are:

If to CONTRACTOR, at:

Insert Company information
and address here

If to AUTHORITY or CITY, at:

Tim Rooney, City Manager
Mustang Improvement Authority
1501 N. Mustang Road
Mustang, Oklahoma 73064
With a copy to:

Jonathan E. Miller, City Attorney
Wheatley, Segler, Osby & Miller, LLC
501 West Main Street
Yukon, Oklahoma 73099

The parties may change the persons and addresses to receive notice by providing written notice to the other party of such change, and providing the name and address of the replacement person designated to receive notice.

1.6 ENTIRE AGREEMENT. This Agreement, including the Appendices attached hereto, sets forth the entire and complete understanding between the parties as of the date of this Agreement and supersedes any and all agreements and representations made or dated prior hereto. This Agreement may be modified only by a written agreement signed by both parties.

1.7 SEVERABILITY. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

1.8 INDEPENDENT CONTRACTOR. It is understood that the relationship of CONTRACTOR to OWNER is that of independent contractor. Neither CONTRACTOR nor its officers, agents or employees shall at any time identify themselves or in any way represent themselves as being employees or agents of CITY or of AUTHORITY. Neither party, one to the other, shall be considered a consumer nor a merchant pursuant to any consumer or trade practice law or regulation, and the parties specifically agree that the application of any such laws or regulations to the terms and conditions herein is inappropriate. The services provided under this Agreement are of a professional nature and shall be performed in accordance with good and accepted industry practices for contract operators similarly situated.

1.9 OPERATING REPRESENTATIVE. Prior to the commencement of work under this Agreement, CONTRACTOR shall designate in writing an employee or other representative who shall have full authority to approve changes in the Scope of Work and compensation therefore, execute written Change Orders reflecting such changes, render decisions promptly, and furnish information expeditiously to OWNER when necessary ("CONTRACTOR Operating Representative").

OWNER shall designate in writing an employee or other representative who shall have authority to approve minor changes in the Scope of Work which do not involve additional compensation to CONTRACTOR and who shall promptly bring to the attention of OWNER for consideration any major changes in the Scope of Work or any change in the Scope of Work which would involve additional compensation to CONTRACTOR ("OWNER Operating Representative").

1.10 OPERATING PROCEDURE. Notwithstanding anything to the contrary provided in this
Agreement or otherwise, the parties agree that all Facilities activity and decisions will be made by and communicated through the Operating Representatives appointed by the parties pursuant to Subsection 1.9 above. CONTRACTOR agrees that it shall submit to AUTHORITY a purchase order, on a form approved by AUTHORITY, for all costs and expenditures to be applied toward the Annual Maintenance and Repair Limit. If AUTHORITY and OWNER Operating Representative approve of the CONTRACTOR's purchase order, then the expenditure and/or cost will be made or incurred. If the AUTHORITY or OWNER Operating Representative deny the purchase order or shall fail to respond to the request within ten (10) days, CONTRACTOR shall promptly resubmit the request for approval to OWNER Operating Representative and to the City Manager of CITY. If no response is made by the City Manager within five (5) days from the date the request is delivered, the request shall be deemed denied by AUTHORITY, in the same manner as if the request had been formally denied in writing.
ARTICLE II
CONTRACTOR SCOPE OF SERVICES – GENERAL

2.1 CONTRACTOR SCOPE OF SERVICES - GENERAL. Except as otherwise provided in this Article 2, from the Commencement Date and thereafter during the term of this Agreement, CONTRACTOR shall:

2.1.1 PROVIDE FULL-SERVICE 24-hour-per-day, 7 days per week operations and maintenance ("O&M") management, including grounds maintenance (within the fenced area securing the Facilities) of the utility Facilities (including, but not limited to, treatment plants, distribution, cleaning and operation of collection, distribution and discharge lines and pumps, hydrants and meters, storage tanks, pump stations, storage ponds, wells, lift stations and booster facilities) in accordance with generally accepted industry principles and practices, within the utility Facility design capacity and capabilities, in full compliance with all applicable Federal, State and local, regulations, policies, rules and permits and any associated time schedules.

2.1.2 Within the design capacity and capability of the water wells, and subject to the limitations as described in Appendix B, Facilities and Project Description, CONTRACTOR shall operate, maintain and manage the water wells for the purpose of water production and distribution within the requirements of the Public Water Supply Regulations, as they existed and were last amended by the Oklahoma Department of Environmental Quality. In the event that the Public Water Supply Regulations are amended, CONTRACTOR shall continue to operate, maintain and manage the water wells within the requirements of the amended Public Water Supply Regulations; provided, to the extent that the operation, maintenance and management of the water wells is more expensive to CONTRACTOR because of the amended Public Water Supply Regulations, the difference in this cost of such continued operation, maintenance and management may be deemed a Change of Law within the Scope of Services provided in this Agreement and compensated as provided in paragraph 2.15.

2.1.3 Provide a 24-hour-per-day, 7 days a week emergency response through the Mustang Police Department dispatch which customers use to report a problem in the utility system. CONTRACTOR's personnel will respond to calls consistent with policies to be determined by the AUTHORITY, as amended from time to time, which shall include responding to all emergency events within one hour or sooner as necessary to ensure, if at all possible, the continued provision of water supply and wastewater collection and treatment in a quantity and quality consistent with Federal, State and local laws, regulations and permits. Water service shall only be turned on or off at the direction of the OWNER Operating Representative, except for temporary interruption of service as required for repairs or emergency response.

2.1.4 Line blockages will BE RESPONDED to within one hour of the CONTRACTOR being notified that a blockage exists. All equipment for wastewater collection system maintenance will be provided by CONTRACTOR. The CONTRACTOR will be
responsible for any fees charged for disposal of debris associated with line cleaning.

2.1.5 CONTRACTOR will operate the Facilities to minimize and avoid, to the extent reasonably practicable, noise and odor disruption to adjacent neighborhoods, and will create an odor control plan and a noise reduction policy with six (6) months from the Commencement Date.

2.1.6 O&M shall include all preventive, predictive and corrective maintenance and all repairs of utility equipment, COLLECTION AND DISTRIBUTION SYSTEM lines and facilities, buildings, fencing, paving, landscaping and all other RELATED UTILITY FACILITIES, INCLUDING, BUT NOT LIMITED TO FIRE HYDRANTS and water meters. The cost of maintenance and repairs shall be the responsibility of the CONTRACTOR, except the total obligation of the CONTRACTOR for repairs will not exceed the Annual Maintenance and Repair Limit. Should the CONTRACTOR reach the Annual Maintenance and Repair Limit, the AUTHORITY reserves the right to require approval of any and all maintenance and repair costs and purchases by the CONTRACTOR necessary for O&M. O&M shall not include video inspection of wastewater collection system lines, unless requested by OWNER and treated as an Additional Expense under paragraph 2.15.

2.1.7 CONTRACTOR shall be responsible for repair of all leaks up to and including the shutoff valve on the discharge of the water meter (any work past the shutoff valve will require prior approval of the AUTHORITY). Any leaks after the water meter shutoff valve are the responsibility of the homeowner.

2.1.8 Maintain all Facilities in a clean, neat and orderly fashion, with all floors and other work spaces free of sewage, screenings, sludge and debris, and equipment, tools, materials and supplies properly stored.

2.1.9 Maintain all manufacturers' warranties on and maintenance of current equipment and any new equipment purchased by or on behalf of AUTHORITY for the water or wastewater utilities and the Facilities.

2.1.10 Dewatering and disposing of sludge produced at the wastewater treatment plant, in accordance with all Federal, State, and local laws, regulations and permits, shall be the responsibility and expense of CONTRACTOR. The AUTHORITY shall retain ownership of and responsibility for any and all Facilities wastewater sludge and byproducts. Removal of the sludge from the wastewater treatment plant, testing, transportation and disposal will be the responsibility of the CONTRACTOR. Note: sludge shall be produced regularly and monthly reports will be required.

2.1.11 Perform all monitoring, sampling, testing, analyses and reporting, as necessary, for compliance with all Federal, State and local laws, regulations, permits and administrative court orders, and provide a regular program for sampling, testing and analyses ("Quality Control/Quality Assurance Program"). The cost of any additional monitoring, sampling, testing, analyses and reporting requirements imposed in addition to those in current laws, regulations and permits will be borne by the
AUTHORITY, and if directed by the AUTHORITY, performed by the CONTRACTOR with the cost thereof to be paid as provided under paragraph 2.15 of this Agreement.

2.1.12 Prepare, sign and timely submit to the Federal, State or other appropriate agencies, all O&M, monitoring, performance, Consumer Confidence Reports, and any other permits required by Federal, State or other agencies or by law, permit or court or administrative order for all Public Works Services. Any cost, fine or penalty imposed as a result of CONTRACTOR's failure to comply with these requirements shall be paid by CONTRACTOR.

2.1.13 Staff the Facilities with adequate personnel with appropriate State required certifications and qualified in technical, laboratory and administrative/management issues to satisfy or exceed regulatory requirements and provide O&M services and all other related and required services within the Scope of Services under this Contract.

2.1.14 Provide all equipment, tools, consumables, and vehicles necessary to perform this Agreement. CONTRACTOR shall be responsible for the purchase and maintenance of all equipment, tools, consumables and vehicles necessary to perform this Contract, which costs are not included in the Annual Maintenance and Repair Limit.

2.1.15 Purchase and maintain throughout the contract term an adequate inventory of parts, supplies, and materials for AUTHORITY owned facilities and equipment sufficient to ensure no interruption of service or failure to comply with Federal, State and local laws, regulations, and permits. All such parts, supplies, and materials, and an inventory thereof shall be accessible by CONTRACTOR. The cost of the items necessary to achieve the foregoing will be considered Maintenance and Repair and included within the Annual Maintenance and Repair Limit.

2.1.16 CONTRACTOR shall be responsible for any and all costs associated with the O&M of the Facilities (except as otherwise provided herein), including, but not limited to, the payment of all wages, salaries and benefits of CONTRACTOR's personnel and the cost of all consumables such as fuels, chemicals, equipment, tools, and supplies required for O&M; provided that all electric power, natural gas and water utility costs will be paid by the AUTHORITY.

2.1.17 Implement and/or continue a computerized maintenance and management program suitable for the size and complexity of AUTHORITY's Facilities (hereinafter the "Computerized Maintenance and Management Program"). The Computerized Maintenance and Management Program must include the following: 1) provide for the systematic evaluation of daily plant performance and be used to promote communications and continuity of performance; and 2) provide and maintain a well-documented record of operations, maintenance, repair, laboratory, personnel, training, safety, process control, daily inspections, alarms and any other significant events, issuance of work orders and purchase orders and a spare parts inventory. Yearly asset management report to include pictures of all major processes. All records and data (with the exception of personnel records) within the Computerized Maintenance
Management Program will be the property of the AUTHORITY.

2.1.18 Develop and maintain all required Emergency Response, Hazardous Materials and OSHA plans, procedures and programs as specified by Federal, State and local law, regulations, permits or administrative orders and such additional plans, procedures and programs as may be necessary to detail contingencies to handle conditions that would threaten the provision of utility services consistent with Federal, State and local laws, regulations, permits, and administrative orders. CONTRACTOR shall coordinate with AUTHORITY and CITY as necessary to include such response in CITY’s Emergency Operations Plan.

2.1.19 Subject to regulatory water quality standards, maintain water flow in an amount and pressure as reasonably specified by the AUTHORITY to provide adequate fire protection pursuant to the Master Plan or other applicable documents.

2.1.20 Read all water meters monthly, on a schedule provided by Authority, and turn water service on and off to the customer as directed by the AUTHORITY consistent with policies and procedures approved by the AUTHORITY, and provide required data to the AUTHORITY billing department in a form suitable to AUTHORITY for the creation of monthly utility bills; and service, repair or replace water meters as required to keep the water meter reading system functioning properly; provided the AUTHORITY will be responsible for the replacement of the handheld meter reading units and the upkeep, maintenance and licensing of meter reading software. CONTRACTOR will maintain a minimum of two (2) fulltime staff to be dedicated for meter reading services required to be performed under this Contract.

2.1.21 Pay any regulatory fines and penalties assessed against the AUTHORITY for non-compliance with any Federal, State or local law, regulation, permit condition or provision of any administrative or court order, when such fine or penalty results from the negligent acts, failure to act or willful misconduct of CONTRACTOR.

2.1.22 Provide the AUTHORITY, at least annually, a capital improvement program recommendation, identifying needed system expansions, major repairs and other expenditures in excess of One Thousand and no/100 Dollars ($1,000) each that will be necessary for the Facilities in order to restore, maintain, replace or upgrade the equipment or other aspects of the Facilities for efficiency, safety, functionality and/or compliance with current and anticipated regulatory or customer growth requirements.

2.1.23 Prepare the annual water system Consumer Confidence Report, in a form as approved by the AUTHORITY, including providing all relevant data and paying all printing and mailing costs.

2.1.24 Perform other services resulting from a change in Scope of Services under subparagraph 2.2, below.

2.2 CHANGE IN SCOPE OF SERVICES. To the extent that the operation, maintenance and management of the Facilities becomes more expensive to CONTRACTOR as a result of a Change of Law, the additional cost of the continued operation, maintenance and management
of the Facilities shall be deemed an Unforeseen Circumstance and the additional costs incurred by CONTRACTOR shall be governed by the provisions of Subsection 2.15 below. CONTRACTOR may, within reason, alter the process and/or Facilities to achieve the objectives of this Agreement. No alteration shall be made without AUTHORITY's written approval. In the event that AUTHORITY shall deny such approval, CONTRACTOR shall not perform the proposed alteration and shall have no further liability or responsibility pursuant to this Agreement or otherwise resulting from the failure to perform such alteration or the consequences thereof, but CONTRACTOR shall continue to perform this Agreement as provided in Appendix B, "Facilities and Project Description."

2.3 MANTEINANCE AND REPAIR. CONTRACTOR shall perform all maintenance and repairs for the Facilities at CONTRACTOR's cost and expense up to the Annual Maintenance and Repair Limit; provided, that CONTRACTOR shall submit a purchase order and secure prior written approval of AUTHORITY for each cost or expenditure to be applied toward the Annual Maintenance and Repair Limit, which approval shall not be unreasonably withheld. In the event that AUTHORITY shall deny any approval required hereunder, CONTRACTOR shall not perform such Maintenance and/or Repair work. CONTRACTOR shall submit a monthly accounting to AUTHORITY summarizing all Maintenance and Repair Expenditures. CONTRACTOR acknowledges that its labor costs for routine, repetitive and predictive Maintenance and Repair activities are included in and considered a part of its Annual Fee. If items of Repair and/or Maintenance are extraordinary or beyond the capacity or knowledge reasonably expected of CONTRACTOR employees exclusively assigned to the Facilities, CONTRACTOR may hire subcontractors with the prior approval of AUTHORITY, which approval shall not be unreasonably withheld, to perform such Maintenance and/or Repair work, and the cost of such subcontractor shall be included as part of the Annual Maintenance and Repair Limit.

2.4 WARRANTY MAINTENANCE. CONTRACTOR shall be responsible for maintaining all manufacturers' warranties on new equipment purchased by OWNER and assist OWNER in enforcing existing equipment warranties and guarantees.

2.5 PREVENTIVE MAINTENANCE DOCUMENTATION. CONTRACTOR shall provide OWNER with full documentation that preventive maintenance is being performed on OWNER's owned equipment, in accordance with manufacturer's recommendations or Prudent Industry Practices, at intervals and in sufficient detail as may be determined by OWNER. The Computerized Maintenance and Process Controls must include documentation of corrective and preventive maintenance and a spare parts inventory.

2.6 STAFFING. At the Commencement Date, CONTRACTOR will staff the Facilities and related equipment with an appropriate staffing level of employees who have met appropriate licensing and certification requirements of the State of Oklahoma and who are capable and demonstrate experience necessary to operate and maintain the Facilities. CONTRACTOR will maintain appropriate staffing levels for its obligations under this Contract. In the event that a position is vacated, CONTRACTOR will use reasonable efforts to timely fill the vacated position.

2.7 TRAINING. CONTRACTOR shall provide ongoing training and education for appropriate
personnel in all necessary areas of modern wastewater process control, operations, maintenance, safety, supervisory skills, laboratory, energy management and other skills necessary to prudently perform the services required under this Agreement.

2.8 EMPLOYEE SAFETY PROGRAM. CONTRACTOR will implement and maintain an employee safety program in compliance with applicable laws, rules and regulations and make recommendations to OWNER regarding the need, if any, for OWNER to rehabilitate, expand or modify the Facilities to comply with governmental safety regulations applicable to CONTRACTOR's operations hereunder and federal regulations promulgated pursuant to the ADA. Nothing herein shall be construed to place upon CONTRACTOR a duty to find and report violations of either the safety laws or the ADA at the Facility.

2.9 FACILITIES ACCESS. Visits may be made at any reasonable time by OWNER's employees so designated by OWNER Operating Representative. Keys for the Facilities shall be provided to OWNER Operating Representative by CONTRACTOR for such visits. All visitors to the Facilities, who are not OWNER's employees or representatives, shall comply with CONTRACTOR's operating and safety procedures. OWNER's employees will comply with OWNER's operating and safety procedures.

2.10 CHEMICALS INVENTORY. CONTRACTOR will provide OWNER with a physical inventory of chemicals and other consumables on hand when CONTRACTOR begins services under this Agreement. CONTRACTOR will provide OWNER with the same quantity of chemicals or equivalent upon termination of this Agreement.

2.11 FACILITIES MANAGER. On the Commencement Date, CONTRACTOR shall provide to AUTHORITY, in writing, the name of its Facilities Manager.

2.12 COMPLIANCE WITH LAW. Subject to the limitations specifically provided in this Agreement, CONTRACTOR shall comply with all provisions of Applicable Law related to the operation and maintenance of the Facilities.

2.13 RECORD KEEPING. CONTRACTOR shall maintain all records, invoices, documents and data concerning the Maintenance and Repair of the Facilities in a format acceptable to, and approved by, AUTHORITY. The AUTHORITY may inspect and copy all such records, invoices, documents and data during normal business hours. CONTRACTOR will make all documents available to third parties to the extent required by the Oklahoma Open Records Act, 51 O.S. §24A.1, et seq.

2.14 SEWER BACK-UP RESPONSE PROCEDURES. CONTRACTOR shall establish (i) a routine, normal sewer line preventive maintenance program, and (ii) response procedures to be implemented in the event of any sewer back-up. The response procedures shall, at a minimum, consist of the following:

(a) Upon receipt of a resident notice, CONTRACTOR will determine whether the cause of the sewer back-up was an obstruction in Mustang's lateral line or the resident's service line;
CONTRACTOR and OWNER will mutually develop response procedures in event of a back-up in a commercial or resident sewer line. The response procedures will be subject to revision from time to time by agreement of OWNER and CONTRACTOR.

2.15 **ADDITIONAL SERVICES.** As directed by AUTHORITY and agreed to by CONTRACTOR, or otherwise in the event of the occurrence of a Change of Law or an Unforeseen Circumstance, CONTRACTOR shall perform additional services and/or incur additional costs in connection with performing services falling within those identified in Section 2.1 above or elsewhere in this Agreement with the prior approval of AUTHORITY. It is recognized and agreed by the parties that such services shall be deemed an addition to the Scope of Services required to be performed by CONTRACTOR for the Facilities under the terms of this Agreement and that such additional services will be billed by CONTRACTOR to AUTHORITY at cost together with Mark-Up for overhead and profit, except for the cost of utilities which shall be paid directly by AUTHORITY and/or the CITY, without any mark-up by CONTRACTOR.

2.16 **MODIFICATION.** Subject to the provisions of 2.2 and 2.3, CONTRACTOR may modify the process and/or Facilities to achieve the objectives of this Agreement and charge the Costs to the Annual Maintenance and Repair Limit. CONTRACTOR must obtain prior approval of AUTHORITY for any proposed modification to the process and/or Facilities.

2.17 **EMERGENCY MODIFICATION.** Subject to the provisions of 2.3, for all emergency situations posing an imminent threat, or potential damage, injury or loss which would affect the safety of persons or property, and all protective measures have been exhausted, CONTRACTOR may act without written approval of proposed costs or expenditures to prevent threatened damage, injury or loss. CONTRACTOR shall seek, to the extent practicable, verbal approval from AUTHORITY for the cost and expense of response. To the extent any response to an emergency is not within the Scope of Services defined under Articles I and 3, CONTRACTOR shall be compensated by AUTHORITY for any such emergency work under the provisions of paragraph 2.15 notwithstanding the lack of a written amendment once it has been determined that the emergency work performed by CONTRACTOR is not within the Scope of Services defined specifically in Articles 2 and 3 and was reasonably required to avert imminent threat or potential damage, injury or loss which would affect the safety of persons or property with the facts known at the time the action is taken.

2.18 **REDUCTION OF SERVICE.** Should OWNER choose to install an automated meter reading system, OWNER reserves the right, upon sixty (60) days notice, to withdraw the meter reading (AMR) services specified in subparagraph 2.1.23 from the Scope of Services to be provided by CONTRACTOR hereunder. CONTRACTOR would still be responsible for all other meter-related services set forth under subparagraph 2.1.23, which would include service, repair and/or replacement of AMR equipment. In addition, CONTRACTOR would be required to perform meter re-reading services, as needed from time to time. In event OWNER withdraws the dedicated meter reading services specified in subparagraph 2.1.23 from the Scope of Services hereunder, the Annual Fee to be paid under this Contract shall be reduced by the amount identified as attributable to dedicated meter reading services in Article 5, subparagraph 5.1.1.
ARTICLE III
CONTRACTOR SCOPE OF SERVICES- WATER AND WASTEWATER

3.1 APPLICABILITY. This Article shall apply to CONTRACTOR's operation, maintenance and management services for OWNER's water and wastewater treatment Facilities.

3.2 WASTEWATER FACILITIES. Within the design capacity and capabilities of the Facilities and subject to the limitations as described in Appendix B, Facilities and Facilities Description, CONTRACTOR will manage, operate and maintain OWNER's Wastewater Facilities so that effluent discharged from the Facilities meets the requirements of the discharge permits specified in Appendix C, OPDES Permits and Facilities Characteristics - Wastewater Treatment. Appropriate amounts of degreaser will be used to manage grease in lift stations.

3.3 WATER FACILITIES. Within the design capacity and capability of the water wells, and subject to the limitations as described in Appendix B, Facilities and Project Description, CONTRACTOR shall operate, maintain and manage the water wells for the purpose of water production and distribution within the requirements of the Public Water Supply Regulations, as they existed and were last amended by the Oklahoma Department of Environmental Quality. In the event that the Public Water Supply Regulations are amended, CONTRACTOR shall continue to operate, maintain and manage the water wells within the requirements of the amended Public Water Supply Regulations; provided, to the extent that the operation, maintenance and management of the water wells is more expensive to CONTRACTOR because of the amended Public Water Supply Regulations, the difference in this cost of such continued operation, maintenance and management may be deemed a Change of Law within the Scope of Services provided in this Agreement and compensated as provided in paragraph 2.15.

3.4 MAINTENANCE AND REPAIR. CONTRACTOR will perform all Maintenance and Repairs for the Facilities up to the Annual Maintenance and Repair Limit. CONTRACTOR shall submit a purchase order and secure written approval of AUTHORITY and the OWNER Operating Representative for each item of Maintenance and Repair prior to incurring such expense or cost. In the event that AUTHORITY and OWNER's Operating Representative shall deny the written approval required hereunder, CONTRACTOR shall not perform the Maintenance or Repair of the Facilities. If, in the opinion of CONTRACTOR, the failure to perform the item of Maintenance or Repair of the Facilities which was denied by AUTHORITY and the OWNER Operating Representative creates a risk to the health or safety of the residents of CITY or a risk of physical damage to the Facilities or their operations, CONTRACTOR will notify the City Manager of CITY and if no action is taken by the City Manager to approve such item within twenty-one (21) days, CONTRACTOR shall not have any responsibility or liability resulting from the failure to perform the denied item of Maintenance or Repair or the consequences thereof; CONTRACTOR shall continue to perform the remainder of this Agreement in accordance with its terms. CONTRACTOR will notify AUTHORITY when actual Maintenance and Repair expenditures equal eighty percent (80%) of Annual Maintenance and Repair Limit. CONTRACTOR shall submit a monthly accounting of the Annual Maintenance and Repair Limit expenditures to AUTHORITY. All
consumables (oil, filters, grease, fluids, paint, and fuses) for vehicles and equipment owned by CONTRACTOR are included in the Annual Fee, and are not part of the Annual Maintenance and Repair Limit.

3.5 PERMITS AND SERVICES. CONTRACTOR shall pay for permit cost for wastewater and water permits, storm water permits, state lab fees, water Consumer Confidence Report ("CCR" development/mail distribution, and public notice publications for any violation.) CONTRACTOR shall conduct Bac-T testing for new construction in CITY based on fifty (50) collections a year.

3.6 NO TITLE. At no time shall CONTRACTOR be deemed to have taken title to any influent, effluent, biologically toxic or regulated substances, bio-solids sludge, solids, untreated wastewater, raw water, screenings, grit, sludges or any other materials or substances in process at any of the Facilities.

3.7 LAWN MAINTENANCE. CONTRACTOR will provide lawn maintenance of all Facilities (within the fenced area securing the Facilities) which will be kept in a groomed, mowed and edged state. Appropriate levels of herbicide will be used to maintain weeds.

3.8 MAINTENANCE OF TELEMETRY SYSTEM. CONTRACTOR will be responsible for maintaining current telemetry system in all locations, including maintenance of any license requirements for any radios and software. All telemetry system hardware and software shall remain the property of CITY. CONTRACTOR shall be responsible for employing qualified personnel to maintain telemetry system hardware and software. OWNER shall have remote read access to telemetry system at all times during the term of this Agreement. Any repairs to the telemetry system shall be considered a Maintenance and Repair Expenditure within the Annual Maintenance and Repair Limit.

3.9 FINES. CONTRACTOR shall be solely responsible for any fines, civil penalties, costs or expenses resulting from CONTRACTOR's negligent acts, failure to act or willful misconduct of CONTRACTOR.
ARTICLE IV
AUTHORITY DUTIES

4.1 CAPITAL EXPENDITURES. AUTHORITY shall either make or pay the cost of all Capital Expenditures which are reasonably recommended by CONTRACTOR within a reasonable time of such recommendation or accept the responsibility for not making such Capital Expenditures.

4.2 RECOMMENDED CAPITAL IMPROVEMENTS. Within ninety (90) days from the effective date hereof, CONTRACTOR will provide a listing of recommended capital improvements required for the Facilities. CONTRACTOR will not be relieved of its responsibility to perform if the recommendations are not implemented; provided, however, that capital improvement necessary to: (i) meet effluent requirements; (ii) meet federal, state or local laws, rules or regulations for the safety of persons in or about the Facilities; or (iii) meet ADA requirements, shall not be optional for AUTHORITY. If approved, AUTHORITY will make arrangements for the design and construction of said improvements.

4.3 CAPITAL EXPENDITURES. AUTHORITY shall fund all necessary Capital Expenditures. Priority shall be given to safety and the ADA related expenses. Any loss, damage, or injury resulting from AUTHORITY’s failure to provide capital improvements and/or funds in excess of the Annual Maintenance and Repair Limit, when reasonably requested by CONTRACTOR, shall be the sole responsibility of AUTHORITY.

4.4 RECOMMENDED CAPITAL PLAN. CONTRACTOR will provide an updated recommended five (5) year capital plan by June 30th of each Contract Year, and will reasonably work with the AUTHORITY’s Director and/or its designated engineer in development of the plans.

4.5 FACILITY MODIFICATIONS. CONTRACTOR will coordinate modifications to the Facilities required to comply with OSHA standards.

4.6 WARRANTIES AND GUARANTEES. OWNER shall keep in force all Facilities warranties, guarantees, easements and licenses that have been granted to OWNER and are not transferred to CONTRACTOR under this Agreement.

4.7 BILLING AND COLLECTION FOR PUBLIC WORKS SERVICES. OWNER shall perform all billing and collections of accounts for Public Works Services.

4.8 TAXES. OWNER shall pay all sales, excise, ad valorem, property, franchise, and disposal taxes, or other taxes associated with equipment and materials purchased for the OWNER.

4.9 SALES AND USE TAXES. In the event CONTRACTOR is required to pay any sales tax or use taxes on the value of the services provided by CONTRACTOR hereunder or the services provided by any subcontractor of CONTRACTOR, such payments shall be reimbursed by the OWNER, unless AUTHORITY furnishes a valid and properly executed exemption certificate under 68 O.S. §1356 relieving AUTHORITY and CONTRACTOR of the obligation for such taxes. In the event AUTHORITY furnishes an exemption certificate which is invalid or not
applicable to services by CONTRACTOR, CONTRACTOR shall pay any taxes, interest, penalties, and increment costs, expenses or fees which may occur as a result.

4.10 **UTILITY COSTS.** AUTHORITY shall be responsible for and shall directly pay the cost of natural gas, electricity and water. In the event that CONTRACTOR must pay for any such costs, they will be reimbursed by AUTHORITY.

4.11 **PAYMENT OBLIGATIONS.** AUTHORITY shall pay CONTRACTOR in accordance with the terms of this Agreement. CONTRACTOR recognizes and expressly agrees that CITY is not a co-obligor, surety or guarantor of any payment to CONTRACTOR hereunder.

4.12 **COST OF COMPLIANCE.** AUTHORITY shall be responsible for paying all Cost associated with bringing the Facilities into compliance with any modifications or additions to environmental laws that are made effective during the term of this Agreement. AUTHORITY acknowledges and agrees that AUTHORITY shall be responsible for any fines or civil penalties imposed by any regulatory or enforcement agencies directly resulting from AUTHORITY’s failure to meet any such requirements.

4.13 **COOPERATION.** AUTHORITY shall cooperate with CONTRACTOR in any reasonable manner necessary in order to allow CONTRACTOR to diligently and efficiently discharge its obligations under this Agreement.
ARTICLE V
COMPENSATION

5.1 COMPENSATION. AUTHORITY shall pay CONTRACTOR compensation for services provided herein equal to the sum of the following:

5.1.1 ANNUAL FEE. CONTRACTOR's compensation under this Agreement shall consist of an Annual Fee. For the first year of this Agreement, CONTRACTOR's Annual Fee is ______________________ and No/100ths Dollars ($________________) of which amount ______________________ and No/100 Dollars ($_____________) is for dedicated water meter reading services required to be performed under subparagraph 2.1.23. The Annual Maintenance and Repair Limit is included as part of the Annual Fee. In event a Contract Year consists of less than twelve months, payments provided under this Agreement shall be prorated for a proportion of the Contract Year.

5.1.2 APPROVED MAINTENANCE AND REPAIR EXPENDITURES. If actual Maintenance and Repair expenditures are less than the Annual Maintenance and Repair Limit for any Contract Year, CONTRACTOR will rebate the entire difference to AUTHORITY in accordance with paragraph 6.1.3. If actual and approved Maintenance and Repair expenditures exceed the Annual Maintenance and Repair Limit, AUTHORITY will pay the excess to CONTRACTOR. CONTRACTOR will notify OWNER when actual Maintenance and Repair expenditures equal eighty percent (80%) of the Annual Maintenance and Repair Limit.

5.1.3 CHANGE IN SCOPE OF SERVICE. Any compensation due from AUTHORITY to CONTRACTOR as a result of the change in the Scope of Services to be provided by CONTRACTOR to AUTHORITY shall be paid as provided in Article 6, below.

5.1.4 ADJUSTMENT TO ANNUAL FEE. The Annual Fee shall be adjusted each year at least four (4) months prior to the anniversary of the Commencement Date. The Annual Fee for a succeeding Contract Year will be determined by the application of the Consumer Price Index as published by the U.S. Department of Labor, Bureau of Labor Statistics. The Annual Maintenance and Repair Limit shall increase or decrease by a percentage equal to the change in the Annual Fee. The first adjustment to the Annual Fee and Annual Maintenance and Repair Limit shall not occur until four (4) months prior to the Contract Year beginning July 1, 2018.
ARTICLE VI
PAYMENT OF COMPENSATION

6.1 PAYMENTS TO CONTRACTOR. CONTRACTOR shall prepare an invoice in a format acceptable to AUTHORITY and submit the invoice to AUTHORITY either on or before (i) the 1st day of the calendar month in the month during which the services are being performed, or (ii) the Wednesday preceding the first Tuesday of the month before the month during which the services are being performed, whichever earlier occurs. The compensation to be paid by AUTHORITY to CONTRACTOR shall be made as follows:

6.1.1 MONTHLY PAYMENT. One-twelfth (1/12) of the Annual Fee for the current Contract Year shall be due and payable on or before the 15th day of the month during each month that services are provided.

6.1.2 OTHER COMPENSATION. All other compensation to CONTRACTOR is due upon receipt of CONTRACTOR's invoice and payable within thirty (30) days.

6.1.3 Return of Maintenance and Repair. Any monies payable pursuant to Subsection 5.1.2 will be paid within sixty (60) calendar days after the end of each Contract Year.

6.2 INTEREST ON OVERDUE BALANCE. AUTHORITY shall pay interest at an annual rate of two percent (2.0%), said rate of interest not to exceed any limitation provided by law, on payments not paid and received within sixty (60) calendar days of the due date, such interest being calculated from the due date of the payment. In the event the charges hereunder might exceed any limitation provided by law, such charges shall be reduced to the highest rate or amount within such limitation.

6.3 PRORATION. In event a Contract Year includes less than twelve months, the amount of the Annual Fee and the Annual Maintenance and Repair Limit shall be prorated for the proportional Contract Year.
ARTICLE VII
CHANGES IN SCOPE OF SERVICE

7.1 CHANGE IN SCOPE OF SERVICES. A Change in Scope of Services shall occur when and as CONTRACTOR's costs of providing services under this Agreement change as a result of:

7.1.1 Any change in Facility operations, personnel qualifications or staffing or other cost which is a result of an Unforeseen Circumstance or Change of Law; or

7.1.2 Any change in the services provided by CONTRACTOR as described in Articles 2 and 3, as requested and approved by OWNER.

7.2 ADJUSTMENT TO ANNUAL FEE. Upon approval of OWNER to Changes in Scope, described in Subsections 7.1.1 and 7.1.2, the Annual Fee shall be increased (or decreased) by an amount equal to CONTRACTOR's additional (reduced) Cost associated with the Change in Scope plus (minus) Mark-Up.
ARTICLE VIII
INDEMNITIES, LIABILITY AND INSURANCE

8.1 INDEMNIFICATION BY CONTRACTOR. CONTRACTOR hereby agrees to indemnify and hold AUTHORITY and CITY harmless from any liability or damages for bodily injury, including death, which may arise from CONTRACTOR's negligence or willful misconduct under this Agreement. CONTRACTOR shall indemnify and hold AUTHORITY and CITY harmless from and against all mechanic's and materialman's liens which may be filed against the Facilities as a direct result of the performance of Scope of Services by CONTRACTOR hereunder, and CONTRACTOR shall cause any such lien to be discharged of record through bonding or otherwise within thirty (30) days of the date of filing of such lien of record.

8.2 INSURANCE. CONTRACTOR shall obtain and maintain insurance coverage of a type and in the amounts described in Appendix D, Insurance Coverage. CONTRACTOR shall maintain broad form property insurance in order to protect both parties against any such loss, and provide OWNER with satisfactory proof of insurance.

8.3 SURVIVAL OF INDEMNIFICATION. Indemnity agreements provided for in this Agreement shall survive the termination of the Agreement, for the period of time allowed by the applicable statute of limitation during which the claim creating the indemnity obligation may be filed with a court of competent jurisdiction.

8.4 PERFORMANCE BOND. CONTRACTOR shall provide and maintain throughout the term of this Agreement a performance, payment, and guarantee bond of a type described in Appendix E, "Performance Bond" and in an amount equal to CONTRACTOR's Annual Fee under this Agreement.

8.5 CONTRACTOR LIABILITY FOR CIVIL PENALTIES. CONTRACTOR shall be liable for those fines or civil penalties imposed by a regulatory or enforcement agency for violations occurring on or after the effective date of this Agreement of the effluent quality requirements provided for in Appendix C, OPDES Permit and Facilities Characteristics – Wastewater Treatment, resulting from the negligent acts, failure to act or willful misconduct of the CONTRACTOR. OWNER will assist CONTRACTOR in contesting any such fines in administrative and/or court proceedings prior to any payment by CONTRACTOR. CONTRACTOR shall pay the cost of any such contest.

8.6 OWNER LIABILITY FOR CIVIL PENALTIES. OWNER shall be liable for those fines or civil penalties imposed by any regulatory or enforcement agencies on OWNER and/or CONTRACTOR that are not required to be borne by CONTRACTOR as in paragraph 8.5.

8.7 OWNER WORKER'S COMPENSATION. OWNER shall maintain statutory workers' compensation for all of OWNER's employees who regularly interact with CONTRACTOR and the Facilities, in such amounts as required by the State of Oklahoma.

8.8 AUTHORITY'S INSURANCE. AUTHORITY shall maintain property damage insurance
for property leased to or owned by AUTHORITY that is to be operated by CONTRACTOR under this Agreement. Property insurance maintained by AUTHORITY shall be in such amounts as may be determined by OWNER. Insurance required to be obtained and maintained by CONTRACTOR under his Agreement shall be primary to any insurance maintained by AUTHORITY hereunder.
ARTICLE IX
TERM, TERMINATION AND DEFAULT

9.1 **TERM.** The term of this Agreement shall be for a period of four (5) years, commencing on July __, 2017, and ending on July __, 2022. This Agreement may be renewed for two additional five (5) year periods, or less, at the option of the parties, upon the same terms and conditions herein. The parties may terminate this Agreement prior to end of a current term only as set forth below or upon mutual agreement in writing.

9.2 **TERMINATION.** Except as otherwise set forth herein, a party may terminate this Agreement only for a material breach of the Agreement by the other party; only after giving written notice of breach; and, only after allowing the other party thirty (30) days to cure or to commence taking reasonable steps to cure the breach.

9.3 **DEFAULT.** Upon notice of termination by OWNER and at OWNER's request, CONTRACTOR shall assist OWNER in assuming operation of the Facilities. If additional Cost is incurred by CONTRACTOR at request of OWNER, OWNER shall pay CONTRACTOR such Cost-plus Mark Up for profit within thirty (30) days of invoice receipt.

9.4 **RETURN OF FACILITIES, EQUIPMENT AND PROPERTY.** Upon termination of this Agreement and all renewals and extensions thereof, CONTRACTOR will return the Facilities to AUTHORITY in the same condition as it was upon the effective date of this Agreement, ordinary wear and tear excepted. Equipment and other personal property purchased by CONTRACTOR for use in the operation or maintenance of the Facilities shall remain the property of CONTRACTOR upon termination of this Agreement, unless the property was directly paid for by OWNER, or OWNER specifically reimbursed CONTRACTOR for the cost incurred to purchase the property, or this Agreement provides to the contrary.
ARTICLE X
DISPUTES AND FORCE MAJEURE

10.1 DISPUTES. In the event activities by employee groups or unions cause a disruption in CONTRACTOR's ability to perform at the Facilities, OWNER, with CONTRACTOR's assistance or CONTRACTOR at its own option, may seek appropriate injunctive court orders. During any such disruption, CONTRACTOR shall operate the Facilities on a best-efforts basis until any such disruptions cease.

10.2 ENFORCEMENT OF AGREEMENT. If any litigation is necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, which are directly attributed to such litigation, in addition to any other relief to which it may be entitled.

10.3 FORCE MAJEURE. Neither party shall be liable for its failure to perform its obligations under this Agreement, if such failure is due to any Unforeseen Circumstances beyond its reasonable anticipation and control. However, this Section may not be used by either party to avoid, delay or otherwise affect any payments due to the other party.
ARTICLE XI
CONFIDENTIALITY

11.1 CONFIDENTIAL INFORMATION. To the extent permissible by law, CONTRACTOR or OWNER may from time to time disclose to the other party confidential information relating to the provision of services or the terms of this Agreement ("Confidential Information"). Neither party will disclose Confidential Information of the other to any third party, or use such Confidential Information for any purpose other than as specified herein, without the express written consent of the other party. Confidential Information does not include information: (a) generally available to or known to the public; (b) previously known to the recipient; (c) independently developed by the recipient outside the scope of this Agreement; (d) lawfully disclosed by a third party; or (e) required to be disclosed by operation of law. Upon any termination or expiration of this Agreement in accordance with its terms, each party will, within a reasonable period of time thereafter return all confidential or proprietary information received from the other party under the terms of this Agreement, except that each party may retain a legal file copy. CONTRACTOR and OWNER shall designate information as "Confidential" by placing the word "Confidential" on the page(s) containing information claimed as Confidential.

11.2 INTELLECTUAL PROPERTY. Any protectable intellectual property developed or used by CONTRACTOR in the course of performing the services under this Agreement shall be the exclusive property of CONTRACTOR.
ARTICLE XII
MISCELLANEOUS

12.1 **AMENDMENT.** This Agreement may be amended or modified only by a written document signed by both parties.

12.2 **SEVERABILITY.** If the laws of the State of Oklahoma should be construed or amended so as to make any material portion of this Agreement invalid, thereby frustrating the ability of either party to adequately perform the material terms and conditions of this Agreement, then this Agreement shall terminate upon written notice to the other party, unless the parties shall mutually agree in writing that the scope of services can be performed pursuant to those portions of the Agreement not affected by the legal determination.

12.3 **NO ADDITIONAL RIGHTS.** Nothing in this Agreement shall be construed to create in any third party or in favor of any third party any right(s), license(s), power(s) or privilege(s).

12.4 **NO WAIVER OF IMMUNITY.** Notwithstanding anything herein to the contrary, including provisions relating to required insurance coverage, neither AUTHORITY nor CITY intend to waive or limit, in any manner or purpose, any claim or sovereign immunity or the protections and limitations of the Governmental Tort Claim Act, 51 Okla. Stat. §151, et seq.

IN WITNESS WHEREOF, the CITY, the AUTHORITY and the CONTRACTOR have caused this Agreement to be signed as of the date first written above.

Attest: Mustang Improvement Authority, an Oklahoma Public Trust

Witness

Attest: City of Mustang, Oklahoma

Witness

Attest: Contractor

Witness

Approved as to Form:

__________________________________   ____________________________________
Municipal Attorney
APPENDIX A- DEFINITIONS

The following terms, when appearing in first initial capitalization in the text of this Agreement, shall, whether used in singular or plural, have the following meanings:

1. "Abnormal Substances" means substances or materials that: (i) create a fire or explosion hazard at the Facility; (ii) will cause corrosive structural damage to the Facility; (iii) contain solid or viscous pollutants in amounts which will cause obstruction to the flow in the Facility; (iv) are present in flow rates or concentrations that will cause Interference or Pass Through; (v) will result in the presence of toxic gases, vapors or fumes within the Facility in a quality that may cause acute worker health and safety problems; or (vi) will result in an alteration of the requirements or Costs for the operation or maintenance of the Facility.

2. "Adequate Nutrients" means plant influent nitrogen, phosphorus and iron contents proportional to BOD5 in the ratio of five (5) parts nitrogen, one (1) part phosphorus, and one-half (0.5) part iron for each one hundred (100) parts BOD5.

3. "ADA" shall mean the Americans with Disabilities Act, as amended from time to time.

4. "Agents" shall mean the employees, officers, agents and subcontractors of CONTRACTOR.

5. "Agreement" shall mean this Agreement for Operation, Maintenance and Management Services for Water and Wastewater Treatment Plants, Collection and Distribution Systems and Meter Reading, together with Appendices A through F, which Appendices are attached thereto and fully incorporated therein.

6. "Annual Fee" means a predetermined, fixed sum for CONTRACTOR's services. The Annual Fee includes Cost and profit.

7. "Annual Maintenance and Repair Limit" means the total amount of money allocated to Maintenance and Repair Expenditures within the Annual Fee. The Annual Maintenance and Repair Limit shall equal the sum of One Hundred Seventy Five Thousand and No/100 Dollars ($175,000.00) Dollars during each Contract Year. Such expenditures exclude any labor costs for CONTRACTOR's staff assigned to the Facilities. CONTRACTOR's specialized maintenance personnel, not assigned to the Facilities, who provide such specialized services including, but not limited to, vibration, thermographic and electrical analyses, instrumentation maintenance and repair, will be charged to the Annual Maintenance and Repair Limit upon prior approval by AUTHORITY.

8. "Applicable Law" shall mean all those laws, rules, regulations, codes, orders, directives, guidelines, judgments, rulings, interpretations or similar requirements or actions of any federal, state, county or local government, agency or executive or administrative body of any of the foregoing, in each case that pertain to the operation or maintenance of the Facilities, the health and welfare of individuals working at or visiting the Facilities, or the collection, delivery, pretreatment, treatment, discharge, or reuse of water and/or
wastewater. This definition specifically includes the terms, conditions, requirements or schedules of any administrative or judicial settlement or enforcement related, in any way, to the Facilities or the collection, delivery, pretreatment or treatment of water and/or wastewater and to the OPDES Permit.

9. "Biologically Toxic Substances" means any substance or combination of substances contained in the plant influent in sufficiently high concentration so as to interfere with the biological processes necessary for the removal of the organic and chemical constituents of the wastewater required to meet the discharge requirements of OWNER's Certificate of Approval. Biologically toxic substances include, but are not limited to, heavy metals, phenols, cyanides, pesticides and herbicides.

10. "Capital Expenditures" means any expenditures for (1) the purchase of new equipment or facility items that cost more than Five Thousand ($5,000) Dollars; or (2) major repairs which significantly extend equipment or facility service life and cost more than Five Thousand ($5,000) Dollars; or (3) expenditures that are planned, non-routine and budgeted by AUTHORITY.

11. "Change of Law" is defined as the occurrence, after the date hereof, of any of the events listed in (a) through (c) below, which results in either (a) the need to make a capital improvement at any of the Facilities in order for CONTRACTOR to operate the Facilities in accordance with this Agreement and Applicable Law, or (b) a direct increase or decrease to the Cost of operating, maintaining or managing any of the Facilities, in accordance with this Agreement and Applicable Law:

   a) there is passed or promulgated any federal, state, county or other local law, statute, ordinance, rule or regulation different from those existing on the date hereof; or
   b) there is passed or promulgated any amendment to, or change in, any federal, state, county or other local law, statute, ordinance, rule or regulation following the date hereof; or
   c) there comes into existence an order or judgment of any federal, state, county or local court, administrative agency or other governmental body following the date hereof containing interpretations of any federal, state, county or other local law, statute, ordinance, rule, regulation, or permit (including the OPDES Permit) relating to the operation or maintenance of the Facilities, or the health and safety of CONTRACTOR' employees that is inconsistent with generally accepted interpretation in effect on the date hereof.

12. "Change in Scope of Services" means the change in scope of services as described in Article 2.

13. "CITY" shall mean the City of Mustang, Oklahoma, a municipal corporation formed under the laws of the State of Oklahoma.

14. “Commencement Date" shall mean the effective date for commencement of operation, maintenance and management of the Facilities as set forth in Section 9.1 of this Agreement.
15. "Contract Year" means each of the CITY’s fiscal years, or portion(s) thereof, during the term of this Agreement, with the first Contract Year beginning with the Commencement Date and ending on July ___, 2018, and each subsequent Contract Year beginning on each and every July 1 during the term hereof.

16. "Cost" means all Direct Cost and indirect cost determined on an accrual basis in accordance with generally accepted accounting principles.

17. "Direct Cost" means the actual cost incurred for the direct benefit of the Facilities including, but not limited to, expenditures for Facilities management and labor, employee benefits, chemicals, lab supplies, repairs, repair parts, maintenance parts, safety supplies, gasoline, oil, equipment rental, legal and professional services, quality assurance, travel, office supplies, other supplies, uniforms, telephone, postage, utilities, tools, memberships and training supplies.


19. "Electrical Cost" means the cost of electrical power.

20. "Facilities" means the wastewater Facilities described on Appendix B, Facilities and Facilities Description.

21. "Maintenance" means those routine and/or repetitive activities required or recommended by prudent industry practices or by CONTRACTOR to maximize the service life of the equipment, sewer, and Facilities.

22. "Maintenance and Repair Expenditures" shall mean any and all costs and expenditures incurred by CONTRACTOR in performing Maintenance and/or Repair work, exclusive however, of CONTRACTOR' direct labor expenses for those individuals exclusively assigned by CONTRACTOR to the Facilities and whose cost is otherwise included in the Annual Fee. Maintenance and Repair Expenditures shall include, but shall not be limited to the cost of materials, lubricants, batteries, specialized services, maintenance parts, repair parts, paint, sandpaper, sealants, belts, fuel, utilities, building and road materials, asphalt, gravel, pumps, fuses, wiring, electrical supplies, fittings, pipe, manhole castings, tools, lawn care supplies, outside maintenance subcontractors, off-site CONTRACTOR specialized maintenance personnel and equipment and rental equipment that are used for Maintenance and Repair of the Facilities. Maintenance and Repair Expenditures shall not include costs or expenditures for tools, fuel and upkeep of CONTRACTOR's equipment or vehicles. Maintenance and Repair Expenditures shall exclude Capital Expenditures, the cost of which shall be paid to CONTRACTOR in addition to the Annual Fee as provided in this Agreement.

23. "Mark-Up" shall mean ten percent (10%).

24. "Non-Processible Wastewater" means wastewater (i) which is detrimental to the operation and performance of the wastewater treatment plant Facilities, or (ii) which violates the
requirements of any provision of Applicable Law, including, without limitation, the requirements of the Sewer Use Regulation, or any other pre-treatment requirement applicable to any industrial user discharging wastewater into the CITY's sewer system, or (iii) which exceeds the design capabilities of the wastewater treatment plant Facilities as defined by the operations and maintenance manuals for such Facilities, or (iv) which does not contain Adequate Nutrients.

25. "OPDES Permit" means the OPDES Permit attached to and described in Appendix C, "OPDES Permit and Facilities Characteristics".

26. "ODEQ" means the Oklahoma Department of Environmental Quality.

27. "Operating Representative" means the individual designated by the parties pursuant to Subsection 1.9 of this Agreement.

28. "Processible Wastewater" is wastewater other than Non-Processible Wastewater.

29. "Prudent Industry Practices" means those methods, techniques, standards and practices which, at the time they are employed and in light of the circumstances known or believed to exist at the time, are generally accepted as reasonably prudent in the operation maintenance of water and/or wastewater assets as practiced in the United States with respect to equipment of similar type. For the warranty period of any piece of equipment, "Prudent Industry Practices" requires those maintenance activities required to maintain in force the manufacturer's warranty.

30. "Public Works Services" shall mean all work performed to operate, maintain, and manage the following: (i) water meter readings and servicing; (ii) water and sewer line maintenance; (iii) water well operation and distribution, but not treatment; (iv) wastewater treatment and collection; and (v) the Facilities.

31. "Repairs" means those non-routine/non-repetitive activities required for operational continuity, safety and performance generally due to failure or to avert a failure of the equipment, sewer, vehicles or Facilities or some component thereof.

32. "Service Orders" shall mean those emergency response calls which are received by the AUTHORITY during normal business hours or by AUTHORITY's designated agent (at this time, the Mustang Police Department) after normal business hours, which such calls describe ongoing conditions representing a threat to CITY and/or AUTHORITY property, or the safety or well-being of residents of the CITY.

33. "Sewer Use Regulation" shall mean the CITY's applicable ordinance, order or regulation, if any, as amended from time to time during the term of this Agreement, which establishes the regulatory requirements for persons discharging wastewater to the CITY's sewer system for delivery to the wastewater Facilities.

34. "Unforeseen Circumstances" means any event or condition which has an effect on the rights or obligations of the parties under this Agreement, or upon the Facilities, which is beyond
the reasonable control of the party relying thereon and constitutes a justification for a delay in or non-performance of or increased cost of performance of an action required by this Agreement, including but not limited to (i) an act of God, landslide, lightning, earthquake, tornado, fire, explosion, flood, failure to possess sufficient property rights, acts of the public enemy, war, blockade, sabotage, insurrection, riot or civil disturbance, (ii) preliminary or final order of any local, province, administrative agency or governmental body of competent jurisdiction, (iii) any change in law, regulation, rule, requirement, interpretation or statute adopted, promulgated, issued or otherwise specifically modified or changed by any local, province or governmental body, (iv) labor disputes, strikes, work slowdowns or work stoppages, but excluding labor disputes, strikes, work slowdowns or work stoppages by employees of CONTRACTOR; and (v) loss of or inability to obtain service from a utility necessary to furnish power for the operation and maintenance of the Facilities.
APPENDIX B - FACILITIES AND FACILITIES DESCRIPTION

Facilities Description. The Facilities shall include the performance of services by CONTRACTOR in connection with the operation, maintenance and management of all land, buildings, equipment, vehicles and Facilities described below.

Method of Providing Services. The manner in which the services which constitute the Facilities will be provided are described in the technical proposal submitted by CONTRACTOR to AUTHORITY (Appendix F, "Copy of CONTRACTOR’ Technical Proposal for the Facilities"). Copies of the technical proposal are incorporated herein by reference (excluding proposal for video of wastewater sewer line, with associated equipment and labor).

AUTHORITY and/or CITY Directives/Additional Services. AUTHORITY and/or CITY shall not have the authority to direct the services to be performed hereunder. AUTHORITY may expand the scope of the services to be provided by CONTRACTOR hereunder; such direction shall be deemed to be an addition to the Scope of Services provided in this Agreement and CONTRACTOR shall be compensated for such addition to the scope of services provided herein, in the manner provided in Subsection 2.15 hereinabove.

Facilities Description. The wastewater treatment plant is located in Canadian County in Mustang, OK at 520 S.W. 59th Street. The plant has a design capacity of 3.0 MGD and a maximum flow of 3.3 MGD. CONTRACTOR agrees to provide the services necessary for the management, operation and maintenance of the following:

- Flow I Storm Water Equalization Basin and Aerators
- Mechanical Bar Screen and Wet Well
- Grit Removal
- SBR retrofit with diffused aeration and mixing
- Aerobic digester
- WAS holding tank
- Gravity Belt Thickener
- Filter Belt Press and Belt Press Building, Belt Press Sludge Feed holding Tank and Auger
- Decant Equalization Basin
- Decant Line to South Canadian River
- South Canadian Outfall

1.2.2 Wet Weather Flow and Diversion
Excess flow may be diverted to the Flow I Storm Water Flow Equalization Basin (FEB), which has a capacity of 7.55 MG. The FEB contains five floating aerators.
1.2.3 Grit Removal
The Grit Removal system receives flow from the Head Works Wet Well Pumps. Grit is separated in two stainless steel vortex Grit removal chambers, (One rated at 4.0 MGD and one rated at 2.5 MGD) and then collected into a grit classifier equipped with a dewatering screw that dumps into dumpsters for disposal. De-gritted Wastewater flows directly from the grit chambers into the pipe gallery located in the basement of the Control Building and thence into SBR # 1 and SBR #2.

1.2.4 Sequencing Batch Reactors
The WWTP has two square SBR basins that are approximately 106-ft square with a 12.5 ft full water depth, resulting in a volume of about 1.0 million gallons each. The basins are equipped with fixed-floor fine bubble aeration, 4 floating mixers, decanters, submersible sludge pumps, and influent piping. Additionally, level sensors, pressure transducers, and dissolved oxygen meters are integrated with a programmable logic controller for enhanced process control. Diffused air is provided by positive displacement blowers equipped with VFDs. Sludge may be wasted from the SBRs directly into the Aerobic Digester or into the WAS holding tank prior to thickening by the Gravity Belt Thickener.

1.2.5 Decant Equalization Basin and Effluent Auto Sampling
Effluent from the SBRs decants into the Decant Equalization Basin (DE Basin) and ultimately the South Canadian River.

1.2.6 WAS Holding Tank
Waste Sludge from the SBRs is pumped into a 220,675-gal sludge holding tank, which is sized to store more than three days of sludge production under maximum month conditions of 2.8 MGD. The sludge is mixed using a vertical turbine mixer. A pump well located adjacent to the holding tank houses two submerged centrifugal pumps that feed the sludge to either the Gravity Belt Thickener (GBT) or the Aerobic Digester. A decant manifold is integrated into the holding tank.

1.2.7 WAS Thickening
The thickening process is carried out by a gravity belt thickener located in the new solids equipment building.

1.2.8 Aerobic Digestion
A progressive cavity pump feeds thickened sludge from the GBT to the Aerobic Digester. The Aerobic Digester can also receive sludge from the WAS holding tank. The digester is fitted with the same type of fixed-floor diffusers used in the SBRs. Air is supplied by a positive displacement blower. Four floating mixers are also located in the digester. Supernatant may be returned to the head works through a telescoping valve. Digested sludge is pumped to the Dewatering Holding Tank by progressive cavity pumps located in the Control Building Basement.
1.2.9 Sludge Dewatering Equipment
Digested sludge pumped into the Dewatering Holding Pond is then pumped onto the Filter Belt Press. This device utilizes a polymer feed system and two converging belts to further dewater the sludge.

1.2.10 Potable Water Treatment Facilities
The potable water treatment system consists of eleven deep water wells located in the Oklahoma City/Moore area. Of these eleven wells, only ten are active and in use. Additionally, there are three booster stations and three water storage tanks.

1.2.11 Potable Water Wells
Each well is equipped with a variable frequency drive and a programmable logic controller to transmit information to the SCADA computer, located in the control room of the wastewater treatment plant. The wells pump to a collective line that runs to the "Rockwell Booster Station".

1.2.12 Rockwell Booster Station
The Rockwell booster station is located at SW 119th and Rockwell in Oklahoma City. This station houses two 400 HP pumps equipped with VFD's. The information collected in the PLC is transmitted to the SCADA computer, located in the control room of the wastewater treatment plant.

1.2.13 County Line Tower
County Line Tower is located at SW 83rd and County Line Rd. in Mustang. The water pumped from the Rockwell booster station is chlorinated before entering the county line storage tower. The chlorine feed system consists of two 150 lb chlorine cylinders with auto switching regulators. The storage tank will hold approximately 1.4 MG of water. The water from here flows to the 74th booster station where it is pumped into the distribution system. There is also the option to purchase water from Oklahoma City at this location. The tower level, valve status, and chlorine alarm are transmitted to the SCADA computer.

1.2.14 74th Booster Station
The 74th Street Booster Station is located 1/4 mile west of County Line Rd on SH 152. Chlorinated water from the county line tower is pumped into the distribution system at this point. This station houses two 150 HP pumps equipped with VFD's. The drive is ramped up or down depending on the tower levels. The maximum flow of this station is around 2500 GPM. There is also a bypass line that was constructed around this station to allow an additional 1300 GPM.

1.2.15 59th Booster Station
59th Booster Station is located 1/4 mile west of County Line Rd on SW 59th St in Mustang. This station is the normal buy point from Oklahoma City. The Authority is contracted to buy 250,000 gallons per day, however this will vary depending on season/demand. This station houses two 150 HP pumps equipped with VFD's.
1.2.16 Mustang Tower
Mustang tower is located 1/4 mile west of Mustang Rd on SH 152. This tower will hold approximately 1.2 MG of water at full water level. This tower is primarily for pressure and storage.

1.2.17 Clearsprings Tower
Clearsprings tower is located at SH 152 and Clearsprings Rd. This tower will hold approximately 0.58 MG. It has a 75 HP pump that pumps out of it into the distribution system. This tower is primarily used for fire suppression but will be exercised daily to get proper turnover.

1.2.18 Collection System
The collection system of Mustang consists of 6 sewage lift stations, 4 of which have standby generators.

1.2.19 Lift Station #1
Lift station #1 is located at 59th and Morgan Rd. It is a dry well lift station with two 40 HP centrifugal pumps located in the "Cantex" drywell. This lift station has a 60kW diesel powered standby generator. This lift station is also equipped with a manual bar screen.

1.2.20 Lift Station #2
Lift station #2 is located at 59th and Morgan Rd. It is a wet well lift station with three 25 HP submersible pumps. The lift station is equipped with a diesel powered 60 kW standby generator.

1.2.21 Lift Station #3
Lift Station #3 is located off Cedar Ridge Dr. 114 Mile west of Clearsprings Rd. It is a dry well lift station with two 40 HP centrifugal pumps located in the "Cantex" drywell. This lift station has a 60kW diesel powered standby generator. This lift station also contains a second wet well that houses two 3HP submersible pumps that pump into the wet well of the drywell pumps.

1.2.22 Lift Station #4
Lift Station #4 is located 1/4 mile west of Sara Rd. on Hwy 152. It is a wet well lift station equipped with 2-5HP submersible pumps. The lift station is equipped with a natural gas powered 50 kW standby generator.

1.2.23 Lift Station #5
Lift station #5 is located at Spitler Drive and Hwy 152. It is a wet well lift station that houses two 3HP submersible pumps.

1.2.24 Lift Station #6
Lift station #6 is located 1/4 mile south of SH 152 on Czech Hall Rd. It is a wet well lift station that houses two 3 HP submersible pumps.
DESCRIPTION OF FACILITIES - WATER

CONTRACTOR will operate and maintain the water system effluent to meet the requirements of ODEQ permit number OK2000910 to include all required sampling and monitoring.

Water Wells, Transmission Pumping, and Storage
The eleven (11) water wells, located in Oklahoma County, in Oklahoma City, OK have a design capacity of 3.5 MGD. Currently the wells pump an average daily flow of 2.2 MGD and the CITY purchases at least an equal part from the City of Oklahoma City. The following describes the processes at the plant:

A. Water Wells - The eleven (11) water wells average 160 to 210 GPM each. They are connected to a common transmission line that delivers water to the CITY limits for distribution. CONTRACTOR shall maintain all transmission and distribution lines.

B. Water Chlorination - The water pumped from the Rockwell booster station is chlorinated before entering the county line storage tower. The chlorine feed system consists of two 150 lb. chlorine cylinders with auto switching regulators.

C. Oklahoma City Blending/Pumping Station - The CITY has three booster pumps located at OKC Booster Station 22. These pumps are utilized to purchase City of Oklahoma City water. The maintenance of the station and the pump is contracted with The City of Oklahoma City. The OWNER's Telemetry system and OWNER Meter maintenance falls within the scope of this contract.

D. Water Towers and Booster Station - The CITY has three in-service water towers within the CITY limits. The CITY has three booster stations. These are used to increase pressure to the water system.

E. Annual inspection of cathodic protection of water towers by Third Party Company.
C.1 CONTRACTOR will operate so that effluent will meet the requirement of OPDES permit number OK0028584 to meet the correct permit requirements; a full and complete copy of which is adopted by reference herein as of the date hereof. CONTRACTOR shall be responsible for meeting the effluent quality requirements of the Permit unless one or more of the following occurs: (1) the Facilities influent does not contain Adequate Nutrients to support operation of Facilities' biological processes and/or contains Abnormal Substances or Biologically Toxic Substances which cannot be removed by the existing process and Facilities; (2) dischargers into OWNER's sewer system violate any or all regulations as stated in OWNER's Industrial Water and Sewer Ordinance(s) or as required by law; (3) the flow or influent BODs and/or suspended solids exceeds the Facilities design parameters which are 3.0 million gallons of flow per day, with a maximum of 5.02 MGD, 5,000 pounds of BODs per day, 5,000 pounds of suspended solids, 500 pounds per day of ammonia and a daily peaking factor of <3 times flow; (4) if the Facilities is inoperable or can operate only at a reduced capacity on account of construction activities, fire, flood, adverse weather conditions, labor disputes or other causes beyond CONTRACTOR's control.

C.2 In the event any one of the Facilities influent characteristics, suspended solids, BOD5 or flow, exceeds the design parameters stated above, CONTRACTOR shall return the plant effluent to the characteristics required by OPDES in accordance with the following schedule after Facilities influent characteristics return to within design parameters.

<table>
<thead>
<tr>
<th>Characteristics Exceeding Design Parameters By</th>
<th>Recovery Period Maximum</th>
</tr>
</thead>
<tbody>
<tr>
<td>10% or Less</td>
<td>5 days</td>
</tr>
<tr>
<td>Above 10%, but Less than 20%</td>
<td>10 days</td>
</tr>
<tr>
<td>20% and Above</td>
<td>30 days</td>
</tr>
</tbody>
</table>

Notwithstanding the above schedule, if the failure to meet effluent quality limitations is caused by the presence of Abnormal Substances or Biologically Toxic Substances or the lack of Adequate Nutrients in the influent, then CONTRACTOR will have a thirty (30) day recovery period after the influent is free from said substances or contains Adequate Nutrients.

C.3 A portion of the Annual Fee for services under this Agreement is based upon the OPDES permit number OK0028584. The permit reflects the design criteria for the facility. Any change of ten percent (10%) or more in any of these characteristics, based upon a twelve (12) month moving average, will constitute a Change in Scope (See Article 7).
APPENDIX D-INSURANCE COVERAGE

CONTRACTOR Insurance

Comprehensive general liability insurance naming AUTHORITY and the CITY as additional insured for bodily injury and/or property damage in an amount not less than Five Million ($5,000,000) Dollars. Insurance provided by CONTRACTOR shall be the primary insurance coverage for the parties hereunder.

INSURANCE COVERAGE

CONTRACTOR SHALL MAINTAIN:

1. Statutory workers' compensation for all of CONTRACTOR's employees at the Facilities as required by the State of Oklahoma.

2. Commercial General Liability insurance, insuring CONTRACTOR's negligence, in an amount not less than $1,000,000 each occurrence and $4,000,000 aggregate for bodily injury and/or property damage.

3. Business Automobile Liability insurance, insuring owned, non-owned and hire automobiles, including vehicles owned by OWNER and operated by CONTRACTOR under this Agreement, in an amount not less than $1,000,000 combined single limit.

CONTRACTOR will provide at least thirty (30) days' notice of the cancellation of any policy it is required to maintain under this Agreement. CONTRACTOR may self-insure reasonable deductible amounts under the policies it is required to maintain to the extent permitted by law. CONTRACTOR shall include OWNER as additional insured on the coverages, excluding workers' compensation, required to be maintained hereby and shall contain a waiver of subrogation in favor of OWNER as respects any claims covered or which should have been covered by valid and collectible insurance including any deductibles or self-insurance maintained thereunder.
APPENDIX E- PERFORMANCE BOND

The Performance Bond to be provided pursuant to Section 8.4 of the Agreement shall be (i) in the amount of the first year's Annual Fee, (ii) issued in accordance with 61 O.S. §1 and requiring any action for recovery under the bond to be commenced within the one (1) year period following the date on which the last date on which the services provided by this Agreement are furnished as provided in 61 O.S. §2, and (iii) issued for a one (1) year period, to be replaced by CONTRACTOR prior to the expiration thereof with a bond bearing substantially the same terms and conditions for each Contract Year.
PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That ________________________________,
as Principal, and ________________________________,
a Corporation organized under the laws of the State of ________________________________,
and authorized to transact business in the State of Oklahoma, as Surety, are held and firmly bound
unto ________________________________,
in the penal sum of ________________________________ Dollars ($ ____________)
in lawful money of the United States of America, such sum being equal to the contract price for
the payment of which, well and truly to be made, we bind ourselves and each of us, our heirs,
executors, administrators, trustees, successors, and assigns, jointly and severally, firmly by these
presents.

DATED this ____________ day of ________________________________, 20__________.

The condition of this obligation is such that:

WHEREAS, said Principal entered into a written Contract with MUSTANG IMPROVEMENT
AUTHORITY, dated ________________________________, 20__________, for:

OPERATION, MAINTENANCE, AND MANAGEMENT OF THE WATER AND WASTE
WATER TREATMENT FACILITIES
FOR THE CITY OF MUSTANG

all in compliance with the specifications therefore, made a part of said Contract and on file in the
office of the City Hall, Mustang, Oklahoma.

NOW, THEREFORE, if said Principal shall, in all particulars, will truly and faithfully perform and
abide by said Contract and each and every covenant, condition, and part thereof and shall fulfill
all obligations resting upon said Principal by the terms of said Contract and said specifications;
and if said Principal shall promptly pay, or cause to be paid, all labor materials and/or repairs and
all bills for labor performed on said work, whether by subcontract or otherwise; and if said Principal
shall protect and save harmless said Mustang Improvement Authority from all loss, damage, and
expense to life or property suffered or sustained by any person, firm, or corporation caused by
said Principal or his or its agents, servants, or employees in the construction of said work, or by
or in consequence of any negligence, carelessness or misconduct in guarding and protecting the
same, or from any act or omission of said Principal or his or its agents, servants, or employees,
and if said Principal shall protect and save Mustang Improvement Authority harmless from all suits
and claims in infringement or alleged infringement or patent rights or processes, then this
obligation shall be null and void, otherwise to be and remain in full force and effect.
It is further expressly agreed and understood by the parties hereto that no changes or alterations in said Contract and no deviations from the plan or mode of procedure herein fixed shall have the effect of releasing the sureties, or any of them, from the obligations of this Bond.

IN WITNESS WHEREOF, the said Principal has caused these presents to be executed in its name and its corporate seal to be hereunto affixed by its duly authorized officers, and said Surety has caused these presents to be executed in its name and its corporate seal to be hereunto affixed by its attorney-in-fact, duly authorized so to do, the day and year first above written.

ATTEST:                      PRINCIPAL:

_____________________________                      _______________________________

BY: _______________________________

Surety:                      Address of Surety or Agent:

_____________________________

By: _______________________________

Attorney-in-Fact            Telephone No. _______________________________

APPROVED as to form and legality this _______ day of ______________________, 20______.

_____________________________

CITY ATTORNEY

APPROVED by the Mustang Improvement Authority this _____________ day of ______________________, 20_______.

ATTEST:

_____________________________

CITY CLERK                      MAYOR