



Control Number: 44740



Item Number: 18

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APPLICATION MSEC ENTERPRISES,
INC. TO AMEND A CERTIFICATE OF
CONVENIENCE AND NECESSITY IN
MONTGOMERY COUNTY

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PUBLIC UTILITY COMMISSION
PUBLIC UTILITY COMMISSION
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OF TEXAS

**APPLICANT MSEC ENTERPRISES, INC.'S ANSWERS
TO COMMISSION STAFF'S SECOND REQUEST FOR INFORMATION
TO MSEC ENTERPRISES, INC.
QUESTION NOS. STAFF 2-1 THROUGH STAFF 2-5**

Applicant MSEC Enterprises, Inc., by and through its attorney of record, John M. Fultz, files Applicant's Answers to Commission Staff's Second Request for Information, Question Nos. Staff 2-1 through Staff 2-5, which are attached hereto. The Request was filed June 6, 2016, and by agreement with Staff, are to be filed by July 15, 2016. Applicant would show that these Answers to Staff's Second Request for Information are timely filed. The Answers are proffered by Troy Morris, Applicant's First Vice-President.

Dated: July 13, 2016

Respectfully submitted,

FULTZ & FULTZ, PLLC

By: 

John M. Fultz

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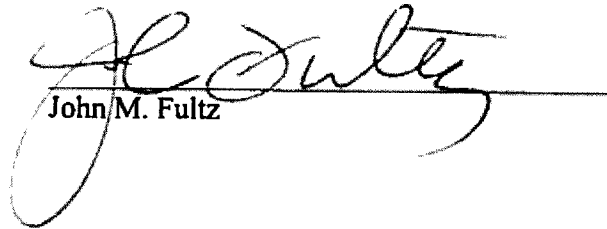
Attorney for Applicant

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CERTIFICATE OF SERVICE

I, John M. Fultz, attorney of record for Applicant MSEC Enterprises, Inc., certify that a copy of this document was served on all parties of record in this proceeding on July 13, 2016, in the following manner:

Mr. Jason Haas
Attorney-Legal Division
Public Utility Commission of Texas
Via fax: (512) 936-7268 (facsimile)



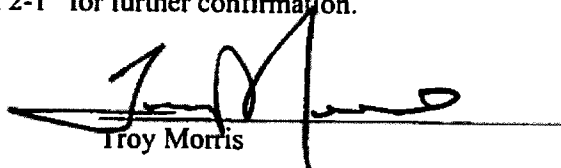
John M. Fultz

DOCKET NO. 44740

**ANSWERS TO COMMISSION STAFF'S SECOND REQUEST FOR INFORMATION
TO MSEC ENTERPRISES, INC.
QUESTION NOS. STAFF 2-1 THROUGH STAFF 2-5**

- Staff 2-1 Please provide a copy of the contract and service agreement between MSEC and MISD for the wastewater plant and reuse plant referred in MSEC's response to Staff RFI 1-1.
- Answer 2.1: SEE ATTACHED EXHIBIT "A-2-1": UTILITY SERVICE FACILITY FUNDING AND CONSTRUCTION CONTRACT AND UTILITY SERVICE AGREEMENT by and between Applicant and Montgomery Independent School District dated 2016 (the "Contract")
- Staff 2-2 Please provide MSEC's Audited Financial Statements for FY2015 or unaudited financial statements if audited statements are not available.
- Answer 2.2: SEE ATTACHED EXHIBIT "A- 2-2": AUDITED FINANCIAL STATEMENT FY2015
- Staff 2-3 Please provide an updated debt service schedule for FY 2015 as provided in Exhibit A-2 for FY 2014 in MSEC's filing of July 13, 2015.
- Answer 2.3: SEE ATTACHED EXHIBIT "A-2-3": UPDATED DEBT SERVICE SCHEDULE FY2015
- Staff 2-4 Please provide projected 5-year financial data as requested in Staff RFI 1-1.
- Answer 2.4: SEE ATTACHED EXHIBIT "A-2-4": 5-Year Financial Data including projected profit and loss statements, cash flow worksheets, and balance sheets for each of the first five years of operation.
- Staff 2-5: Please provide loan approval or approved funding documentation for an amount significant enough to purchase and install the new wastewater system and distribution lines per the engineers estimate provided.
- Answer 2.5: The Contract provides for the funding of the cost of the construction of the sewer plant and water plant by the Montgomery Independent School District in accordance with the terms set forth in the attached Contract. Please refer to the attached Contract Exhibit "A 2-1" for further confirmation.

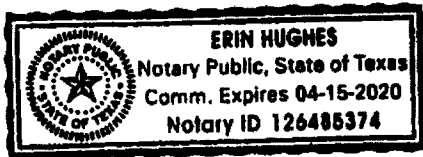
Dated: July 12, 2016


Troy Morris

JURAT

The foregoing Answers to Commission Staff's Second Request for Information to MSEC Enterprises, Inc., Question Nos. Staff 2-1 through Staff 2-5, were:

SWORN TO and SUBSCRIBED BEFORE ME the undersigned authority on this 12 day of July, 2016, by Troy Morris.




Notary Public, State of Texas

EXHIBIT "A-2-1"

MSEC ENTERPRISES, INC.

UTILITY SERVICE FACILITY FUNDING AND
CONSTRUCTION CONTRACT AND
UTILITY SERVICE AGREEMENT
by and between Applicant and
Montgomery Independent School District dated 2016

UTILITY SERVICE FACILITY
FUNDING AND CONSTRUCTION CONTRACT
AND UTILITY SERVICE AGREEMENT
BY AND BETWEEN
MONTGOMERY INDEPENDENT SCHOOL DISTRICT
AND
MSEC ENTERPRISES, INC.
_____, 2016

MONTGOMERY INDEPENDENT SCHOOL DISTRICT (the "DISTRICT") AND MSEC ENTERPRISES, INC., A TEXAS CORPORATION ("MSEC"), ENTER INTO THE FOLLOWING AGREEMENT ("CONTRACT") PROVIDING FOR UTILITY SERVICE FACILITY FUNDING AND CONSTRUCTION AND FOR WATER AND/OR WASTEWATER SERVICE TO THE DISTRICT SCHOOL EXPANSION TO BE CONSTRUCTED IN THE RALEIGH ROGERS SURVEY, ABSTRACT NO. 33, MONTGOMERY COUNTY, TEXAS:

BACKGROUND

A. MSEC

1. MSEC Enterprises, Inc. ("MSEC") is a retail water and sewer utility company providing retail water and sewer service as defined by Section 13.002, WATER CODE, under the authority of and within the area described under Water Certificate of Convenience and Necessity ("Water CCN") No. 12887 in Grimes and Montgomery Counties, Texas, and Sewer Certificate of Convenience and Necessity ("Sewer CCN") No. 20984 in Montgomery County, Texas.

B. MISD

1. Montgomery Independent School District is a public school district and political subdivision organized under the Texas Education Code located in Montgomery County, Texas (the "District"). The District requested MSEC to provide water and sewer service to the District for the students and faculty at the District Expansion. MISD will be treated as a Developer per MSEC's applicable Tariff provisions.

C. District Expansion

1. The District Expansion includes plans to construct elementary, junior high, and senior high school facilities and supporting school amenities including athletic fields, play grounds, other outbuildings and improvements to serve an estimated student and staff population of 5,500.
2. The District acquired the District Real Property in Montgomery County, Texas, described below, lying north and west of FM 2854 and Keenan Cut-off Road,

approximately 3 miles west of MSEC's existing wastewater plant at Lone Star Elementary School. The District Real Property is generally described as:

TRACT 1: 127.462 acres of land, more or less, out of the Raleigh Rogers Survey, Abstract No. 33, Montgomery County, Texas; and,

TRACT 2: 63.45 acres of land, more or less, out of the Raleigh Rogers Survey, Abstract No. 33, Montgomery County, Texas.

3. Tract 1 has no water or sewer service nor are there existing utilities in close proximity with it. Tract 2 has no sewer service and no such service is in close proximity.
4. The District requires utility services to serve the students and faculty at the District Expansion.
5. The District requested MSEC to provide water and sewer service for the District Expansion in 2011 and agreed to pay the costs to construct and operate Water and Wastewater Service Facilities.
6. Water Service Facilities for Tract 1 requires the construction of a water plant and water distribution system with fire-flow capacity and Wastewater Service Facilities for Tract 1 requires construction of a wastewater plant, wastewater collection system, water reuse plant, and irrigation system within, on, and/or near the District Real Property.
7. Water Service Facilities for Tract 2 will be provided by Keenan Water Supply Corporation and Wastewater Service for Tract 2 will be provided by MSEC from the Wastewater Service Facilities serving Tract 1.
8. District and MSEC entered into a Memorandum of Understanding dated July 25, 2011, revised November 17, 2011, and December 12, 2011 (the "MOU").
9. Subsequent to the MOU, the District conveyed 3.548 acres of land out of Tract 1 to MSEC for MSEC's Sewer Plant Site and 3.50 acres adjacent to Tract 1 for MSEC's Water Plant Site both by Deed dated April 28, 2014, filed for record under Montgomery County Clerk's File No. 2014046987.
10. In October of 2014, the PUC became the governmental agency with regulatory power over the issuance of Water and Sewer CCN's and Tariffs.
11. MSEC filed an application to amend its Water CCN 12887 to include Tract 1 within MSEC's CCN, which application was approved by TCEQ and MSEC now holds the Water CCN for Tract 1.

12. MSEC filed an application for a Wastewater Discharge Permit pending before the TCEQ.
13. MSEC filed an application for an amendment to its Sewer CCN 20984 pending before the PUC.
14. The District Expansion plans were revised by the District to include a reuse system to provide irrigation water for the District Expansion.
15. The District held a Bond Election In May 2015 and the voters approved the District Expansion and the bonded indebtedness required to fund the District Expansion.
16. District and Utility acknowledge their intentions to fully comply with the provisions of Chapter 13 of the Texas Water Code and administrative rules and regulations of the PUC and TCEQ concerning the subject matter of this Contract.
17. The parties knowingly enter into this Contract conditioned upon: (1) TCEQ approval of MSEC's application for a wastewater discharge permit; (2) TCEQ approval of the engineering plans and specifications for the Systems; (3) PUC approval of an amendment to MSEC's Sewer CCN 20984 to include the District Real Property; (4) PUC approval of the agreement between MSEC and the District to provide and receive sewer service under a contracted rate as part of MSEC's amended Sewer Tariff; and (5) any and all necessary federal, state, or local approvals.

DEFINITIONS:

Agreement: This Funding and Facility Construction Contract and Utility Service Agreement and attachments.

Capacity: The maximum limit of well pumpage, storage, delivery, and treatment of utility production.

Capacity Reservation: The water capacity and/or sewer treatment capacity of the Utility Service Facilities generating Capacity in excess of the District Capacity to be reserved by MSEC.

Contract: This Funding and Facility Construction Contract and Utility Service Agreement and attachments.

Contract Rate: The Utility Service Contract Rate agreed upon by the parties for the provision of Water Service, Wastewater Service, and/or Reuse Service.

Contribution in Aid of Construction ("CAIC"): The amounts and types of contribution required of the District to fund the costs of the Utility Service Facilities sufficient to furnish the District Expansion with all facilities necessary to provide for reasonable District demand requirements and to comply with TCEQ minimum design criteria for facilities used in the production, transmission, pumping, or treatment of water and/or wastewater, or TCEQ minimum requirements, including the contribution of land, distribution and collection lines, and easements within which the lines are located, exclusive of the Real Property Contribution Credit, intending to include all cost of constructing the Utility Service Facilities agreed upon in this Contract.

District Capacity: The Capacity requirements of the District to serve the ultimate users of the Utility Service at the District Expansion calculated by the MSEC Engineer in Engineer's Water & Wastewater Capacity Calculations.

District Contractor: A general contractor engaged and paid by the District to construct the District Design Facilities.

District Design: The design, plans, and specifications prepared by the District Engineer for the construction of the District Design Facilities.

District Design Facilities: The Utility Service Facilities to be designed, financed, and constructed by the District, the general location of which is depicted on the Preliminary Drawing, and including the internal Water Distribution System, Irrigation System, and Wastewater Collection System, exclusive of the (i) Lift Station, (ii) Force Main, and (iii) Gravity Sewer Line.

District Engineer: A licensed engineer engaged and paid by the District to design and prepare plans and specifications for the District Design Facilities.

District Expansion: Elementary, junior high, and senior high school facilities and supporting school amenities including athletic fields, play grounds, other outbuilding and improvements, planned to be constructed on the District Real Property.

District Real Property: The real property described on page 2 of this Contract, less that portion conveyed to MSEC for the Wastewater Plant.

Easements: Access and utility easements (and/or licenses where required) depicted on the Preliminary Drawing to be conveyed by the District on forms provided by MSEC and jointly agreed upon by the District and MSEC.

Effluent: Liquid discharged from a wastewater treatment plant.

Final Completion: The date on which all Utility Service Facilities have been constructed, capable of operation, and approved by TCEQ, or the governmental agency with authority to do so, for operation and delivery of Utility Service to the District.

Force Main: A wastewater gathering line connecting Tract 1 and Tract 2 of the District Real Property and the Lift Station to the Gravity Sewer Line, consisting of pumps, pipe, valves, electric and electronic and other equipment to be located the Easements.

Gravity Sewer Line: A wastewater gathering line connecting the Force Main to the Wastewater Plant consisting of pumps, pipe, manholes, electric and electronic and other equipment to be located within the Easements.

Irrigation System: Network of irrigation pipes, valves, fittings, electric panel, and other equipment required to transport and distribute the Reuse Water from the Wastewater Plant to locations designated by the District.

Lift Station: A wastewater lifting station consisting of pumps, pipe, valves, housing, electric and electronic and other equipment to be located upon the Lift Station Site.

Lift Station Site: a 60 X 60 site depicted on the Preliminary Drawing as Lift Station to be conveyed by the District to MSEC by deed for the location of the Lift Station.

MSEC Contractor: A general contractor engaged and paid by MSEC to construct the MSEC Design Facilities.

MSEC Engineer: McClure & Browne, Engineers, a licensed engineering firm engaged and paid by MSEC to generate the Utility Service Facilities Design, or any successor.

MSEC Design: The design, plans and specifications prepared by the MSEC Engineer for the construction of the MSEC Design Facilities.

MSEC Design Facilities: The Utility Service Facilities to be designed, financed, and constructed by MSEC the general location of which is depicted the Preliminary Drawing, including the Water Plant, Wastewater Plant, Lift Station, Force Main, Gravity Sewer Line, and Reuse Plant.

MSEC Real Property: The real property described in paragraph 9 on page 3 of this Contract.

Parties: The District and MSEC, collectively.

Preliminary Drawing: The drawing depicting the general location of the proposed Utility Service Facilities prepared by the MEC Engineer attached hereto as **Exhibit "A"**.

PUC: The Public Utility Commission of Texas.

Real Property Contribution Credit: \$112,768.00 having been agreed upon by the Parties to be credited against the funding required of the District for the Utility Service Facilities.

Reuse Plant: Reuse facilities located on the Wastewater Plant Site including but not limited to pipes, valves, meters, pumps, storage tanks, electric panels, electronic controls buildings, electric and electronic controls, testing equipment, and other equipment used in the production, storage, and preparation of Reuse Water for distribution/irrigation purposes.

Reuse Service: Production, treatment, and delivery of Reuse Water at a master meter for irrigation purposes.

Reuse Water: Non-potable water produced by treating Effluent from a wastewater plant to a level allowing human contact.

Substantial Completion: The date on which both the Water Service Facilities and Wastewater Service Facilities receive approval from TCEQ to commence operations and provide Utility Service to the District Expansion.

Tariff: MSEC's Water Tariff or Sewer Tariff filed with and approved by PUC or the proper governmental agency having jurisdiction thereof.

TCEQ: The Texas Commission on Environmental Quality.

Utility Service: The provision of potable water service and wastewater service, including the production and delivery of Reuse Water.

Utility Service Agreement: The terms, conditions, and provisions of the Water Service Agreement and Wastewater Service Agreement contained as a part of MSEC's approved Tariff, as may be amended, and Reuse Service Agreement, to be to be agreed upon by the Parties, together with applicable terms of this Contract. The form of the Water Service Agreement is attached as Exhibit "C" and the Wastewater Service Agreement is attached hereto as Exhibit "D".

Utility Service Facilities: Water Service Facilities, Wastewater Service Facilities, and Reuse Plant dedicated to meet the water production (with fire flow) capacity, water storage capacity, irrigation use, and sewer treatment requirements attributable to the District Expansion.

Water and Wastewater Capacity Calculations: The calculations prepared by the MSEC Engineer with input from District Engineer based upon information provided by the District and the applicable requirements of TCEQ and MSEC as set forth on the Exhibit "B" attached hereto.

Water Distribution System: The distribution pipes, lines, meters, valves, electric panels, electronic controls, and other equipment required to deliver potable water from the Water Plant to the ultimate user.

Water Plant: All equipment and facilities required to produce potable water including water wells, pump, pipes, storage tanks, pressure tanks, valves, meters, electronics, electrical, other equipment and outbuildings.

Water Plant Site: 3.50 acres of land conveyed to MSEC by the District for the location of the Water Plant and described on page 3 of this Contract.

Water Service: The production, storage, treatment and distribution of potable water from and the operation and maintenance of Water Service Facilities.

Water Service Facilities: Potable water plant consisting of but not limited to buildings, electric and electronic controls, well, motors, pumps, storage, pipes, valves, meters, testing equipment, and water distribution system including without limitation distribution and transmission pipe, pumps, valves, connections and other associated equipment.

Wastewater Collection System: Collection pipes, lines, valves, controls, pumps, and other equipment required to carry wastewater generated within the District Expansion to the Wastewater Water.

Wastewater Plant: All equipment and facilities required to produce potable water including water wells, pump, pipes, storage tanks, pressure tanks, valves, meters, electronics, electrical, other equipment and outbuildings.

Wastewater Plant Site: 3.548 acres of land conveyed to MSEC by the District for the Wastewater Plant and Reuse Plant and described on page 3 of this Contract.

Wastewater Service: The collection and treatment of wastewater and the operation and maintenance of Wastewater Service Facilities.

Wastewater Service Facilities: Wastewater Plant and Wastewater Collection System consisting of but not limited to buildings, electric and electronic controls, motors, pumps, storage, pipes, valves, testing equipment, and sewer collection system including without limitation pipes, pumps, valves, lift station, force-mains, gravity flow lines, connections, and other associated equipment.

PARTIES AGREEMENT

NOW THEREFORE, for and in consideration of the premises and the mutual agreements and benefits set forth herein, District and MSEC agree as follows:

I. PURPOSE

The purpose of this Contract is to set forth the terms under which Utility Service is to be provided to and within the District Expansion, including provisions for the District to fund the construction of the Water, Wastewater and Reuse Water Service Facilities, shared design and coordinated construction of those facilities by the District and MSEC to provide District Water Capacity and Wastewater Capacity, collectively the District Capacity, to serve the District Expansion, and provide fire flow and Reuse Service.

II. PARTIES AGREEMENT TO FUND, DESIGN, AND CONSTRUCT UTILITY SERVICE FACILITIES:

District requests MSEC to collaboratively design and construct Utility Service Facilities to provide water and wastewater service meeting the District Capacity taking into account fire flow requirements together with production of treated effluent for irrigation purposes. District agrees to provide MSEC with funds and other contribution in aid of construction with which the MSEC Design Facilities are to be constructed. MSEC, for and in consideration of the Contribution in Aid of Construction, agreement and undertakings by District, and other good and valuable consideration hereinafter set forth, agrees to:

1. provide engineering design, plans, specifications and capacity calculations to meet the Capacity requirements of the District with input from the District; and,
2. construct, coordinate, and/or supervise the construction of the Utility Service Facilities to provide the Utility Service and District Capacity required to serve the District Expansion with input from the District.

MSEC acts as its own general contractor in the construction of the MSEC Design Facilities and will purchase material through a contracted single-source vendor.

III. CONTRIBUTION IN AID OF CONSTRUCTION AND COMMITMENT:

1. CAIC: The District, in consideration of the agreement and undertakings of MSEC to provide Utility Service meeting at least the District Capacity, agrees to provide CAIC totaling \$3,686,696.00 as set out below to MSEC as allowed under MSEC's Tariff (subject to True-up) as follows:
 - a. Funds sufficient to pay the design and construction costs, including labor and material, of the MSEC Design Facilities;
 - b. The MSEC Real Property; and,
 - c. In-Kind contribution of certain of the District Design Facilities.

2. **Commitment:** District commits to purchase Water Service, Wastewater Service, and Reuse Service from MSEC and agrees to execute, deliver, and perform under the terms of the MSEC Utility Service Agreements agreed upon by the Parties and as may be approved if required by the PUC pursuant to any Tariff provisions as may be amended.
3. **CAIC Construction Funding:**
 - a. **CAIC for MSEC Design Facilities for Water Service:**
 - i. Water Service CAIC: **\$1,355,251.00.**
 - ii. Water Service CAIC includes one-half of the Real Property Credit [$\$1,411,635.00 - \$56,384.00$ ($1/2$ of $\$112,768.00$) = $\$1,355,251.00$];
 - iii. Water Service CAIC is payable as follows: an initial draw of \$203,287.65 payable within thirty (30) days of execution of this Contract. The remaining \$1,151,963.35 shall be paid in monthly draws based on progress of construction. Said monthly draws shall be submitted to the District no later than the 10th of each month and paid by the District within 30 days of receipt and approval.
 - iv. Draws shall be invoiced and the invoices will separate the charges for materials from the charges for skill and labor.
 - b. **CAIC for MSEC Design Facilities for Wastewater Service Facilities:**
 - i. Wastewater Service CAIC: **\$2,218,677.00**
 - ii. Wastewater Service CAIC includes one-half of the Real Property Credit [$\$2,275,061.00 - \$56,384.00$ ($1/2$ of $\$112,768.00$) = $\$2,218,677.00$];
 - iii. Wastewater Service CAIC is payable as follows: an initial draw of \$332,801.55 payable within thirty (30) days of execution of this Contract. The remaining \$1,885,875.45 shall be paid in monthly draws based on progress of construction. Said monthly draws shall be submitted to the District no later than the 10th of each month and paid by the District within 30 days of receipt and approval.
 - iv. Draws shall be invoiced and the invoices will separate the charges for materials from the charges for skill and labor.
 - c. MSEC Engineer will certify in writing the stage of completion of the MSEC Design Facilities at the time of each monthly submittal as described in Section 3.a. and 3.b. of this Agreement will be due and payable and will submit the same to the District and MSEC ("MSEC Engineer Progress Payment Certification") for review.
 - d. District agrees to deliver payment to MSEC at its office in Navasota, Grimes County, Texas, within 30 days of receipt of each of the MSEC Engineer Progress Payment Certifications.

- e. MSEC agrees to construct and install or cause to be constructed and installed the MSEC Design Facilities at a total estimated cost to MSEC of \$3,686,696.00, less the Real Property Credit of \$112,768.00. The term "Construction Costs" shall mean the actual costs incurred by MSEC for the construction of the MSEC Design Facilities excluding sales tax. In addition to the Construction Costs, the District agrees to pay MSEC an administrative fee equal to 5% of the Construction Costs in payment of MSEC's employees' time and labor to oversee such construction (the "Admin Fee"). The Admin Fee will be paid in the same manner as Construction Draws are invoiced and paid.
- f. True-up: MSEC will invoice the District as set forth in Sections 3.a. and 3.b. above. Within 180 days after Final Completion of the Utility Service Facilities, MSEC will review the Construction Costs plus Admin Fee invoiced by MSEC and paid by the District and will "true-up" the difference between the those costs and Admin Fee and the amount paid by the District and provide notice to the District of the true-up with supporting calculations. MSEC will thereafter either (1) refund any excess payment made by the District over actual Construction Costs plus the Admin Fee and Consultant Expenses, or (2) invoice the District for any shortage between what the District has actually paid and the Construction Costs plus Admin Fee actually were. Any refund or payment required to true-up shall be made within 30 days of the date of the notice of the true-up and if disputed, any final resolution. Any good-faith dispute over the True-up shall be resolved by the District and the MSEC Engineers.

IV. PARTIES' DIVISION OF DESIGN AND CONSTRUCTION

The design and construction of the Utility Service Facilities is divided between MSEC and District as set forth below, subject to MSEC's overarching right to supervise, coordinate, and direct the design and construction of the Utility Service Facilities to the satisfaction of MSEC, to the extent allowed by law. Reference is made to the Preliminary Drawing which depicts the general location of the proposed Utility Service Facilities. MSEC and District's obligations are as follows:

A. DESIGN AND CONSTRUCTION OBLIGATIONS:

1. MSEC and District agree to cooperate in the design and construction of the Utility Service Facilities to MSEC's satisfaction.
2. MSEC is granted the right to review and approve the design and construction of the District Design Facilities.
3. MSEC will design and construct the following MSEC Design Facilities:
 - a. Water Service Facilities:

- i. Water Plant, including well, pumps, meters, storage, pressure tanks, electric panels, valves, fittings, pipe, well house, other out buildings, and all water lines within the Water Plant Site;
 - ii. 12" water line within the Water Plant Site to the terminus at the Water Plant east line and the commencement point of the District 12" water line; and,
 - iii. 12" water line eastward from the terminus of the District 12" water line at the intersection with the District 4" water line as shown on the Preliminary Drawing.
 - b. Wastewater Service Facilities:
 - i. Wastewater Plant, consisting of a Sequencing Batch Reactor (SBR) wastewater treatment plant (WWTP), with associated appurtenances, outbuildings, and water and sewer lines within the Wastewater Plant;
 - ii. Lift Station to be constructed by MSEC on the Lift Station Site, which Site is to be conveyed by Deed from the District to MSEC as additional CAIC;
 - iii. Force Main, with associated pumps, valves, fittings, manholes, electrical and electronic connections; and
 - iv. Gravity Sewer Line consisting of pipes, manholes, fittings, electrical and electronic connections.
 - c. Reuse Plant, including treatment facilities, pumps, meters, storage tanks, pressure tanks, valves, fittings, pipe, electric and electronic panels, and associated outbuildings, to be constructed within the Wastewater Plant Site with connection availability at or near the Plant fence.
- 4. District will design and construct the following District Design Facilities:
 - a. 4" and 12" water lines designated as "District lines to be installed" as shown on the Preliminary Drawing;
 - b. Water Distribution System, including all other internal distribution water lines beginning at the meter to be installed by MSEC;
 - c. Wastewater Collection System, including all internal sewer collection lines except the Lift Station, Force Main and Gravity Sewer Line; and,
 - d. Irrigation System.
- 5. MSEC Engineer will design the MSEC Design Facilities and submit the MSEC Design to the District Engineer for review and comment.
- 6. District Engineer will design the District Design Facilities and submit the District Design to the MSEC Engineer for review, comment, approval, and coordination with the MSEC Design.

7. MSEC Engineer will coordinate the District Design and the MSEC Design to provide for the orderly prosecution of the construction of the Utility Service Facilities and will be the on-site Engineer in charge of the coordination of all Utility Service Facilities construction.
8. MSEC will coordinate the design and connection of the MSEC Design Facilities for wastewater collection with the District Design Facilities for sewer collection lines at a manhole as agreed upon by MSEC Engineer and the District Engineer;
9. Upon approval by the MSEC Engineer, the MSEC Engineer and the District Engineer will submit the plans and specifications prepared by each to the TCEQ, Montgomery County, the Texas Department of Health and all other agencies having jurisdiction for review and approval.
10. Upon approval of the plans and specifications by the applicable governing body or bodies, the MSEC Engineer will begin preparation for the commencement of construction.
11. MSEC will take all action, including all work, services and acts that may be necessary in order to fully complete the MSEC Design Facilities and oversee the completion of the District Design Facilities to ensure the Utility Service Facilities meet the requirements in this Contract and are capable of operating in compliance with all rules and regulations of governmental agencies having authority over the construction and operation of the Utility Service Facilities and providing District Capacity.
12. District will take and be responsible for all action, including all work, services and acts that may be necessary in order to fully complete the District Design Facilities are capable of operating in compliance with all rules and regulations of governmental agencies having authority over the construction and operation of the Utility Service Facilities.
13. MSEC will provide, install, complete and pay for all labor, equipment, tools, supplies, construction equipment and machinery, utilities and consumables, transportation and other facilities and services (including any temporary materials, equipment, supplies and facilities) necessary for the proper execution and completion of the MSEC Design Facilities.
14. District will provide, install, complete and pay for all labor, equipment, tools, supplies, construction equipment and machinery, utilities and consumables, transportation and other facilities and services (including any temporary materials, equipment, supplies and facilities) necessary for the proper execution and completion of the District Design Facilities.
15. MSEC and District will cooperate in the construction of the Utility Service Facilities to provide adequate and continuous water service and wastewater

service, taking into account fire flow demand, to meet the District's water production and storage capacities and sewer treatment capacity required to serve the District Expansion and to provide Reuse Service.

B. DISTRICT OBLIGATIONS:

District, in addition to the obligations set out above, will:

1. provide all necessary information regarding the District Expansion required by MSEC or the MSEC Engineer to design the MSEC Design Facilities with the understanding that MSEC will rely upon the District information provided to calculate Water Capacity and Wastewater Capacity, said calculations shall be made with input from District Engineer;
2. construct or have constructed the Water Distribution System within Tract 1 and the Wastewater Collection System and Irrigation System depicted in the Preliminary Drawing by providing the labor and material that comply with the design standards and specification of MSEC and MSEC's Engineer;
3. provide access Easements to the Water Plant Site, Wastewater Plant Site, and Lift Station Site over and across the District Real Property;
4. apply for Utility Service by completing and filing with MSEC its Water Service Agreement and Wastewater Service Agreement in the form contained in MSEC's approved Tariff, or as may be agreed upon by the Parties and where required approved by the PUC;
5. pay the MESC Tariff Rates for Water Service and Sewer Service approved by PUC or as contracted, as and when due;
6. pay the Reuse Water Contract Rate as agreed upon, as and when due;
7. convey to MSEC the Lift Station Site by deed with title insurance insuring title to be free and clear of all encumbrances except as permitted by MSEC and upon forms as may be agreed upon by the parties;
8. transfer ownership of the 4" and 12" water lines to be installed by the District depicted on the Preliminary Drawing by Bill of Sale as additional in kind CAIC;
9. convey a utility and access easement to connect Tract 1 and Tract 2 of the District Real Property to provide the location and construction of water, sewer, electric, or other utility service to any of the Utility Service Facilities; and,
10. convey to MSEC such access and utility Easements over, under, across and through the District Real Property as may be reasonably required by MSEC to provide Utility Service to the District.

C. CONSTRUCTION WORK:

1. **MSEC Design Facilities:** MSEC will be responsible for the construction of the MSEC Design Facilities.
2. **District Design Facilities:** District will be responsible for the construction of the District Design Facilities.
3. **Construction Easements:** Prior to the commencement of construction, District will execute and convey to MSEC blanket access and utility easements as agreed upon by the Parties for the construction of the MSEC Design Facilities and the District Design Facilities in the general location shown on the Preliminary Drawing.
4. **Notice to Proceed:** Within 10 days of agency approval of both the MSEC Design and District Design to MSEC Engineer's satisfaction, the MSEC Engineer will issue a written notice to proceed with construction ("NTP") to the MSEC Contractor and the District Contractor.
5. **Commencement Coordination:** Construction commencement will be coordinated:
 - a. through the MSEC Engineer and is to begin within 30 days of the NTP; and
 - b. through the MSEC Contactor and District Contractor communicating and coordinating with the MSEC Engineer and District Engineer in the pre-construction conference.
6. **On-site Oversight:** MSEC staff and MSEC Engineer will provide on-site oversight to coordinate the construction of the Utility Service Facilities.
7. **District Contractor Communication:** The District will communicate to the District Contractor the required cooperation with and on-site oversight by MSEC.
8. **Coordinated Construction:** All construction will be in accordance with the coordinated District Design and MSEC Design to the satisfaction of the MSEC and District Engineers.
9. **Contracts with Contractors:** The Contract(s) with the Contractors must contain provisions obligating the Contractor(s) to prosecute the work to a conclusion by the substantial completion date, to complete any required punch list items to complete the construction in its entirety, standard provisions for indemnity and insurance coverage (including worker's comp and commercial general liability insurance and builder's risk coverage) satisfactory to MSEC and the District, and other provisions that may be collaboratively agreeable to the Parties. MSEC will list the District as a beneficiary on all contracts related to the MSEC Design

Facilities. District will list MSEC as a beneficiary on all contracts related to the construction of the District Design Facilities.

10. Substantial Completion Date: The Parties will work together to achieve substantial completion by May 1, 2017 (date estimated).

V. SUBSTANTIAL COMPLETION

1. Certification of Substantial Completion: The MSEC Engineer, within 10 business days of receiving written notice from the Contractors that construction of the Utility Service Facilities has been completed, will conduct an inspection of the Utility Service Facilities to confirm the same, and if and when substantially complete in the opinion of the MSEC Engineer and the governmental agency having jurisdiction thereof, shall certify to the Parties the substantial completion of the construction.
2. Delivery of In-Kind CAIC: Within 30 days after certification of Substantial Completion, the District will deliver the 4" and 12" District installed pipe lines to MSEC as In-Kind CAIC by providing:
 - a. Duly executed Bill of Sale transferring title and ownership of the pipelines to MSEC, free and clear of all encumbrances;
 - b. Possession and control of those facilities; and,
 - c. Defined Utility and Access Easements (or license where required and agreed upon by the Parties) over, under, and across the District Real Property where the lines are located upon the ground, on forms provided by MSEC to be described by metes and bounds by surveys provided by the District.
3. Utility Service Agreements Required: Prior to commencement of Utility Service, District will execute and deliver to MSEC a Water Service Agreement and Wastewater Service Agreement as required by MSEC's Tariff and a Reuse Service Agreement in the form provided by MSEC, agreeing to purchase the Utility Service from MSEC at the rates required for each service and to perform upon the terms, covenants, and conditions set forth therein for the term specified.
4. Commencement of Utility Service: MSEC will commence Utility Service after Final Completion of the Utility Service Facilities and receipt of the executed Utility Service Agreements.

VI. DEDICATION/RESERVATION OF CAPACITY:

1. District Capacity: Based upon projections provided by the District to MSEC, the MSEC Engineer prepared the Water & Wastewater Capacity Calculations attached as Exhibit "B" (the "Calculations").
 - a. District Water Capacity:

- i. Excluding any calculation for fire flow, the Calculations establish that the domestic use Water Demand for the anticipated 3000 population to be served by the Water Utility Facilities will be 70,600 GPD (the "District Water Capacity"), or approximately 235 residential connections (based upon 300 GPD/connection) also known as Equivalent Single Family Connections or "ESFC's".
 - ii. District is funding to MSEC as CAIC the cost of construction of the Water Utility Facilities, including those facilities required by the District to meet the District Water Capacity described in "i" above.
 - iii. MSEC is funding the cost of construction of upgrades to the Water Utility Facilities required by MSEC to meet MSEC's anticipated future domestic use water capacity requirements in excess of (over and above) the District Water Capacity of 70,600 GPD.
 - iv. All domestic use water capacity over and above 70,600 GPD (235 ESFC's) generated from the Water Utility Facilities will be generated from MSEC upgrades to the Water Utility Facilities paid for/financed by MSEC at no cost to the District ("Excess Water Capacity").
 - v. All Excess Water Capacity shall belong solely to and is reserved by MSEC to be used for its own purposes.
 - vi. District and MSEC agree that all such Excess Water Capacity belongs to MSEC because MSEC paid the cost to upgrade the Water Utility Facilities to achieve the Excess Water Capacity.
- b. District Wastewater Capacity:
- i. The Calculations establish that the anticipated Wastewater Demand for the 5500 population to be served by the Wastewater Service Facilities will be 105,000 GPD or 350 ESFC's based upon 300 GPD (the "District Wastewater Capacity").
 - ii. The District is funding all costs associated with the design and construction of the Wastewater Utility Facilities.
 - iii. MSEC will monitor and record the actual demand on the Wastewater Utility Facilities on a monthly basis ("Actual District Wastewater Demand") and provide the District with the information obtained therefrom.

- iv. Full District Wastewater Capacity is anticipated to begin August 2018, when the High School portion of the District Expansion is expected to begin operation.
 - v. Should it be determined that excess capacity in the Wastewater Utility Facilities exists for any reason, MSEC shall have the right to serve additional customers after payment to the District of \$1,250 per ESFC served from the excess capacity.
 - vi. Should the District require additional capacity in the future, the District will be deemed to be a Developer and subject to the applicable terms of MSEC's Water and Sewer Tariffs.
2. **MSEC Capacity Reservation:** MSEC reserves any capacity generated by Water Service Facilities and Wastewater Service Facilities constructed at MSEC's sole cost and expense that generate capacity in excess of the District Capacity. Such reservation is for MSEC, its customers, successors, and assigns.

VII. OWNERSHIP, OPERATION, AND MAINTENANCE OF THE UTILITY SERVICE FACILITIES

- 1. MSEC will own and operate the MSEC Design Facilities and the 4" and 12" District installed lines.
- 2. District will own and be responsible for the operation and maintenance of the District Design Facilities except for the 4" and 12" District installed lines to be transferred to MSEC by Bill of Sale.
- 3. MSEC will sell Water and Wastewater Service and Reuse Service to the District in accordance with the Utility Service Agreements and the terms of this Contract.
- 4. MSEC will dedicate 100% of the District Capacity to the District.
- 5. MSEC will own the Capacity Reservation.
- 6. MSEC will own all water, Effluent, and Reuse Water produced from the Utility Service Facilities, subject to the Water, Wastewater, and Reuse Service Agreements.

VIII. GENERAL TERMS, CONDITIONS AND PROVISIONS:

1. CONTINGENCY:

This Contract and the provisions hereof are expressly made contingent upon the approval by TCEQ of MSEC's application for a Wastewater Discharge Permit, approval by PUC of MSEC's application for an amendment to MSEC's Sewer CCN# 20984, and approval by PUC of applicable Tariff provisions authorizing the Utility Service included in this Contract at the rates agreed upon and/or approved where required.

2. TARIFF GOVERNS:

MSEC's Water Tariff and Sewer Tariff govern the Water and Wastewater Service to the District, subject to the terms of this Agreement.

3. TARIFF RATES:

Tariff Rates are subject to change upon the approval by the appropriate governmental agency with authority over rates. Contract Rates are subject to change upon agreement of the Parties.

4. TERM OF CONTRACT

The Term of the Facility Funding and Construction Contract portion of this Contract is for so long as is reasonably required to complete construction and begin Utility Service, or 5 years from the date of the Contract, whichever is sooner.

5. TERM OF UTILITY SERVICE AGREEMENTS

The term of the Water Service Agreement, Wastewater Service Agreement, and Reuse Service Agreement shall be a minimum of 40 years, beginning from the date of the delivery of the first Utility Service, subject to automatic renewals and the terms and conditions contained in the Utility Service Agreements.

6. AUTOMATIC RENEWAL

The term of the Utility Service Agreements shall automatically renew at termination for additional periods of twenty years (20 years) each upon the same terms and conditions as contained in the Utility Service Agreements.

7. BINDING AFFECT

The terms and conditions of the Facility Funding and Construction Contract and/or the Utility Service Agreements are binding upon the Parties for their respective Terms.

8. MUTUAL OBLIGATIONS:

Each Party shall take all precautions as are reasonably necessary to avoid injury to persons and damage to the property of the other during the construction phase of the District Expansion. The Parties will cause their respective engineers to work together in the engineering phase of the District Expansion.

9. ACCESS TO DISTRICT REAL PROPERTY:

9.1 Access. District grants to MSEC the right to reasonable access to the District Real Property for construction purposes and for the purpose of conducting such inspections of the District Real Property as MSEC deems appropriate prior to the commencement of the Construction.

9.2 Temporary Storage Site: If requested by MSEC, District will provide a site or sites within the District Real Property for the temporary storage of material to be used during the Construction.

10. COOPERATION TO THE BENEFIT OF THE PARTIES:

The MSEC and District agree to continue to work together to ensure that the Utility Service Facilities are constructed in accordance with the District Design and MSEC Design.

11. REPRESENTATIONS, WARRANTIES AND COVENANTS

11.1 Common Representations. Each Party represents and warrants that: (a) it has full authority to enter into and perform this Contract; (b) this Contract does not conflict with any other document or Contract to which it is a party or is bound, and this Contract is fully enforceable in accordance with its terms; (c) it is a legal entity duly organized, validly existing and in good standing under the laws of the jurisdiction in which it was formed; (d) the execution and delivery of this Contract and performance hereunder will not conflict with or violate or constitute a breach or default under its formation documents and will not violate any law, rule or regulation applicable to it; and (e) no consents need be obtained from any governmental agency or regulatory authority to allow it to execute, deliver and perform its obligations under this Contract.

11.2 LIMITATIONS ON WARRANTIES. THERE ARE NO WARRANTIES UNDER THIS CONTRACT EXCEPT TO THE EXTENT EXPRESSLY AND UNAMBIGUOUSLY SET FORTH HEREIN.

12. INSURANCE

12.1 Insurance Requirement. District and MSEC shall carry insurance in such form and issued by such companies as are reasonably satisfactory to the Parties to protect the Parties from and against any and all claims, demands, actions, judgments, costs, expenses and liabilities of every name and nature which may arise or result directly or indirectly from or by reason of any loss, injury, death or damage involving the construction of the Utility Service Facilities,

with subrogation and additional insured provisions.

12.2 The insurance requirements attached as **Exhibit "G"** shall be incorporated into the construction contract documents with contractors and/or subcontractors engaged in the construction of the Utility Service Facilities. Revisions to such insurance requirements shall be subject to prior approval by MSEC and District. Additionally, MSEC and the District shall be named as an indemnified party in any provision of any construction contract relating to indemnification by the contractor performing the construction of the Utility Service Facilities.

13. DEFAULTS

13.1 **District Default.** If District is in Default under this Contract and fails to correct such Default within the cure period specified below, MSEC may, at its option, and without further notice:

- (a) suspend MSEC's prosecution of the construction of the MSEC Design Facilities;
- (b) correct such Default and charge District as provided in this Contract; and/or
- (c) recover damages arising from such default, District expressly waiving any immunity from breach of contract allowed District under the law.

13.2 **District Cure Period.** For a period of thirty (30) days following receipt of written notice (other than obligations not reasonably susceptible of cure within said thirty (30) day period, provided that District has promptly undertaken and is diligently continuing its efforts to cure such default) from MSEC, District shall be entitled to take all steps necessary to cure any Defaults.

13.3 **Termination Because of District Default.** If MSEC terminates this Contract because of District's Default, District shall not be entitled to any refund of any portion of the CAIC.

13.4 **Reimbursement for MSEC Work.** If District fails to cure a Default with respect to the performance of any work that District is obligated to perform under this Contract, MSEC may elect to perform such work, and District shall reimburse MSEC for all reasonable costs related thereto.

13.5 **MSEC Default.** If MSEC is in Default under this Agreement, MSEC shall have thirty (30) days following receipt of written notice (other than obligations not reasonably susceptible of cure within said thirty (30) day period, provided that MSEC has promptly undertaken and is diligently continuing its efforts to cure such default) from District within which to correct such Default. If MSEC does not cure its Default within the allotted time period, District may, at its sole discretion, and without further notice:

- (a) correct such Default and charge MSEC as provided in this Contract;
- (b) decline to pay any CAIC due and payable;
- (c) design and construct the Utility Service Facilities necessary to serve the District Expansion; and

- (d) recover damages arising from such default.

13.6 Attorney Fees and Court Costs. If either Party fails to cure a Default with respect to any of its obligations under this Contract and it becomes necessary for the other Party to obtain the services of an attorney, who is not a salaried employee of that Party, to enforce its rights under this Contract, the defaulting Party agrees to pay all reasonable attorney fees and court costs of litigation associated with such enforcement, if the other Party is successful, to the extent allowed by law.

14. TERMINATION OF CONTRACT

15.1 All terms of this Contract applicable to the construction of the Utility Service Facilities terminate upon completion by the District of the construction of the District Design Facilities to the satisfaction of MSEC and completion by MSEC of the construction of the MSEC Design Facilities. Upon termination of the construction of the Utility Service Facilities, the Parties shall be released from any further liability to each other for construction obligations, except as otherwise provided.

15.2 All terms in this Contract relating to Utility Service shall continue and be merged in the Utility Service Agreements to be executed hereunder.

15. WAIVER OF TERMS OR CONDITIONS

The failure of either Party to enforce or insist upon compliance with any of the terms or conditions of this Contract shall not constitute a general waiver or relinquishment of any such terms or conditions, but such conditions and terms shall be and remain at all times in full force and effect.

16. MODIFICATIONS

Except as otherwise specified in this Contract, this Contract may be amended or supplemented at any time only upon written Contract by the Parties hereto. The names, addresses, facsimile numbers and electronic mail addresses to which notices must be sent may be modified by either Party upon notice to the other.

17. SALES TAX EXEMPTION

The parties agree and acknowledge that the District qualifies for exemption from Texas state and local sales taxes pursuant to the provisions of Sections 151.309(5), 151.311, and any other applicable provisions of the Texas Tax Code, as amended (the "Code"), and that MSEC shall in purchasing: (1) tangible personal property to be incorporated into the MSEC Design Facilities; (2) tangible personal property, other than machinery or equipment and its accessories and repair and replacement parts, consumed in the construction of the MSEC Design Facilities; and (3) taxable services performed at the job site if the contract expressly requires the specific service to be performed or purchased and is integral to the performance of the contract, cause to be issued to its suppliers or the supplier of the Contractor(s), with the cooperation of the District where necessary, an exemption certificate in lieu of said tax, with any such exemption certificate to

comply with and be subject to any and all applicable Rules and Rulings for the State Comptroller of Public Accounts.

18. NOTICES

Any notice, request, consent, demand, designation, approval or statement required to be made to either Party by the other shall be in writing and shall be delivered via personal delivery, Federal Express (or other equivalent, generally recognized overnight delivery service), facsimile, electronic mail transmission, or certified U.S. mail return receipt requested. Notice given by facsimile shall be deemed to have been received when transmitted, provided that the sender shall have received a transmission report indicating that all pages of the notice have been transmitted with the correct facsimile number. Notice given by electronic mail shall be deemed given when directed to an electronic mail address at which the recipient has consented to receive such notice. Notice given by personal delivery, overnight delivery, or certified U.S. mail shall be effective upon receipt.

The addresses of the parties for purposes of notice, correspondence, or other matters arising herefrom shall be the following until written notice to the other parties of any change is provided:

District: Montgomery Independent School District
 Attn: Dr. Beau Rees, Superintendent
 13159 Walden Road
 Montgomery, Texas 77356
 936-276-2011
 936-276-2009 (fax)
 Email: brees@misd.org

MSEC: MSEC Enterprises, Inc.
 Attn: President/CEO
 P. O. Box 970
 Navasota, Texas 77868
 936-8258-5100
 936-825-5179 (fax)
 Copy to: legal@midsouthsynergy.com

20. FORCE MAJEURE

Except as may be expressly provided otherwise, neither Party shall be liable to the other for any failure of performance hereunder due to causes beyond its reasonable control, including but not limited to: (a) acts of God, fire, explosion, vandalism, storm, or other similar occurrences; (b) national emergencies, insurrections, riots, acts of terrorism, or wars; or (c) strikes, lockouts, work stoppage, or other labor difficulties. To the extent practicable, the Parties shall be prompt in restoring normal conditions, establishing new schedules and resuming operations as soon as the *force majeure* event causing the failure or delay has ceased. Each Party shall promptly notify the other Party of any delay in performance under this section and its effect on performance required under this Contract.

21. CONSTRUCTION OF CONTRACT

This Contract was reached by each Party after arms' length negotiations and upon the opportunity for advice of counsel, and shall not in any way be construed against either Party on the basis of having drafted all or any part of this document. All words used in this Contract will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the words "including" or "includes" do not limit the preceding words or terms.

22. OWNERSHIP RIGHTS

All engineering and design work as well as all personal property included in the Utility Service Facilities shall be, become, and remain the property of MSEC.

23. THIRD PARTY BENEFICIARIES

Except as otherwise provided in this Contract, this Contract is intended to benefit only the Parties and may be enforced solely by the Parties, their successors in interest or permitted assigns. It is not intended to, and shall not, create rights, remedies or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, except as otherwise provided herein.

24. SEVERABILITY

Nothing contained in this Contract shall be construed to require the commission of any act contrary to law, and wherever there is any conflict between any provision of this Contract and any law, such law shall prevail. In such event, however, the provisions of this Contract so affected shall be curtailed and limited only to the extent necessary to permit compliance with the minimum legal requirement, and no other provisions of this Contract shall be affected thereby and all such other provisions shall continue in full force and effect.

25. ASSIGNMENT AND TRANSFER

MSEC may assign and transfer this Contract and the Service Agreements, provided that any assignee shall assume all duties and responsibilities of MSEC to provide Utility Service.

26. FACSIMILE AND ELECTRONIC SIGNATURES; COUNTERPARTS

This Contract may be executed using facsimile or electronic signatures and such facsimile or electronic version of the Contract shall have the same legally binding effect as an original paper version. This Contract may be executed in counterparts, each of which shall be deemed an original.

27. SURVIVAL

Notwithstanding any provisions to the contrary, all rights, remedies, or obligations which arose or accrued prior to the termination or expiration of the terms hereof shall survive and be fully

enforceable for the applicable statute of limitations.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the _____ day of _____, 2016.

MSEC:

District:

MSEC ENTERPRISES, INC.

MONTGOMERY INDEPENDENT
SCHOOL DISTRICT

By: _____
Kerry Kelton, President/CEO

By:  _____
Dr. Beat Rees, Superintendent

List of Exhibits:

- Exhibit "A" – Preliminary Drawing
- Exhibit "B" – Capacity Calculations
- Exhibit "C" – Water Service Agreement
- Exhibit "D" – Wastewater Service Agreement
- Exhibit "E" – Reuse Service Agreement
- Exhibit "F" – Easement Form
- Exhibit "G" – Insurance Provisions for Contractors

enforceable for the applicable statute of limitations.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the _____ day of _____, 2016.

MSEC:

District:

MSEC ENTERPRISES, INC.

**MONTGOMERY INDEPENDENT
SCHOOL DISTRICT**

By: _____

Kerry Kelton, President/CEO

By: _____

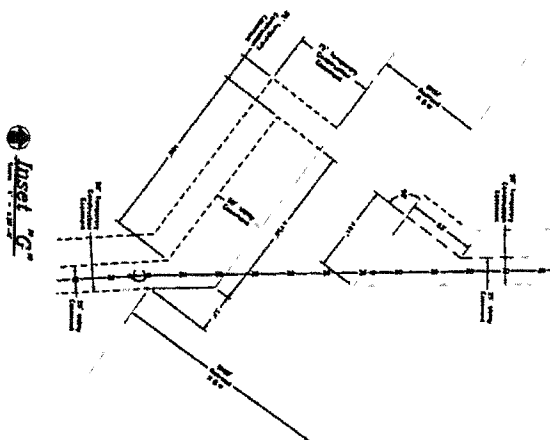
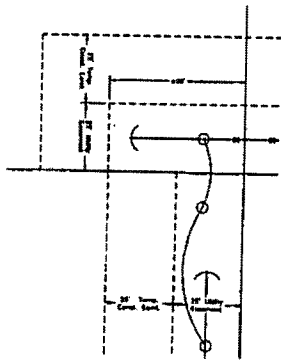
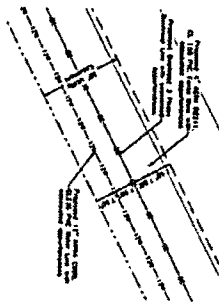
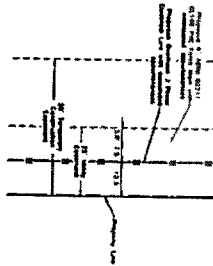
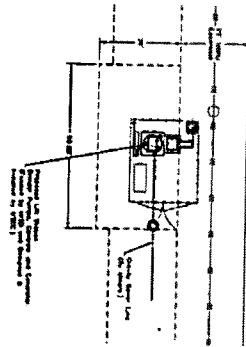
Dr. Beau Rees, Superintendent

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EXHIBIT "A"
to
UTILITY SERVICE FACILITY
FUNDING AND CONSTRUCTION CONTRACT
MSEC ENTERPRISE AND MONTGOMERY MISD
_____, 2016

DRAWING OF PROPOSED GENERAL LOCATION
OF
UTILITY SERVICE FACILITIES



1. NAME _____
2. DATE _____
3. TIME _____
4. LOCATION _____
5. REASON _____
6. WITNESSES _____
7. REMARKS _____
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257. REASON _____
258. WITNESSES _____
259. REMARKS _____
260. SIGNATURE _____
261. DATE _____
262. TIME _____
263. LOCATION _____<

**Water and Wastewater
Improvements
Montgomery I.S.D.**

Montgomery County, Texas
Updated September 18, 2013
RCDF 70426

N

Public:
ERIC Langerman, Inc.
c/o Box 1166
Cincinnati, Ohio 45201
(513) 675-1400

Private:
Occur a Pure Engineering, a
Unit Building @ Box 161
Cincinnati, Ohio 45201
(513) 675-1400
Box 161, Inc. 7-475

EXHIBIT "B"
to
UTILITY SERVICE FACILITY
FUNDING AND CONSTRUCTION CONTRACT
MSEC ENTERPRISE AND MONTGOMERY MISD
_____, 2016

WATER AND WASTEWATER
CAPACITY CALCULATIONS

WATER & WASTEWATER CAPACITY CALCULATIONS

Montgomery ISD Elementary School, Middle School & High School Improvements
MBESI No. 10260076

October 2, 2015

DOMESTIC REQUIREMENTS

Campus	Students	Staff	Total Occupants	TCEQ Wastewater Demands		Water Demand		
				(gals/Occupant)	GPD	GPD ³	gpm	w/PF = 4
High School	2,800	200	3,000	20	60,000	70,600	120	480
Subtotal:	2,800	200	3,000		60,000	70,600	120	480
Elementary ⁴	950	50	1,000	15	15,000	0	0	0
Middle School ⁴	1,400	100	1,500	20	30,000	0	0	0
Subtotal:	2,350	150	2,500		45,000	0	0	0
Total:	5,150	350	5,500		105,000	70,600	120	480

Notes:

1. Wastewater demands based on 30 TAC §217.32 (a)(3), Table B.1.
2. Student and Staff data was supplied by Montgomery ISD 04/22/15.
3. Water demand is based on an 85% return rate of the wastewater.
4. Water supply for the Elementary and Middle School sites will be provided by others.

Abbreviations:

Gals – Gallons
GPD – Gallons per Day
GPM – Gallons per Minute
PF – Peaking Factor

WATER SYSTEM IMPROVEMENTS

CONNECTION EQUIVALENCY CALCULATION

A water demand of 70,600 gpd would be equivalent to approximately 235 residential connections based on 300 gpd/connection.

The following capacity calculations are based on TCEQ §290.45(b)(1)(C).

Well Capacity

TCEQ Requirement (0.6 gpm/connection): 141 gpm

MSEC Requirement (1.0 gpm/connection): 235 gpm

Irrigation Demands (as per Huckabee 09/01/15): 70,000 gallons per day ~ 50 gpm

Recommend installing a well with a minimum capacity of 200 gpm.

WATER SYSTEM IMPROVEMENTS (Cont'd.)

Booster Pump Capacity

TCEQ Requirement (2.0 gpm/connection): 470 gpm

Fire Flow Requirements (as per email from Dr. Rees dated 06/09/2015)

Fire Flow Requirements for High School Site: 1,760 gpm

Recommend installing two 500 gpm VFD pumps and two 1,750 gpm VFD pumps.

Storage Capacity

TCEQ Requirement (200 gal/connection): 47,000 gallons

Fire Flow Requirements (Minimum): 1,760 gpm for 2 hours => 211,200 gallons

Storage On-Hand for Domestic and Irrigation Demands: 140,000 gallons per day.

Recommend installing one (1) 350,000 gallon ground storage tank.

Pressure Tank Capacity

TCEQ Requirement (20 gal/connection): 5,000 gallons

Recommend installing one (1) 5,000 gallon pressure

WASTEWATER SYSTEM IMPROVEMENTS

The wastewater improvements will consist of the construction of a lift station at the elementary/middle school site and Sequencing Batch Reactor (SBR) wastewater treatment plant (WWTP) with the associated appurtenances at the north end of the High School site. The design of the WWTP will be such that no additional improvements to the WWTP will be required to accept the wastewater flow from the High School site improvements.

First Phase (i.e. Elementary & Middle School Site): SBR WWTP set to treat 45,000 gpd.

Second Phase (i.e. High School Site): Water levels in the SBR WWTP will be increased to treat 105,000 gpd.

Note: The wastewater permit application was submitted to TCEQ with a capacity of 130,000 gpd based on the best available information at the time of submission.

Prepared by:


J. Dale Browne, Jr., P.E., CFM

10/02/15

McClure & Browne Engineering/Surveying, Inc.

Firm Reg. No. F-458

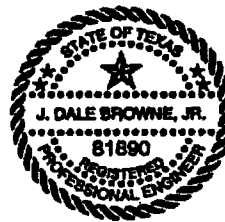
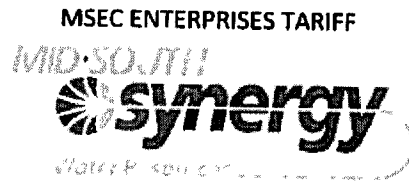


EXHIBIT "C"
to
UTILITY SERVICE FACILITY
FUNDING AND CONSTRUCTION CONTRACT
MSEC ENTERPRISE AND MONTGOMERY MISD
_____, 2016

WATER SERVICE AGREEMENT

EXHIBIT "C"
Funding and Facility Construction Contract and Utility Service Agreement



WATER SERVICE AGREEMENT

The following are the terms of the water service agreement between MSEC Enterprises, Inc. and Montgomery Independent School District (the Customer) for District's Facilities located west of FM 2854 and north of Keenan Cut-Off Road in Montgomery County, Texas.

I. PURPOSE.

The Utility owned and/or operated by MSEC Enterprises, Inc., doing business as Mid-South Synergy Water Resources, is responsible for protecting the drinking water supply from contamination or pollution which could result from improper private water distribution system construction or configuration. The purpose of this service agreement is to notify each customer of the restrictions which are in place to provide this protection. The Utility enforces these restrictions to ensure the public health and welfare. Each Customer must sign this agreement before MSEC Enterprises will begin service. In addition, when service to an existing connection has been suspended or terminated, the Utility will not re-establish service unless it has a signed copy of this agreement.

II. PLUMBING CODE.

The Utility adopts the International Plumbing Code pursuant to Texas Commission on Environmental Quality (TCEQ) Rule 290.46(i). The piping and other equipment on the premises furnished by the customer will be maintained by the customer at all times in conformity with the requirements of the International Plumbing Code and any other federal, state, and/or local regulations.

III. RESTRICTIONS. The following unacceptable practices are prohibited by State regulations.

- A. No direct connection between the public drinking water supply and a potential source of contamination is permitted. Potential sources of contamination shall be isolated from the public water system by an air-gap or an appropriate backflow prevention device.
- B. No cross-connection between the public drinking water supply and a private water system is permitted. These potential threats to the public drinking water supply shall be eliminated at the service connection by the installation of an air-gap or a reduced pressure-zone backflow prevention device.
- C. No connection which allows water to be returned to the public drinking water supply is permitted.
- D. No pipe or pipe fitting which contains more than 0.25% lead may be used for the installation or repair of plumbing at any connection which provides water for human use.
- E. No solder or flux which contains more than 0.2% lead can be used for the installation or repair of plumbing at any connection which provides water for human use.

EXHIBIT "C"
Funding and Facility Construction Contract and Utility Service Agreement

IV. TERMS.

- A. The Utility will maintain a copy of this agreement as long as the Customer and/or the premises is connected to the Utility.
- B. The Customer shall allow his/her property to be inspected for possible cross-connections and other potential contamination hazards. These inspections shall be conducted by the Utility or its designated agent prior to initiating new water service; when there is reason to believe that cross-connections or other potential contamination hazards exist; or after any major changes to the private water distribution facilities. The inspections shall be conducted during the Utility's normal business hours.
- C. The Utility shall notify the Customer in writing of any cross-connection or other potential contamination hazard which has been identified during the initial inspection or the periodic re-inspection.
- D. The Customer shall immediately remove or adequately isolate any potential cross-connections or other potential contamination hazards on his premises.
- E. The Customer shall, at his/her expense, properly install, test, and maintain any backflow prevention device required by the Utility. Copies of all testing (including annual retesting if required) and maintenance records shall be provided to the Utility.

V. ENFORCEMENT.

If the Customer fails to comply with the terms of the Service Agreement, the Utility may, at its option, either terminate service or properly install, test, and maintain an appropriate backflow prevention device at the service connection. Any expenses associate with the enforcement of this agreement shall be billed to the Customer and the Customer by signing this Agreement agrees to be bound by the terms of this Service Agreement and to pay all costs incurred by the Utility related to the installation of any backflow prevention devices.

Montgomery Independent School District

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT "D"
to
UTILITY SERVICE FACILITY
FUNDING AND CONSTRUCTION CONTRACT
MSEC ENTERPRISE AND MONTGOMERY MISD
_____, 2016

WASTEWATER SERVICE AGREEMENT

EXHIBIT "D"
Funding and Facility Construction Contract and Utility Service Agreement

WASTEWATER SERVICE AGREEMENT

THAT MSEC Enterprises, Inc., a Texas corporation with its principal place of business being located in Grimes County, Texas ("MSEC"), and Montgomery Independent School District, a political subdivision of the State of Texas ("District"), as a part of that certain Funding and Facility Construction Contract and Utility Service Agreement, effective as of the Final Completion of the Wastewater Service Utilities, enter into this Wastewater Service Agreement. In accordance with MSEC's Sewer Tariff, District is treated as a Developer. MSEC and District agree as follows:

1. CONSIDERATION. For and in consideration of the monthly Operating Fee hereinafter set forth, and in consideration of the undertakings and obligations of the parties to the Funding and Facility Construction Contract and Utility Service Agreement (the "Agreement"), MSEC agrees to provide to the District the Wastewater Utility Services contracted in the Agreement and District agrees to pay to MSEC for providing the Wastewater Utility Service to District's property, a monthly operating fee ("Operating Fee") equal to the cost of operation (labor and material) plus 15% administration fee, agreed to be \$_____ (at this time estimated to be not less than \$9,000.00 for the first year) per month for each month or prorata part thereof while providing the Wastewater Utility Services, subject to adjustment as hereinafter set out. Additionally, District shall be responsible for all damages to the Wastewater System caused by the District, its employees or subcontractors, and shall pay all costs for such damages upon receipt of an invoice therefor, subject to the right of the District to contest responsibility. The Operating Fee shall be revisited at least 60 days before the District budget is to be compiled.

2. ADJUSTMENT OF OPERATING FEE: If, as, and when (1) actual operating costs increase or decrease on a material basis or (2) MSEC adds additional third-party customers to the Wastewater Utility Services Wastewater Plant such that the prorata cost to the District changes measurably, MSEC and District will revisit the Operating Fee and adjust the same based upon those changes in circumstance. MSEC and District will review costs of operation on an annual basis and any adjustment agreed upon by the Parties shall be made by written agreement signed by both Parties and appended to this Service Agreement.

3. TERM: 40 years, beginning from the date of the delivery of the first Utility Service, subject to automatic renewals every 20 years thereafter.

STANDARD TERMS OF CUSTOMER SERVICE AGREEMENT:

1. PURPOSE. MSEC Enterprises, Inc., is responsible for protecting the drinking water supply from contamination or pollution which could result from improper private water distribution system construction or configuration. The purpose of this service agreement is to notify each customer of the restrictions which are in place to provide this protection. The utility enforces these restrictions to ensure the public health and welfare. Each customer must sign this agreement before MEC Enterprises will begin service. In addition, when service to an

EXHIBIT "D"
Funding and Facility Construction Contract and Utility Service Agreement

existing connection has been suspended or terminated, the sewer system will not re-establish service unless it has a signed copy of this agreement.

II. RESTRICTION. The following unacceptable practices are prohibited by State regulations.

A. No direct connection between the public drinking water supply and a potential source of contamination is permitted. Potential sources of contamination shall be isolated from the public water system by an air-gap or an appropriate backflow prevention device.

B. No cross-connection between the public drinking water supply and a private water system is permitted. These potential threats to the public drinking water supply shall be eliminated at the service connection by the installation of an air-gap or a reduced pressure-zone backflow prevention device.

C. No connection which allows water to be returned to the public drinking water supply is permitted.

D. No pipe or pipe fitting which contains more than 8.0% lead may be used for the installation or repair of plumbing at any connection which provides water for human use.

E. No solder or flux which contains more than 0.25% lead can be used for the installation or repair of plumbing at any connection which provides water for human use.

III. SERVICE AGREEMENT. The following are the terms of the service agreement between MSEC Enterprises, Inc. (the Sewer System) and Montgomery Independent School District (the Customer).

A. The Sewer System will maintain a copy of this agreement as long as the Customer and/or the premises is connected to the Sewer System.

B. The Customer shall allow his property to be inspected for possible cross-connections and other potential contamination hazards. These inspections shall be conducted by the Sewer System or its designated agent prior to initiating new water service; when there is reason to believe that cross-connections or other potential contamination hazards exist; or after any major changes to the private water distribution facilities. The inspections shall be conducted during the Sewer System's normal business hours.

EXHIBIT "D"
Funding and Facility Construction Contract and Utility Service Agreement

C. The Sewer System shall notify the Customer in writing of any cross-connection or other potential contamination hazard which has been identified during the initial inspection or the periodic re-inspection.

D. The Customer shall immediately remove or adequately isolate any potential cross connections or other potential contamination hazards on his premises.

E. The Customer shall, at his expense, properly install, test, and maintain any backflow prevention device required by the Sewer System. Copies of all testing and maintenance records shall be provided to the Sewer System.

IV. **ENFORCEMENT.** If the Customer fails to comply with the terms of the Service Agreement, the Sewer System shall, at its option, terminate service or properly install, test, and maintain an appropriate backflow prevention device at the service connection. Any expenses associated with the enforcement of this agreement shall be billed to the Customer.

Montgomery Independent School District

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT "E"
to
UTILITY SERVICE FACILITY
FUNDING AND CONSTRUCTION CONTRACT
MSEC ENTERPRISE AND MONTGOMERY MISD
_____, 2016

REUSE SERVICE AGREEMENT

EXHIBIT "F"
to
UTILITY SERVICE FACILITY
FUNDING AND CONSTRUCTION CONTRACT
MSEC ENTERPRISE AND MONTGOMERY MISD
_____ , 2016

UTILITY EASEMENT FORM

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

MSEC ENTERPRISES, INC.
WATER LINE EASEMENT AND RIGHT-OF-WAY
(Blanket - Entity)

STATE OF TEXAS §
COUNTY OF _____ §

Line No. _____
Easement No. _____

DATE: _____, 20____

GRANTOR: _____

_____ (address)

GRANTEE: MSEC ENTERPRISES, INC.
P. O. Box 970
Navasota, Grimes County, Texas 77868

CONSIDERATION: The provision of public water service and/or other benefits inuring to GRANTOR and/or TEN AND NO/100THS DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which consideration is deemed valuable to GRANTOR and is hereby expressly acknowledged and accepted by GRANTOR.

EASEMENT: The EASEMENT is located upon, over, across, and/or under the following property (the "Property") (check one):

- ☐ Platted Property.
Lot(s) _____, in Block _____, Addition, a subdivision in the City of _____, (cross out "city of" if property is not within city limits), _____ County, Texas, according to the map or plat thereof recorded in the Plat Records of such County.
- ☐ Unplatted Property.
_____ acres of land, more or less, out of the _____ Survey, Abstract # _____, in _____ County, Texas, as more fully described in an instrument recorded in Volume _____, Page _____, Records of _____ County, Texas/ _____ County Clerk's File No. _____, (confirm volume/page/file number of vesting deed).

Upon location by GRANTEE of its transmission/distribution lines, pumps, tanks, valves, and/or other facilities on the tract of land described above, the EASEMENT herein granted shall be limited to that portion of the tract of land described above within ten (10) feet in all directions of GRANTEE's lines or other facilities on the tract of land described above. The approximate location of the EASEMENT is shown on the attached sketch, if any. The EASEMENT includes the use of so much of the subsurface below and air space above the ground, and such portion of GRANTOR's adjoining property, as is reasonably necessary for the PURPOSE stated below.

PROJECT: Water transmission and/or distribution line or lines, consisting of a variable number and sizes of pipe, pumps, tanks, valves, and all necessary or desirable appurtenances, appliances, facilities and equipment (including but not limited to supporting structures and other facilities whether made of pvc, metal, or other materials).

GRANT: GRANTOR for the CONSIDERATION hereby GRANTS, SELLS, and CONVEYS to GRANTEE an EASEMENT appurtenant and Right-of-Way in, upon, under, and across the tract of land described herein together with all and singular the rights and appurtenances thereto in any wise belonging, TO HAVE AND HOLD the EASEMENT to GRANTEE and GRANTEE's successors and assigns forever. GRANTOR also grants to GRANTEE the right and authority to license, permit, or otherwise agree to the joint use or occupancy of the EASEMENT by any person or entity for the transmission or distribution of water or gas and wastewater collection or other similar purposes; PROVIDED, HOWEVER, that nothing contained in this provision shall be deemed a waiver by GRANTOR of GRANTOR's right to require any such person or entity, other than GRANTEE, to obtain an easement for the conduct of any such activity.

PURPOSE: The EASEMENT, right-of-way, rights, and privileges herein granted shall be used for the purpose of providing public water and/or sewer utility service, constructing, placing, operating, maintaining, reconstructing, replacing, relocating, reconstituting, changing the size or nature of, rebuilding, upgrading, removing, inspecting, patrolling, and/or repairing the PROJECT or any part of the PROJECT, and making connections therewith, and to undertake the same for any of the other joint uses authorized herein. The PURPOSE shall also include use of the EASEMENT, right-of-way, rights, and privileges granted herein for any use directly related to the PROJECT or financing of the PROJECT, including but not limited to performing archeological, historical, environmental, or other studies. GRANTEE shall have the right to place temporary structures and support for use in constructing or repairing the PROJECT. GRANTEE shall have the right to use temporarily such portion of the Property along and adjacent to the EASEMENT and right-of-way as may be reasonably necessary in connection with the construction, reconstruction, repair, maintenance, or other PURPOSE stated, or any one or more of them relating to the PROJECT, or any part thereof; provided, no permanent structure shall be located off of the Easement.

ACCESS: GRANTEE shall have the right of pedestrian, equipment, and vehicular ingress and egress at all times upon and across the EASEMENT for the above stated PURPOSE and any joint use authorized herein. GRANTEE shall also have the right of ingress and egress over existing roads across the adjacent or remainder Property of GRANTOR for the purpose of obtaining access. In the event that access is not reasonably available over existing roads, GRANTEE shall have the right of reasonable ingress and egress over the adjacent Property of GRANTOR along any route that is reasonable and appropriate under the circumstances then existing in order to obtain access.

TERM: The EASEMENT and access rights granted herein, as well as the covenants made herein, shall be perpetual and appurtenant to the land, unless abandoned by the GRANTEE for a period of 10 consecutive years.

TREES/SHRUBS: GRANTEE shall have the right to cut, trim, chemically treat with herbicides, and/or remove trees, shrubs, bushes, brush and vegetation within or adjacent to the EASEMENT or otherwise necessary to realize the PURPOSE herein stated. Reasonable Notice shall be given in advance of the use of herbicides and GRANTOR may remove vegetation prior to treatment with herbicides, if desired.

STRUCTURES/OBSTRUCTIONS: GRANTOR shall not construct or locate on the EASEMENT any structure, improvement, or obstruction. GRANTEE shall have the right to remove from the EASEMENT any structure, improvement or obstruction, and GRANTOR agrees to pay GRANTEE the reasonable cost of such removal, including court costs and attorney's fees incurred by GRANTEE should suit be brought to enforce this provision. This provision shall be a covenant running with the land for the benefit of GRANTEE.

DAMAGES: It is understood and agreed that the CONSIDERATION received by GRANTOR includes adequate compensation for all damages for the initial construction and all operation and maintenance of the PROJECT as well as all damages, if any, to GRANTOR's property which may occur in the future after the original construction of the PROJECT, directly resulting from GRANTEE's exercise of any rights for the PURPOSE granted, PROVIDED, HOWEVER, that GRANTEE shall restore the surface of the EASEMENT to the same grade as existed, as nearly as practicable, prior to any such construction, operation, and/or maintenance. GRANTEE shall not be liable for damages caused by keeping the EASEMENT clear of trees, shrubs, bushes, brush, undergrowth, vegetation, structures, improvements, or obstructions.

MINERALS: GRANTOR expressly reserves all oil, gas, and other minerals owned by GRANTOR, in on, and under the EASEMENT, provided that GRANTOR shall not be permitted to, and shall not allow any party to, drill or excavate for minerals on or from the surface of the EASEMENT, but GRANTOR may extract oil, gas, or other minerals from and under the EASEMENT by directional drilling or other means which do not interfere with or disturb GRANTEE's use of the EASEMENT or any part thereof.

OWNERSHIP: GRANTOR agrees that all pipe, tanks, wells, casing, valves, appurtenances, facilities, appliances, and equipment installed upon the EASEMENT shall at all times remain the property of the GRANTEE and is removable at the option of the GRANTEE.

ASSIGNMENT AND MISCELLANEOUS: This instrument, and the terms and conditions contained herein, shall inure to the benefit of and be binding upon GRANTOR and GRANTEE, and their respective heirs, personal representatives, successors, and assigns. When the context requires, singular nouns and pronouns include the plural. When appropriate, the term "GRANTEE" includes the employees, contractors, and authorized agents of GRANTEE.

WARRANTY: GRANTOR WARRANTS AND SHALL FOREVER DEFEND the EASEMENT to GRANTEE against anyone lawfully claiming or to claim the EASEMENT or any part thereof.

Recording Information:

(GRANTOR/Entity name)

By: _____
Name: _____
Title: _____

STATE OF TEXAS §
COUNTY OF _____ §

This instrument was acknowledged before me on this ____ day of _____,
20____, by _____
(name), _____ (title)
of _____
(Grantor/entity), a _____ (type of entity), on
behalf of said entity

Notary Public, State of Texas

Seal

After Recording, Return this Document to:
MSEC Enterprises, Inc.
P. O. Box 970
Navasota, Texas 77868

EXHIBIT "G"
to
UTILITY SERVICE FACILITY
FUNDING AND CONSTRUCTION CONTRACT
MSEC ENTERPRISE AND MONTGOMERY MISD
_____, 2016

INSURANCE PROVISIONS

Exhibit "G"

INSURANCE

Notwithstanding any other provision in the CONTRACT DOCUMENTS, OWNER shall not be required to provide any insurance whatsoever regarding the WORK or the PROJECT. CONTRACTOR shall maintain such insurance as will protect CONTRACTOR, OWNER¹, ENGINEER², and the DISTRICT from claims under Worker's Compensation Acts, and any amendments thereof, and from any other claims for property damage, damages from personal injury, including death, which may arise from operations under this AGREEMENT, whether such operations be by himself or by any subcontractor or anyone directly or indirectly employed by either of them. In this connection, CONTRACTOR agrees to carry and maintain, at CONTRACTOR'S sole expense, such insurance as specified herein or as may be specified by OWNER in writing. Such insurance shall remain in effect at least until the expiration of the warranty period.

CONTRACTOR shall require that all insurance policies in any way related to the Work and maintained by CONTRACTOR, as well as by all subcontractors of every tier, be endorsed specifically to name OWNER, ENGINEER, and DISTRICT and their respective officers, directors, partners, employees, agents and other consultants and subcontractors of OWNER, ENGINEER, and DISTRICT as additional insureds, excluding, however, Worker's Compensation Insurance, and to provide that each underwriter waives its right of subrogation against the additional insureds. All of the aforesaid policies shall be further endorsed to provide that they are primary coverages and not in excess of any other insurance available to OWNER, ENGINEER OR DISTRICT and without rights of contribution or recovery against any of the insureds or from any such other insurance available to OWNER, ENGINEER OR DISTRICT. Evidence of such specific endorsements shall be furnished with CONTRACTOR's Certificate of Insurance.

Irrespective of the requirements as to insurance to be carried, the insolvency, bankruptcy, or failure of any insurance company carrying insurance for CONTRACTOR, or any subcontractor of any tier, or failure of any insurance company to pay claims accruing shall not be held to waive any of the provisions of the CONTRACT DOCUMENTS.

CONTRACTOR's compliance with these provisions and the limits of liability shown for each of the insurance coverages to be provided by CONTRACTOR shall not be deemed to constitute a limitation of CONTRACTOR's liability for any claims, suits or actions or in any way limit, modify or otherwise affect CONTRACTOR's indemnification obligations.

Provision of the required insurance coverages and the actual certificates and copies of applicable endorsements is a condition precedent to the obligations of OWNER under the CONTRACT DOCUMENTS, and if CONTRACTOR shall at any time fail to provide the required insurance coverages, such failure shall constitute a material breach of CONTRACTOR's obligations under the CONTRACT DOCUMENTS. If CONTRACTOR does not purchase or maintain all of the bond and insurance required of CONTRACTOR by the CONTRACT DOCUMENTS, OWNER shall have the right (but not the obligation) to obtain such, at CONTRACTOR's expense.

In the event OWNER elects to pursue a claim under any applicable builder's risk policy, CONTRACTOR shall cooperate with OWNER, OWNER's insurance carriers, and their agents and representatives in asserting, substantiating or investigating any insurance claim, whether potential or actual, that OWNER may have in connection with Builder's Risk Insurance.

a. The CONTRACTOR and SUBCONTRACTORS shall provide and maintain Workers' Compensation insurance coverage as required by all applicable Federal, State, Maritime, Railroad or other laws and in accordance with Section 110.110 of Chapter 28 of the Texas Administrative Code and as follows:

1) Definitions.

- (a) Certificate of Coverage ("certificate"). A copy of a certificate of insurance, a certificate of District to self-insure issued by the Texas Workers' Compensation Commission (the "TWCC"), or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

1 and 2

For ease of incorporation of the insurance provisions in this Exhibit into the Utility Services Agreement documents, the term "OWNER" is used herein and is understood to mean MSEC ENTERPRISES, INC., referred to as "MSEC", the term ENGINEER is used herein and is understood to mean the MSEC Engineer in the Agreement to which this Exhibit is attached.