

**INTERLOCAL AGREEMENT BETWEEN
CIBOLO CREEK MUNICIPAL AUTHORITY
AND THE CITY OF SCHERTZ**

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

PREAMBLE:

The Parties to this Agreement (the “**Agreement**”) are the Cibolo Creek Municipal Authority (“**CCMA**”) and the City of Schertz (the “**City**”) (each individually referred to as a “**Party**” and collectively referred to as the “**Parties**”). The Parties are authorized to enter into this Agreement pursuant to the Interlocal Cooperation Act, Texas Government Code Chapter 791, specifically Section 791.026, Chapter 8166 of the Texas Special District Local Laws Code, Chapter 30 of the Texas Water Code, and other applicable laws. This Agreement is made for the purpose of efficient and effective use of resources and is in the best economic interests of the Parties. CCMA and the City are both political subdivisions of the State of Texas.

RECITALS

WHEREAS, CCMA owns and operates a regional wastewater system in the Cibolo Creek watershed (the “**Authority System**”) and is specifically identified as the regional wastewater provider for the area of the Cibolo Creek watershed pursuant to Subchapter F of Chapter 351 of Title 30 of the Texas Administrative Code;

WHEREAS, the City receives wholesale wastewater service from CCMA pursuant to that certain *Contract for Sewerage Service*, dated February 15, 1985;

WHEREAS, for wastewater service, the City transports its wastewater through its local wastewater facilities to the Authority System;

WHEREAS, the City operates as part of its local wastewater facilities the Waterford Lift Station;

WHEREAS, the City desires to decommission the Waterford Lift Station;

WHEREAS, to allow for the decommissioning of the Waterford Lift Station, the City, in partnership with CCMA desires to lower the Schertz Lift Station and to replace the Waterford Road Lift Station with a wastewater gravity line (the “**Gravity Line**”) and CCMA desires to accommodate this request; and

WHEREAS, CCMA and the City now desire to execute this Agreement to effect the mutual agreement to lower the Schertz Lift Station and to replace the Waterford Lift Station with the Gravity Line to allow for the decommissioning of the Waterford Lift Station.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the sufficiency of which are hereby conclusively acknowledged, and subject to the terms and conditions hereinafter set forth, CCMA and the City mutually undertake, promise, and agree as follows:

I. DEFINITIONS

In addition to the terms otherwise defined in the above recitals or the provisions of this Agreement, the terms used in this Agreement will have the meanings set forth below:

A. “City Contribution” means Schertz’ obligation to pay \$407,000.00 pursuant to the invoices received from CCMA. CCMA will invoice the City for \$350,000 prior to October 1, 2020 and the City will pay the “Balance Amount” of their contribution of \$57,000 pursuant to the invoice received from CCMA for the balance amount. Although the City is not obligated to pay the balance amount prior to the completion of construction of the Project, the City may provide payment sooner on an agreeable date between the two parties.

B. “CCMA Contribution” means CCMA’s obligation to pay \$70,000.00 as CCMA’s portion of the Project costs.

C. “Effective Date” means the date the Agreement is executed by both Parties, as included on the signature page.

D. “Force Majeure” means acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, orders of any kind of the Government of the United States or the State, or any civil or military authority, insurrection, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, partial or entire failure of water supply, or on account of any other causes not reasonably within the control of the Party claiming such inability.

E. “Gravity Line” means the wastewater gravity line that will replace the Waterford Lift Station for conveyance of City wastewater to the Authority System.

F. “Notice” occurs upon written communication by one party to the other as specifically defined in this Agreement. Notice to the Parties is satisfied by written communication to the address designated in Section IV.A, herein.

G. “Party” and “Parties” mean, respectively, the City and CCMA individually and collectively.

H. “Project” means the planning, design, and construction activities that pertain to lowering the Schertz Lift Station and installing the Gravity Line that will replace the Waterford Lift Station.

I. Use of the singular shall include the plural, and vice versa, where the usage permits reasonable construction of this Agreement.

II. TERM OF AGREEMENT

The term of this Agreement will begin on the Effective Date and terminate upon the later of the following: (1) CCMA's receipt of the Balance Amount in accordance with Section III.B, or (2) completion of the Project.

III. MUTUAL PROMISES AND COVENANTS OF THE PARTIES

The Parties, in consideration of the mutual promises and covenants contained in this Agreement, agree as follows:

A. CCMA shall be solely responsible for the planning, design, and construction of the Project. Included in **Exhibit A** is a Technical Memorandum prepared by the Plummer engineering firm detailing the Project options and the Project cost estimate.

B. CCMA will contribute \$70,000.00 to the total cost of the Project. CCMA will invoice the City for the City Contribution during the City's 2020 fiscal year, which ends September 30, 2020. Following completion of the Project, CCMA will invoice the City for the Balance Amount. The Parties agree that the City may pay the Balance Amount prior to receiving an invoice from CCMA. It is expressly understood and agreed that any obligations on the part of CCMA to plan, design, and construct the Project shall be conditioned upon the prompt and timely payment of any and all invoices submitted by CCMA to the City for payment as provided herein. Time is of the essence for the performance of this Agreement and the receipt of invoices and payments for obligations hereunder. Failure to timely pay CCMA any invoices associated with the Project will entitle CCMA to suspend performance of this Agreement until payment for past due invoices are received by CCMA.

C. The City acknowledges that CCMA may have to postpone construction of the Gravity Line until CCMA receives sufficient funding from assessment of impact fees. In the event the Gravity Line is postponed, to the extent such postponement results in increased costs for the Gravity Line, CCMA agrees that the City is not obligated to pay for the increase in costs, if there are any.

D. Except for the City Contribution and Balance Amount, all Project construction costs, including payment of contractors, subcontractors, and material providers, and all liability risks associated with the Project shall be the responsibility of CCMA.

E. The City acknowledges that this Project is dependent on a 99-year lease from the City to CCMA for CCMA owned Schertz Lift Station, and the completion of the site plan and plat map. In the event the City fails to enter the lease with CCMA regarding the lift station site, this Agreement will terminate and no longer have any force and effect.

F. Each Party shall provide such consents, cooperation, and assistance as is reasonably necessary to facilitate the construction of the Project.

IV. MISCELLANEOUS

A. Notice and Addresses. All notices required hereunder must be given by certified mail or registered mail, addressed to the proper Party, at the following addresses:

To CCMA: Cibolo Creek Municipal Authority
Attn: Clint Ellis, General Manager
P.O. Box 930
Schertz, TX 78154

With a copy to: Sara R. Thornton, Attorney for CCMA
Lloyd Gosselink Rochelle & Townsend, P.C.
816 Congress Ave., Ste. 1900
Austin, Texas 78701

To the City: City of Schertz, Texas
Attn: Mark Browne, City Manager
10 Commercial Place, Building 2
Schertz, TX, 78154

Either Party may change the address to which notices are to be sent by giving the other Party notice of the new address in the manner provided in this section. Notices shall be deemed to have been received three (3) days after deposit in the mail.

For ease of administration of this contract, a primary contact person has been designated for each of the Parties as follows:

For the City: Suzanne Williams, Public Works Director

For CCMA: Ryan Madsen, Business Manager

B. Parties Bound. This Agreement shall be binding upon, and inure to the benefit of, the Parties to this Agreement and their respective heirs, executors, administrators, legal representatives, successors, and assigns.

C. Prior Agreement Superseded. This Agreement constitutes the sole and only agreement of the Parties regarding their responsibilities to each other concerning the work noted herein on the Project and supersedes any prior understandings or written or oral agreements between the Parties respecting the Project. This Agreement in no way modifies or supersedes any document executed by the Parties prior to this Agreement which does not involve the Project.

D. Amendment. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the Parties to this Agreement.

E. Hold Harmless. CCMA will hold the City harmless from any claims arising from the construction of the Project, as each is contemplated by this Agreement (e.g., contract claims

between the City and any contractors and/or any injury or property damage claims) to the extent permitted by Texas law.

F. Violation of Law. The City and CCMA shall not violate any Federal, State or local laws, regulations or ordinances in the performance of this Agreement.

G. Enforceability. If any provision of this Agreement proves unlawful or unenforceable by a court having jurisdiction over the Parties or the subject matter, such provision shall be severable from the other provision of this Agreement, and all remaining provisions shall be fully enforceable.

H. Governing Law and Place for Performance. This Agreement shall be governed by the laws of Texas, which state shall also be deemed the place where this Agreement was entered into and the place of performance and transaction of business and Parties. In the event of litigation pertaining to the Agreement, the exclusive forum, venue, and place of jurisdiction shall also be the Guadalupe County and the State of Texas unless otherwise agreed in writing by the Parties. The Parties acknowledge that each has had the unfettered opportunity to review, revise, and negotiate the terms of this Agreement and that if in the future there is a dispute as to the meaning of any provision herein, then no such provision shall be construed against the drafter of the Agreement.

I. Recitals and Exhibits Incorporated. The recitals contained in the preamble hereof and the exhibits hereto are hereby found to be true, and such recitals and exhibits are hereby made a part of this Agreement for all purposes.

J. Signature Warranty Clause. The signatories to this Agreement represent and warrant that they have the authority to execute this Agreement on behalf of the City and CCMA, respectively.

K. No Waiver of Immunities. Nothing in the Agreement shall be construed to waive any immunities from suit or liability enjoyed by City, CCMA, their past or present officers, employees, or agents or employees.

L. No Third Party Beneficiary. This Agreement inures to the benefit of and obligates only the Parties executing it. No term or provision of this Agreement shall benefit or obligate any person or entity not a party to it. The Parties hereto shall cooperate fully in opposing any attempt by any third person or entity to claim any benefit, protection, release or other consideration under this Agreement.

M. No Joint Venture. Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint ventures or any other similar such relationship between the Parties hereto.

N. Approval by Governing Bodies. This Agreement has been approved by the governing bodies of the City and of CCMA.

O. Payment from Current Revenues. Each Party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying Party.

P. Assignment. Neither Party may assign their interests in this Agreement except upon receiving the written consent of the other Party.

EXECUTED TO BE EFFECTIVE this _____ day of _____, 2020.

**CIBOLO CREEK MUNICIPAL
AUTHORITY**

By: _____
Kenneth Greenwald, President

ATTEST:

By: _____
Reginna Agee, Secretary

CITY OF SCHERTZ

By: _____
Mark Browne, City Manager

ATTEST:

By: _____
Brenda Dennis, City Secretary