

**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.**

**LEASE FOR WASTEWATER TREATMENT FACILITIES SITE  
BETWEEN  
CIBOLO CREEK MUNICIPAL AUTHORITY  
AND  
CITY OF SCHERTZ**

This LEASE FOR WASTEWATER TREATMENT FACILITIES SITE (this “**Lease**”) is made and entered into by and between the **CIBOLO CREEK MUNICIPAL AUTHORITY** (the “**Authority**”), a conservation and reclamation district created under Article XVI, Section 59 of the Texas Constitution and Chapter 8166 of the Texas Special District Local Laws Code, as amended, and the **CITY OF SCHERTZ** (the “**City**”), a political subdivision of the state of Texas. Unless otherwise provided in this Lease, the Authority and City shall be referred to herein individually as a “**Party**,” or collectively, as the “**Parties**.”

**RECITALS**

**WHEREAS**, the Authority owns and operates a regional wastewater system in the Cibolo Creek watershed (the “**Authority System**”);

**WHEREAS**, the Authority owns certain facilities associated with the Authority System that are located on real property owned by the City for which the Authority and the City do not currently have an agreement regarding the Authority’s use of such real property;

**WHEREAS**, as a wholesale wastewater customer of the Authority, the City desires to lease to the Authority the real property on which the Authority’s facilities are sited;

**NOW THEREFORE**, in consideration of the mutual covenants, and agreements of this Lease, and other good and valuable consideration, the City leases to the Authority, and the Authority hereby agrees to assume responsibility of the leased premises, including but not limited to wastewater treatment and collection facilities, reclaimed water conveyance facilities, wastewater lines, reclaimed water lines, and a lift station owned and operated by the Authority (the “**Facilities**”), and the lands reasonably necessary to allow for the operation of the Facilities, with said lands being more particularly described in **Exhibit A** attached hereto.

## AGREEMENT

### **Article I.** **TERM OF THE LEASE**

#### **Section 1.01 Term of Lease.**

The term of this Lease is ninety-nine (99) years, beginning on the date this Lease is fully executed and ending ninety-nine (99) years from the anniversary date of this Lease, unless terminated sooner as provided below. The Authority shall pay an annual rental rate of One Dollar, which shall be payable on the anniversary date of the execution of this Lease for each succeeding ninety-nine (99) years. Failure to timely pay the above One Dollar Lease fee shall not be considered a material breach of this Lease, unless the City has provided the Authority with written notice that they are in default of that provision and the Authority has failed to cure the default within sixty (60) days of the date that they receive notice of non-payment.

#### **Section 1.02 Termination.**

This Lease shall terminate upon the occurrence of any one of the following events:

- (a) ninety-nine (99) years from the date of the execution of this Lease;
- (b) at such time as the Authority, in mutual agreement with the City, determines that the Facilities are no longer necessary to provide wastewater treatment services and reclaimed water services;
- (c) upon mutual written agreement of the Parties;
- (d) upon the occurrence of any act of default contained in Article IV, which remains is not remedied for a period of sixty (60) days from the date of written notice of default is received from the Party.

At such time as this Lease is terminated, as set forth above, the Authority shall return possession and operation of the Facilities to the City in good condition. The Authority shall be held responsible for the condition of the Facilities at the time the Lease is terminated, including any deterioration, decay, and/or damage to the Facilities and related structures as a result of negligence and/or intentional misconduct of the Authority.

### **Article II.** **OPERATION AND MAINTENANCE**

#### **Section 2.01 Operation and Maintenance.**

(a) The Authority will, throughout the Lease term, at its own expense, operate, maintain, and repair the Facilities and associated improvements in good order and condition, including but not limited to making all repairs as necessary to keep the Facilities in operation. All maintenance, repairs, and replacements required hereunder shall be performed promptly so as to ensure the continued operation of the Facilities. The Authority's obligations to operate, repair, and maintain the Facilities shall not extend any duty or obligation to operate, repair, or maintain any of the City's wastewater or reclaimed water facilities, which duties and obligation shall

remain the sole responsibility of the City. At such time as repairs are needed to be made to the Facilities, the Parties agree to cooperate with each other in order to facilitate the repair of the Facilities.

(b) The Authority may, to the extent required to ensure the continued and uninterrupted operation of the Facilities make alterations or improvements to the Facilities as they deem necessary in its sole discretion. Any alterations or improvements made to the Facilities during the term of this Lease shall become the property of the City upon the termination of the Lease.

(c) The City shall remain solely responsible for providing wastewater service to its customers, which wastewater service may involve the use of the Facilities for transporting the wastewater to the Authority's wastewater treatment plant. Nothing contained in this Lease shall impose any duties or obligation upon the Authority to provide, or assume for the provision of wastewater treatment service to individual customers of the City. The Parties specifically acknowledge and agree that nothing contained in this Lease is intended to confer any rights on any third parties under this Lease, including, but not limited to the City's customers, and shall not create any rights as third party beneficiaries for any party not a signatory to this Lease.

**Article III.**  
**INSURANCE AND DAMAGES**

**Section 3.01 Insurance.** The Authority will self-insure the Facilities against loss or damage in an amount sufficient to repair or replace the Facilities in the event of a total loss. The Authority shall provide general liability coverage and works compensation coverage against any accidents, injuries or damages occurring on the leased premises during the term of this Lease, in an amount consistent with the Authority's general liability coverage and workers compensation coverage the Authority System.

**Section 3.02 Damages; Duty to Make Repairs.** If the leased premises, or any structures, or improvements located thereon, are damaged or destroyed by any cause or casualty, the Authority shall immediately give the City written notice of the damage or destruction, including description of the damage and to the extent known by the Authority, the cause of the damage. Upon any such partial or total destruction of the premises as may require the cessation of operations of the Facilities, the Authority shall take all steps necessary to provide for the temporary operation of alternative facilities so as to ensure the continued operation of the City's wastewater system. The City shall fully cooperate with the Authority and take whatever steps are necessary to ensure the continued operation of the City facilities.

**Article IV.**  
**DEFAULT**

**Section 4.01 Authority Default.** The Authority shall be deemed to be in default of its obligations under the terms of this Lease, if, within sixty (60) days of the date of receipt of notice of any of the following acts of default, the Authority has failed to cure said default. An act of default by the Authority shall mean:

- (a) failure to provide for the continued operation of the Facilities in accordance with all applicable local, state, and federal regulations;
- (b) failure to reconstruct or repair any damages to the Facilities caused by any casualty loss;
- (c) failure to properly repair or maintain the Facilities;
- (d) failure to provide insurance coverage as referenced in Article III.

**Article V.**  
**GENERAL PROVISIONS**

**Section 5.01 Assignability.** Assignment of this Lease by either Party is prohibited without the prior written consent of the other Party, which consent shall not be unreasonably withheld, delayed or conditioned; provided however that City hereby consents to the assignment of this Lease to a conservation and reclamation district authorized by Article XVI, Section 59 of the Texas Constitution created for the purpose of owning and operating the Authority System and acting as successor in interest to Authority.

**Section 5.02 Amendment.** This Lease may be amended or modified only by written agreement duly authorized by the respective governing bodies of the City and the Authority and executed by duly authorized representatives of each.

**Section 5.03 Necessary Documents and Actions.** Each Party agrees to execute and deliver all such other and further instruments and undertake such actions as are or may become necessary or convenient to effectuate the purposes and intent of this Lease.

**Section 5.04 Entire Agreement.** This Lease constitutes the entire agreement of the Parties and this Lease supersedes any prior or contemporaneous oral or written understandings or representations of the Parties regarding the Lease.

**Section 5.05 Applicable Law.** This Lease will be construed under and in accordance with the laws of the State of Texas.

**Section 5.06 Venue.** All obligations of the Parties created in this Lease are performable in Guadalupe County, Texas, and venue for any action arising under this Lease will be in Guadalupe County, Texas.

**Section 5.07 Duplicate Originals.** This Lease may be executed in duplicate originals each of equal dignity.

**Section 5.08 Notices.** Any notice required under this Lease may be given to the respective Parties by deposit in regular first-class mail or by hand-delivery and by email to the address of the other Party shown below:

City:

City of Schertz

Schertz, Texas 78266

Email: \_\_\_\_\_

Attention: \_\_\_\_\_

Authority:

Cibolo Creek Municipal Authority  
P.O. Box 930  
Schertz, Texas 78154  
Email: [cdb@ccmatx.org](mailto:cdb@ccmatx.org)  
Attention: General Manager

Notices shall be deemed received on the date of delivery or within three calendar days of deposit in first-class mail.

**Section 5.09 Consents and Approvals.** Wherever this Lease requires any Party, or its agents or employees to provide a consent, approval or similar action, the Parties agree that such consent, approval or similar action will not be unreasonably withheld or delayed.

**Section 5.10 Severability.** Should any court declare or determine that any provisions of this Lease is invalid or unenforceable under present or future laws, that provision shall be fully severable; this Lease shall be construed and enforced as if the illegal, invalid, or unenforceable provision had never comprised a part of this Lease and the remaining provisions of this Lease shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Lease. Furthermore, in place of each such illegal, invalid, or unenforceable provision, there shall be added automatically as a part of this Lease a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable. Texas law shall govern the validity and interpretation of this Lease.

**Section 5.11 Force Majeure.** If any Party is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Lease, other than an obligation to pay or provide money, then such obligations of that Party to the extent affected by such force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time shall be suspended during the continuance of any inability so caused to the extent provided but for no longer period. Such cause, as far as possible, shall be remedied with all reasonable diligence. Force majeure means acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of any governmental entity other than Authority or any civil or military authority, acts, orders or delays of any regulatory authorities with jurisdiction over the parties, insurrections, riots, acts of terrorism, epidemics, landslides, lightning, earthquakes, fires, hurricanes, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, or any other conditions which are not within the control of a party. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the affected Party, and that the above requirements that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demand of the opposing Party or Parties when such settlement is unfavorable to it in the judgment of the affected Party.

**Section 5.12 Good Faith.** Each Party agrees that, notwithstanding any provision herein to the contrary (i) it will not unreasonably withhold or condition or unduly delay any consent, approval,

decision, determination or other action which is required or permitted under the terms of this Lease, and (ii) it will act in good faith and shall at all times deal fairly with the other Party.

**Section 5.13 Authority of Parties Executing Lease, Validity.** By their execution, each of the individuals executing this Lease on behalf of a Party represents and warrants to the other Party that he or she has the authority to execute the document in the capacity shown on this document. Each of the Parties further represent and warrant that this Lease constitutes a valid and binding contract, enforceable against it in accordance with its terms.

**Section 5.14 Exhibits.** The following exhibit, attached to this Lease, is incorporated into this Lease as if fully set forth:

Exhibit "A": Legal Description of Leased Premises

**Section 5.15 Effective Date.** This Lease will be effective from and after the last date of due execution by all Parties.

**Section 5.16 Recitals.** The recitals contained in the preamble of this Lease and the attachments hereto are hereby found to be true, and such recitals and attachments are hereby made a part of this Lease for all purposes.

*(Signatures on following pages)*

**CIBOLO CREEK MUNICIPAL AUTHORITY**

By: \_\_\_\_\_  
Kenneth Greenwald, Board President                      Date \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Reginna Agee, Treasurer

STATE OF TEXAS                      §  
                                                         §  
COUNTY OF GUADALUPE           §

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by Kenneth Greenwald, President of the Board of Directors of Cibolo Creek Municipal Authority, a conservation and reclamation district created under Article 16, Section 59, of the Texas Constitution, on behalf of said conservation and reclamation district.

\_\_\_\_\_  
Notary Public, State of Texas  
Printed Name of Notary:

\_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**CITY OF SCHERTZ, TEXAS**

By: \_\_\_\_\_ Date \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_

ATTEST:  
  
\_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_

STATE OF TEXAS                    §  
                                                  §  
COUNTY OF GUADALUPE       §

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2020,  
by \_\_\_\_\_, \_\_\_\_\_ of the City of Schertz, a political subdivision of the State  
of Texas, on behalf of said municipality.

\_\_\_\_\_  
Notary Public, State of Texas  
Printed Name of Notary:

\_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**EXHIBIT A**

**Legal Description of Leased Premises**