

RESOLUTION NO. 24-R-13

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AUTHORIZING A MEMORANDUM OF UNDERSTANDING WITH THE CITY OF CIBOLO AND THE CIBOLO CREEK MUNICIPAL AUTHORITY REGARDING THE SOUTHERN PLANT WASTEWATER FUNDING AGREEMENT.

WHEREAS, the CCMA, Schertz, and Cibolo entered into an Agreement on August 26, 2014, regarding the new wastewater treatment plant that was to be designed and constructed within the southern portion of CCMA's regional wastewater system (the "Southern Plant"), to meet the current and future wastewater treatment needs of Cibolo and Schertz, and potentially other customers; and

WHEREAS, the Parties entered into the original Agreement to document pecuniary obligations between Schertz and Cibolo concerning the repayment of the Southern Plant Bonds, the costs of issuance, the annual maintenance and operations costs at the Southern Plant, documenting and allocating the annual use of the capacity from the Southern Plant, the establishment of the framework for the possible expansion of the Southern Plant, and the ability to add prospective customers to benefit from the Southern Plant; and

WHEREAS, CCMA has completed the construction of the Southern Plant and per the Agreement, Schertz has made all payments to CCMA for the Southern Plant Bonds and is obligated to solely make those payments for the first ten years of the Agreement; and

WHEREAS, the First Amendment to the Southern Plant Wastewater Services and Funding Agreement was effective on October 23, 2018, which amended the Agreement to recognize the issuance of the 2018 Bonds and to amend Section 4(b) to reflect the payment obligations of the Schertz and Cibolo concerning the 2018 Bonds and the increased costs of the Southern Plant, and to document the increase in debt service requirements on the 2018 Bonds by the Cities of Schertz and Cibolo; and

WHEREAS, the Second Amendment to the Southern Plant Wastewater Services and Funding Agreement was effective on August 24, 2023, and amended Section 4(g) to provide an extension of 90 days to November 27, 2023, the date by which Cibolo must inform the City of Schertz if it chooses to connect to the Southern Plant; and

WHEREAS, the Third Amendment to the Southern Plant Wastewater Services and Funding Agreement was effective on November 20, 2023, and amended Section 4(g) to provide an additional extension February 29, 2024, the date by which Cibolo must inform the City of Schertz if it chooses to connect to the Southern Plant; and

WHEREAS, per the Agreement, Schertz and Cibolo shall equally split all Southern Plant Bond payments during years 11 through 20 and the City of Cibolo shall pay all Southern Plant Bond payments during years 21 through 30, if Cibolo provides written notice of its intent to meet its obligations on or before February 29, 2024, and through this MOU, Cibolo is seeking acknowledgment that the actions it has taken as set forth herein constitute compliance with the terms and conditions of Section 4(g) of the Agreement; and

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS THAT:

Section 1. The City Council hereby authorizes entering into a Memorandum of Understanding with the City of Cibolo and CCMA as per the Attached Exhibit "A".

Section 2. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the City Council.

Section 3. All resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 4. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 5. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Resolution would have been enacted without such invalid provision.

Section 6. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

Section 7. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

PASSED AND ADOPTED, this ____ day of _____, 2024.

CITY OF SCHERTZ, TEXAS

Ralph Gutierrez, Mayor

ATTEST:

Sheila Edmondson, City Secretary

Exhibit "A"

MOU with the City of Cibolo and CCMA regarding the Southern Plant Sewer Funding Agreement

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (the "MOU"), made and entered into on the ___ day of _____, 2024, by and between the **Cibolo Creek Municipal Authority** ("CCMA"), a conservation and reclamation district created under Article 16, Section 59, of the Texas Constitution, the **City of Schertz, Texas** ("Schertz"), a home rule municipality and political subdivision of the State of Texas, and the **City of Cibolo, Texas** ("Cibolo"), a home rule municipality and political subdivision of the State of Texas, also all each referred to as a "**Party**" and collectively as the "**Parties**").

RECITALS

WHEREAS, the CCMA, Schertz, and Cibolo entered into an Agreement on **August 26, 2014**, regarding the new wastewater treatment plant that was to be designed and constructed within the southern portion of CCMA's regional wastewater system (the "Southern Plant"), to meet the current and future wastewater treatment needs of Cibolo and Schertz, and potentially other customers; and

WHEREAS, the Parties entered into the original Agreement to document pecuniary obligations between Schertz and Cibolo concerning the repayment of the Southern Plant Bonds, the costs of issuance, the annual maintenance and operations costs at the Southern Plant, documenting and allocating the annual use of the capacity from the Southern Plant, the establishment of the framework for the possible expansion of the Southern Plant, and the ability to add prospective customers to benefit from the Southern Plant; and

WHEREAS, CCMA has completed the construction of the Southern Plant and per the Agreement, Schertz has made all payments to CCMA for the Southern Plant Bonds and is obligated to solely make those payments for the first ten years of the Agreement; and

WHEREAS, the First Amendment to the Southern Plant Wastewater Services and Funding Agreement was effective on October 23, 2018, which amended the Agreement to recognize the issuance of the 2018 Bonds and to amend Section 4(b) to reflect the payment obligations of the Schertz and Cibolo concerning the 2018 Bonds and the increased costs of the Southern Plant, and to document the increase in debt service requirements on the 2018 Bonds by the Cities of Schertz and Cibolo; and

WHEREAS, the Second Amendment to the Southern Plant Wastewater Services and Funding Agreement was effective on August 24, 2023, and amended Section 4(g) to provide an extension of 90 days to November 27, 2023, the date by which Cibolo must inform the City of Schertz if it chooses to connect to the Southern Plant; and

WHEREAS, the Third Amendment to the Southern Plant Wastewater Services and Funding Agreement was effective on November 20, 2023, and amended Section 4(g) to provide an additional extension February 29, 2024, the date by which Cibolo must inform the City of Schertz if it chooses to connect to the Southern Plant; and

WHEREAS, per the Agreement, Schertz and Cibolo shall equally split all Southern Plant Bond payments during years 11 through 20 and the City of Cibolo shall pay all Southern Plant Bond payments during years 21 through 30, if Cibolo provides written notice of its intent to meet its obligations on or before February 29, 2024, and through this MOU, Cibolo is seeking acknowledgment that the actions it has taken as set forth herein constitute compliance with the terms and conditions of Section 4(g) of the Agreement; and

WHEREAS, Cibolo and Green Valley SUD (“GVSUD”) have come to an agreement in the lawsuit styled *Green Valley Special Utility District v. City of Cibolo, Civil Action No. 1:16-cv-00627-LY (U.S. District Court, Western District of Texas, Austin Division)*, which reflects the intent of Cibolo to meet its obligations under the Agreement; and

WHEREAS, an essential term of the settlement with GVSUD is the development of an Agreement that allocates current and future capacity within the CCMA South Plant for the treatment of wastewater that originates within the respective certificated sewer service areas of the Parties; and

WHEREAS, per the Agreement, Cibolo is agreeing to pay Southern Plant Bond payments during years 11 through 30 per the Agreement starting in 2025 as reflected in Resolution No. ____ approved by the Cibolo City Council on _____, 2024; and

NOW, THEREFORE, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the CCMA, Schertz and Cibolo agree as follows:

SECTION 1. The Parties agree that the following affirmative actions taken by Cibolo, in conjunction with the passage of Resolution No. _____ by the City Council shall constitute adequate evidence of its intention and ability to meet its obligations under the Agreement:

1. Cibolo will be required to serve as part of the Settlement Agreement in the above mentioned lawsuit 3,200 acres.
2. Under the Settlement Agreement with GVSUD in the above reference lawsuit, Cibolo agreed to assign to GVSUD the below agreed to wastewater treatment capacity pursuant to and according to the terms and conditions of the Southern Plant Agreement.
 - a. 350,000 gallons per day (“gpd”) daily flow in a Cibolo constructed trunk line/lift station for transport to CCMA and average flow wastewater treatment capacity at no cost to GVSUD.
 - b. GVSUD has an option to purchase an additional 200,000 gpd average daily flow at Cibolo’s actual cost paid, inclusive of principal and interest. The treatment capacity shall be timed to expansion phases in the CCMA South Plant as follows:
 - i. Phase 1—at the current phase with a total capacity of 500,000 gallons per day average flow 25,000 gpd will be assigned to GVSUD at no cost and an option to obtain an additional 25,000 gpd at Cibolo’s cost;
 - ii. Phase 2—assuming expansion in Phase 2 from 500,000 gpd to one million gpd 100,000 gpd will be assigned to GVSUD at no cost and an option to obtain an additional 25,000 gpd at Cibolo’s cost; and

- iii. Phase 3—assuming expansion in Phase 3 from one million gpd to current permitted full capacity of three million gpd 225,000 will be assigned to GVSUD at no cost and an option to obtain an additional 125,000 gpd at Cibolo’s cost.
3. Cibolo will obtain the necessary permits, licenses, certificates of convenience and necessity that are necessary for Cibolo to provide wastewater services that will require the CCMA wastewater system capacity of the Southern Plant within a commercially reasonable time under current agency practice and rules and will begin the necessary applications promptly. It is agreed that will begin within 90 days.
4. Cibolo will seek a qualified engineer to design the below list of projects that have been developed as a part of the service plans for Cibolo to provide the necessary facilities to serve the area and meet its obligations under the Third Amendment to the Southern Plant Wastewater Services and Funding Agreement:
 - a. Project No. 1—Venado Trunkline (24-inch PVC)
 - b. Project No. 2-I—Haeckerville L.S. & F.M. Phase I (12” F.M. with lift station)
 - c. Project No. 2-II—Haeckerville L.S. Upgrade and Parallel F.M. Phase II (upgrade Haeckerville system to 100%)
 - d. Project No. 3—Bolton Road Trunkline (42-inch FRP)
 - e. Project No. 4—Bolton Road Trunkline Extension (36-inch FRP – Project 3 to Haeckerville)
5. Cibolo will initiate a TCEQ permit for crossing Cibolo Creek and filing for CCN exchange and transfer.
6. A Request for Qualifications (RFQ) will go out by end of April to move towards construction as soon as possible.
7. Cibolo will adopt an update to the Comprehensive Plan, including the future land use between April and May.
8. Cibolo will schedule meetings with property owners to share with them the Cibolo’s plans to a) move forward to bring sewer to their area; b) explain the future land uses; and c) extend to them development agreements that would incentivize them to work with Cibolo.
9. Cibolo’s goal is to have a developer willing to initiate construction in 2025 so Cibolo can go out for bids and initiate construction of wastewater projects.

SECTION 2. The original Agreement referenced herein, and all other provisions of the original Agreement, First Amendment, Second Amendment, and Third Amendment shall remain in full force and are not impacted by this MOU.

SECTION 3. The factual recitals and findings set forth above are found to be true and correct for all purposes and incorporated into the body of this Agreement.

SECTION 4. This Amendment is duly executed by CCMA, Schertz and Cibolo duly authorized representatives as evidenced by their signatures below.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed.

CITY OF CIBOLO

Wayne Reed
City Manager

Date

CITY OF SCHERTZ

Steve Williams
City Manager

Date

CIBOLO CREEK MUNICIPAL AUTHORITY

Clint Ellis
General Manager

Date