

RESOLUTION 26-R-039

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AUTHORIZING A WASTEWATER TRANSMISSION AND TREATMENT CAPACITY LEASE AGREEMENT WITH THE GREEN VALLEY SPECIAL UTILITY DISTRICT (GVSUD) AND RELATED MATTERS IN CONNECTION THEREWITH.

WHEREAS, The City Council of the City of Schertz, Texas (the City) has previously discussed and desires to participate in the design and construction of the expansion of the south wastewater treatment plant that is owned, managed, maintained, and operated by the Cibolo Creek Municipal Authority (CCMA); and

WHEREAS, the City has entered into the Regional Wastewater Treatment Contract South Wastewater Treatment Plant Expansion Project with CCMA for that expansion; and

WHEREAS, the expansion of the South Plant which will provide additional needed sewer treatment capacity to the City of Schertz is not anticipated to be completed for four or five years; and

WHEREAS, the City is experiencing tremendous growth in the area if southern Schertz that is served by the South Plant, and

WHEREAS, in order to provide needed sewer treatment capacity until the completion of the South Plant expansion, staff recommends entering into the Wastewater Transmission and Treatment Capacity Lease Agreement with GVSUD.

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

Section 1. The City Council hereby authorizes a Wastewater Transmission and Treatment Capacity Lease Agreement generally 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resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.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 APPROVED on the _____ day of _____, 2026.

CITY OF SCHERTZ, TEXAS

Ralph Rodriguez, Mayor

ATTEST:

Sheila Edmondson, City Secretary

Exhibit "A"

Wastewater Transmission and Treatment Capacity Lease Agreement

WASTEWATER TRANSMISSION AND TREATMENT CAPACITY LEASE AGREEMENT

This Wastewater Transmission and Treatment Capacity Lease Agreement (the “Lease or “Agreement”) is entered into by and between GREEN VALLEY SPECIAL UTILITY DISTRICT, a Texas special utility district created pursuant to, and operating under, the authority of Chapters 49 and 65, Texas Water Code (“GVSUD” or “Lessor”) and CITY OF SCHERTZ, TEXAS, a Texas home rule municipality (“Schertz” or “Lessee”) (each a “Party” and collectively, the “Parties”), for the purpose of providing the terms and conditions by which Lessor’s right and entitlement to certain wastewater transmission and treatment capacity shall be leased to Lessee for use in enabling Lessee to provide retail wastewater service to Lessee customers.

RECITALS

WHEREAS, Lessor and Lessee are parties to that certain April 27, 2023 Wastewater Line Capacity Agreement (the “Line Capacity Agreement”), a true and correct copy of which is attached as **Exhibit A** to this Lease; and

WHEREAS, among other terms and conditions of the Line Capacity Agreement, Schertz assigned to GVSUD 75,000 gallons per day (“gpd”) average daily flow capacity in Schertz’s Woman Hollering Creek Trunk Line/Lift Station (“WHCTL/LS”) at no cost to GVSUD and agreed to assign up to an additional 75,000 gpd average daily flow capacity at Schertz’s actual cost paid, for a total of up to 150,000 gpd of transmission capacity in the WHCTL/LS; and

WHEREAS, Lessor and Lessee are parties to that certain April 27, 2023 Cibolo Creek Municipal Authority South Wastewater Treatment Plant Capacity Agreement (the “Treatment Capacity Agreement”), a true and correct copy of which is attached hereto as **Exhibit B** to this Lease; and

WHEREAS, among other terms and condition of the Treatment Capacity Agreement, Schertz assigned to GVSUD 75,000 gpd average daily flow of treatment capacity out of its undivided interest in the Cibolo Creek Municipal Authority South Wastewater Treatment Plant (“CCMA South Plant”) at no cost to GVSUD, and up to an additional 50,000 gpd average daily flow treatment capacity at Schertz’s actual cost, for a total of up to 125,000 gpd average daily flow CCM South Plant treatment capacity; and

WHEREAS, Schertz has determined that it has an immediate need for additional wastewater transmission and treatment capacity in the area served by the CCMA South Plant pending the proposed capacity expansion of the CCMA South Plant to serve development; and

WHEREAS, Lessee, together with the City of Cibolo, Texas, jointly formed and continues to fund the Cibolo Valley Local Government Corporation (“CVLGC”) for the purpose of obtaining groundwater rights and the development of a public water supply project to provide additional supplies of potable water for the benefit of the citizens of Schertz and Cibolo; and

WHEREAS, CVLGC has acquired approximately 11,000 acre feet per year (“afpy”) of groundwater rights through leases located in Wilson County, Texas, along with other assets, including but not

limited to designs, plans, analysis related to a water production, transmission and conveyance infrastructure, and real property interests, including well sites, easements and other valuable assets (the "CVLGC Assets:"); and

WHEREAS, events subsequent to the formation by CVLGC and CVLGC's acquisition of groundwater rights, including but not limited to Lessee's participation in the Schertz Seguin Local Government Corporation ("SSLCG"), have caused Lessee to determine that it may no longer have an interest or need to develop the project with the groundwater rights acquired by CVLGC or to continue to maintain those groundwater rights through the payment of royalties and/or delay rentals; and

WHEREAS, Lessor has determined that it does not have an immediate need for and is willing to temporarily : (1) the 150,000 gpd average daily flow WHCTL/LS transmission capacity assignable to GVSUD pursuant to the Line Capacity Agreement; or (2) the 125,000 gpd average daily flow CCMA South Plant treatment capacity pursuant to the Treatment Capacity Agreement; and

WHEREAS, Lessor has further determined that it is willing to temporarily lease to Lessee pursuant to this Lease both; (1) its entitlement to 150,000 gpd average daily flow of WHCTL/LS transmission capacity under the Transmission Capacity Agreement; and (2) its entitlement to 125,000 gpd average daily flow of treatment capacity in the CCM South Plant; and

WHEREAS, Lessor is willing to lease to Lessee a portion of its wastewater transportation and treatment rights, subject to the terms and conditions of this Lease.

NOW THEREFORE, the Parties, for and in consideration of the covenants and agreements herein set forth to be kept and performed by them respectively, the Parties agree together as follows:

AGREEMENT

1. **Recitals Incorporated:** Each of the recitals in this Lease are incorporated into this Lease by reference for all purposes.
2. **Agreements Incorporated:** The Line Capacity Agreement and Treatment Capacity Agreement, and each of their respective terms and conditions are incorporated into this Lease by reference for all purposes.
3. **Demise:** Lessor, for and in consideration of the covenants and agreements hereinafter set forth to be kept and performed by both Parties, does hereby demise and lease to Lessee for the Lease Term (hereinafter defined) 150,000 gpd average flow wastewater transportation capacity in the WHCTL/LS, and 125,000 gpd average flow wastewater treatment capacity in the CCMA South Plant (collectively, the "Capacity"). Lessee shall be solely responsible for all obligations and undertakings of GVSUD regarding the specified Capacity as set forth in the Line Capacity Agreement and the Treatment Capacity Agreement, for the Term of the Lease, including, but not limited to, metering and reporting obligations, maintenance and repairs, the payment of any and all rents, charges and assessments, and specifically including, but not limited to, any impact fee associated with the CCMA South Plant treatment capacity.

During the Term of the Lease, Lessor shall have no responsibility or liability to Lessee for treatment charges, maintenance fees, CCMA impact fees or other expenses incurred by Lessee in its use of the leased Capacity.

4. Lease Term: The Lease will be effective upon execution (the "Effective Date"), the Term of the Lease will commence on the Commencement Date, as further defined herein, and will expire on that day that is the last day of the fifth year following the Commencement Date unless renewed in writing as provided in Section 5 of this Lease. The Commencement Date will be the earlier to occur of (i) ninety (90) days following the Effective Date; or (ii) such earlier date as Lessee actually commences the transportation and treatment of wastewater utilizing the leased capacity under this Lease.
5. Option to Renew: Provided that Lessee is not in default under this Lease beyond applicable notice and cure periods at the time of the exercise of the Option granted herein, Lessee is granted the option (the "Option") to renew this Lease for one additional term of one year (the "Renewal Term") commencing on the next day after the expiration of the Initial Term. Lessee shall exercise the Option, if at all, by delivering Lessor written notice of the exercise of the Option at least 90 days prior to the expiration of the Initial Term. Lessee's lease of the transport and treatment capacity during the Renewal Term will be upon the same terms as for the Initial Term, except that the Rent (hereinafter defined) will adjust as hereinafter provided and during the Renewal Term. Lessee will have no further right to renew this Lease, and no continuation of the Lease is or will be implied. Lessee shall develop alternative or replacement capacity prior to the expiration of this Lease.
6. Rent.
 - A. Initial Term. Lessee agrees to pay to Lessor Annual Rent for the Capacity in quarterly installments, in advance, beginning on the Commencement Date of \$62,500 per quarter for a total Annual Rent of \$250,000.00. Further, Lessee agrees to provide a right of first refusal to the Lessor if the Lessee determines to convey the Lessee's interests in the CVLGC Assets free and unencumbered from any liens or limitations on Lessor's ownership and use of the CVLGC Assets.
 - B. Renewal Term. Provided that Lessee has complied with all terms and conditions of this Lease, the Parties agree to negotiate in good faith the annual Rent for the Renewal Term upon receipt of notice by Lessee to Lessor pursuant to the Notice provisions of this Lease of Lessee's intent to exercise its option for the Renewal Term.
 - C. Payment of Rent. With the exception of Each installment of quarterly Rent shall be due and payable on the first day of the quarter by Automated Clearing House ("ACH").
7. Operation of the Wastewater Infrastructure. Lessee shall at all times during the Lease Term be solely responsible for the operation and maintenance, repair and replacement of the WHCTL/LS. Lessee shall operate the WHCTL/LS in accordance with all applicable laws and in accordance with industry standards.

8. Representations, Warranties and Covenants of Lessor: Lessor represents, warrants and covenants to Lessee that:
- A. Title. Lessor has good, marketable and indefeasible property rights to the Capacity subject to this Lease.
 - B. Authority. Lessor has all requisite power and authority, has taken all actions required by its organizational documents and applicable law, and has obtained all necessary consents, to execute and deliver this Lease and to consummate the transaction contemplated in this Lease.
 - C. Other Agreements, etc. Neither the execution of this Agreement nor the confirmation by Lessor of the transactions contemplated hereby will (i) conflict with or result in any breach of the terms, conditions or provisions of, or constitute a default under; (ii) violate any restriction to which Lessor or the Capacity subject to this Lease; or (iii) constitute the violation of any applicable laws
 - D. Proceedings. There are no attachments, executions, assignments for the benefit of creditors, or voluntary or involuntary bankruptcy proceedings, or under any debtor relief laws, contemplated by or pending or threatened against Lessor or the capacity rights in the WHCTL/LS or CCMA South Plant capacity.
 - E. Litigation. Lessor is not now a party to any material litigation, arbitration or administrative proceeding (i) with any person or entity having or claiming any interest in the Capacity subject to this Lease; or (ii) affecting or questioning Lessor's property interest in the Capacity rights in the WHCTL/LS or CCMA South Plant subject to this Lease.
 - F. Compliance with Laws. To the best of Lessor's knowledge and belief, all applicable laws bearing on the Capacity volumes subject to this Lease have been complied with and this Lease will not violate any such laws.
 - G. Consents. As of the Commencement Date, no consent to the execution or implementation of this Lease is required from any third party
 - H. True and Correct. To Lessor's best knowledge, after reasonable inquiry, all information and other items heretofore or hereafter submitted to Lessee by or on behalf of Lessor are true, correct and complete. Lessor is not aware of any omission to supply Lessee with any material information or other items with respect to Lessor's capacity rights in the WHCTL/LS or CCMA South Plant subject to this Lease.

Lessor acknowledges that the execution of this Lease by Lessee has been made, and the lease of the Pipeline System by Lessee will have been made, in material reliance by Lessee on Lessor's representations and warranties contained in this Paragraph 8.

9. Representations, Warranties and Covenants of Lessee: Lessee represents, warrants and covenants to Lessor that:
- A. Authority. Lessee has all requisite power and authority, has taken all actions required by its organizational documents and Applicable Laws, and has obtained all necessary consents, to execute and deliver this Lease and to consummate the transactions contemplated in this Lease.
 - B. CVLGC Assets. Lessee will make a good faith effort to obtain the legal authority and all requisite approvals to convey all of its undivided interest in the CVLGC Assets to Lessor should it make the determination that the Lessee to convey Lessee's interest in the CVLGC assets.
 - C. Proceedings. There are no attachments, executions, assignments for the benefit of creditors, or voluntary or involuntary bankruptcy proceedings, or under any debtor relief laws, contemplated by or pending or threatened against Lessee.
 - D. Consents. No consent to the execution or implementation of this Lease is required from any third party.
 - E. Licenses. Lessee possesses or will possess all licenses, certificates and permits that are required to fulfill its obligations hereunder.
 - F. Liens. Lessee has no authority, express or implied, and will not create or place any lien or encumbrance of any kind or nature whatsoever upon, or in any manner bind the interest of Lessor or Lessee in the capacity leased hereunder, including those who may furnish materials or perform labor for any construction or repairs.
 - G. Litigation. Lessee is not now a party to any material litigation, arbitration or administrative proceeding affecting or questioning Lessee's ability to perform its obligation under this Lease.
 - H. True and Correct. To Lessee's best knowledge, after reasonable inquiry, all information and other items heretofore or hereafter submitted to Lessor by or on behalf of Lessee are true, correct and complete.

Lessee acknowledges that the execution of this Lease by Lessor has been made, and the lease of the Pipeline System by Lessor will have been made, in material reliance by Lessor on Lessee's representations and warranties contained in this Paragraph 9.

10. Agreement to Hold Harmless: To the extent authorized by law governing municipalities and special district, each Party hereto shall defend, protect and hold the other free and harmless from and against any and all claims, liabilities, damages, costs, penalties, forfeitures, losses or expenses (including attorneys' fees) for death or injury to any person or damage to any property whatsoever arising or resulting in whole or in part, directly or indirectly, out of the

acts or omissions of the counterparty or its employees, contractors or agents or arising out of any breach by the other party to this Lease.

11. Insurance:

A. Maintenance of Existing Coverage. Lessor and Lessee will maintain such or similar insurance coverages in place as exist at the time of execution of this Agreement to the extent pertinent to the respective obligations of each herein.

B. Waiver of Subrogation. Lessor and Lessee and all parties claiming under them mutually release and discharge each other from all claims and liabilities arising from or caused by any casualty or hazard which is covered by insurance carried on the WHCTL/LS or carried in connection with property on or activities conducted on the easements/rights-of-ways on which the WHCTL/LS is located, and waive any right of subrogation which might otherwise exist in or accrue to any person on account thereof.

12. Assignment: This Lease may not be assigned by either Party without the prior written consent of the other Party. The foregoing restrictions on assignment shall not apply to (a) a transfer by a party to an affiliate, provided that the assignment shall not relieve the assignor's obligations under this Lease.

13. Surrender upon Termination. Upon the expiration of the Lease Term, Lessee shall surrender up the WHCTL/LS and CCMA South Plant Capacity with all of Lessee's obligations hereunder fully performed.

14. Events of Default:

A. Events of Default by Lessor. The occurrence of any of the following shall constitute a material default and breach of this Lease by Lessor:

(1) A failure by Lessor to observe and perform any material provision or covenant of this Lease to be observed or performed by the Lessor, where such failure continues for thirty (30) days after written notice thereof by Lessee to Lessor, except that this thirty (30) day period shall be extended for a reasonable period of time if the alleged default is not reasonably capable of cure within said thirty (30) day period and Lessor proceeds to diligently cure the default.

B. Events of Default by Lessee. The occurrence of any of the following shall constitute a material default and breach of this Lease by Lessee:

(1) Any failure by Lessee to pay Rent or make any other payment required to be made by Lessee hereunder, where such failure continues for thirty (30) days after receipt of written notice from the Lessor, subject to the right of Lessee, reasonably exercised, to contest any such payment. In the event Lessee withholds any such payment, and it is determined that such withholding was wrongful, Lessee shall pay

interest to Lessor on such monies wrongfully withheld at the maximum amount allowed by law.

- (2) A failure by Lessee to observe and perform any other material provision or covenant of this Lease to be observed or performed by the Lessee, where such failure continues for thirty (30) days after written notice thereof by Lessor to Lessee, except that this thirty (30) day period shall be extended for a reasonable period of time if the alleged default is not reasonably capable of cure within said thirty (30) day period and Lessee proceeds to diligently cure the default.
 - (3) Any failure of Lessee's representations or warranties to remain true and correct throughout the Lease Term; provided that no event of default shall occur if such representation or warranty is again true and correct within thirty (30) days after receipt of written notice from Lessor.
 - (4) The making by Lessee of any general assignment for the benefit of creditors.
15. Notice: Any notice or communication required or permitted in this Lease shall be given in writing, sent by (a) personal delivery, or (b) expedited delivery service with proof of delivery, or (c) United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed:

if to Lessor, as follows:

City of Schertz
1400 Schertz Parkway
Schertz, Texas 78154
Attention: City Manager

with a copy to:

Denton, Navarro, Rodriguez, Bernal, Santee & Zech, P.C.
2517 North Main Avenue
San Antonio, Texas 78212
Attention: T. Daniel Santee

and, if to Lessee, as follow

Green Valley Special Utility District
605 FM 465
Marion, Texas 78124
Attention: General Manager

with a copy to :

TERRILL & WALDROP, PLLC
810 West 10th Street
Austin, Texas 78701
Attention: Shan Rutherford

or to such other address or to the attention of such other person as shall be designated by the applicable party and on fifteen (15) days' notice from time to time in writing and sent in accordance herewith. Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of delivery service or mail, upon receipt.

16. No Rent Abatement. In no event shall a problem at Lessee's facilities or at the CCMA South Plant excuse Lessee's obligations to pay Rent hereunder, unless and to the extent such problem was caused by Lessor.
17. Limitation of Liability: Neither Party shall be liable for punitive or consequential damages of any kind arising out of or in any way connected with the performance of or failure to perform this Agreement.
18. Goods and Services: The Parties acknowledge and agree that as of the Effective Date of this Lease, the mutual commitments stated herein for the lease of transportation and treatment capacity by Lessor to Lessee constitute an agreement for Lessor to provide goods and services to Lessee under Chapter 271, Subchapter I, Texas Local Government Code, and this Lease is subject to Chapter 271, Subchapter I, Texas Local Government Code.
19. Miscellaneous:
 - A. Headings/Gender. Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires. The captions inserted in this Lease are for convenience only and in no way define, limit or otherwise describe the scope or intent of this Lease, or any provision hereof, or in any way affect the interpretation of this Lease.
 - B. Successors and Assigns. Without limiting the terms of Paragraph 12 above, the terms, provisions and covenants and conditions contained in this Lease shall apply to, inure to the benefit of, and be binding upon, the parties hereto and upon their respective heirs, executors, personal representatives, legal representatives, successors and assigns, except as otherwise herein expressly provided.
 - C. Entire Agreement. This Lease constitutes the entire understanding and agreement of the Lessor and Lessee with respect to the subject matter of this Lease, and contains all of the covenants and agreements of Lessor and Lessee with respect thereto. Lessor and Lessee each acknowledge that no representations, inducements, promises or agreements, oral or written, have been made by Lessor or Lessee, or anyone acting on behalf of Lessor or Lessee, which are not contained herein, and any prior agreements, promises,

negotiations, or representations not expressly set forth in this Lease are of no force or effect. This Lease may not be altered, changed or amended except by an instrument in writing signed by both parties hereto.

- D. Severability. If any clause or provision of this Lease is illegal, invalid, or unenforceable under present or future laws effective during the term of this Lease, then and in that event, it is the intention of the Parties hereto that the remainder of this Lease shall not be affected thereby, and it is also the intention of the Parties to this Lease that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, there be added, as a part of this Lease, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.
- E. Effective Date of Lease. All references in this Lease to “the date hereof” or similar references shall be deemed to refer to the last date, in point of time, on which all Parties hereto have executed this Lease.
- F. Counterparts. This Lease may be executed in counterparts, each being deemed an original, but together constituting only one instrument.
- G. Attorneys’ Fees. In the event it becomes necessary for either party hereto to file a suit respecting the subject matters of this Lease including without limitation to enforce this Lease or any provisions contained herein, the party prevailing in such action shall be entitled to recover, in addition to all other remedies or damages, reasonable attorneys’ fees incurred in such suit.
- H. Law Governing and Venue. THIS LEASE SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS, AND VENUE AND JURISDICTION FOR ANY ACTION OR PROCEEDING RESPECTING THE SUBJECT MATTERS OF THIS LEASE INCLUDING WITHOUT LIMITATION TO ENFORCE THIS LEASE OR ANY PROVISIONS CONTAINED HEREIN SHALL BE EXCLUSIVELY IN THE COURTS LOCATED IN GUADALUPE COUNTY, TEXAS.
- I. No Waiver. No waiver by either party of any provision of this Lease or of any default, event of default or breach hereunder shall be deemed to be a waiver of any other provision of this Lease, or of any subsequent default, event of default or breach of the same or any other provision. Either party’s consent to or approval of any act requiring consent or approval shall not be deemed to render unnecessary the obtaining of consent to or approval of any subsequent act requiring consent. No act or thing done by Lessor or Lessor’s agents during the term of this Lease shall be deemed an acceptance of a surrender of its rights and entitlements under the Line Capacity Agreement and the Treatment Capacity Agreement, unless done in writing signed by Lessor.
- J. Interpretation. The parties hereto agree that it is their intention hereby to create only the relationship of Lessor and Lessee, and no provision hereof, or act of either party hereunder, shall ever be construed as creating the relationship of principal and agent, or a partnership, or a joint venture or enterprise between the Parties hereto.

K. Amendments. This Lease may not be modified or amended, except by an agreement in writing signed by Lessor and Lessee. The Parties may waive any of the conditions contained herein or any of the obligations of the other Party hereunder, but any such waiver shall be effective only if in writing and signed by the Party waiving such conditions or obligations, except as specifically set forth herein.

[Signature Pages Follow]

GREEN VALLEY SPECIAL UTILITY DISTRICT, Lessor

By: 
Phillip K. Gage, General Manager

Date: February 11, 2024

CITY OF SCHERTZ, TEXAS, Lessee

By: _____
Steve Williams, City Manager

Attest: _____
Sheila Edmonson, City Secretary

Date: _____

Exhibit A

WASTEWATER LINE CAPACITY AGREEMENT

BETWEEN

THE CITY OF SCHERTZ, TEXAS

AND

GREEN VALLEY SPECIAL UTILITY DISTRICT

**FOR THE WOMAN HOLLERING CREEK TRUNK
LINE AND LIFT STATION**

WASTEWATER LINE CAPACITY AGREEMENT

This Wastewater Line Capacity (“Agreement”) is made and entered into as of the ____ day of _____, 2023 (the “Effective Date”) by and between the City of Schertz, Texas (“Schertz”) a municipal corporation of the State of Texas, and Green Valley Special Utility District (“GVSUD”), a political subdivision of the State of Texas, individually referred to herein as a “Party” and collectively as “Parties”.

RECITALS

WHEREAS, the Parties entered into a Mediated Settlement Agreement (“MSA”) and agreed to use their best efforts to draft a final Comprehensive Settlement Agreement consistent with the MSA; and,

WHEREAS, an essential term of the MSA is the development of an Agreement that allocates current and future flow capacity within the Woman Hollering Creek Trunk Line/Lift Station (“WHCTL/LS”) for the transport of wastewater that originates within the respective certificated sewer service areas of the Parties, to a termination point located at the Cibolo Creek Municipal Authority South Wastewater Treatment Plant (“CCMA South Plant”); and,

WHEREAS, Schertz is in process of constructing the WHCTL/LS with an initial capacity average daily flow of 765,870 gallons, currently estimated to be the equivalent of 3,126 Living Unit Equivalents (“LUE”), with an LUE equaling 245 gpd, currently at an estimated cost per LUE of \$4,132.00 (\$12,918,000/3,126) or \$16.87 per gallon (\$12,918,000/765,870); and,

WHEREAS, the Parties have agreed that Schertz will assign WHCTL/LS initial capacity of 75,000 gallons per day at no cost to GVSUD, and will assign WHCTL/LS capacity sufficient to service up to an additional total of 75,000 gallons per day) at the City of Schertz final actual cost paid, inclusive of principal and interest, currently estimated to be \$1,264,392.00; and,

WHEREAS, the Parties hereby find that the terms and conditions set forth herein represent that which the Parties believe to be in the best interest of each entity and their respective existing and future customers.

NOW THEREFORE, the Parties, for and in consideration of the covenants and agreements herein set forth to be kept and performed by them respectively, have agreed to and do hereby agree together as follows:

AGREEMENT

I.

PURPOSE AND SCOPE OF AGREEMENT

- A. The purpose of this Agreement is to establish the terms, conditions, and cost associated with Schertz's agreement to assign/convey WHCTL/LS initial capacity sufficient to service a total of 75,000 gpd at no cost to GVSUD, and convey/assign WHCTL/LS capacity sufficient to service up to an additional total of 75,000 gpd at a point certain, in the future, for the transport of wastewater that originates within the respective certificated sewer service areas of the Parties, to a termination point located at the CCMA South Plant. GVSUD may initially connect up to 306 LUEs to the system, subject to modification as further provided in this Agreement. As used throughout this Agreement, any reference to gallons per day (gpd) shall mean the gpd based upon average daily flow as determined by the Parties through the monitoring on flow meters at the points where GVSUD wastewater flows enter the Schertz lift station or trunk lines. The Parties agree that the capacity assigned in this Agreement is capacity owned by Schertz in the CCMA South Plant that must be utilized by the flowage of wastewater into the CCMA South Plant through Schertz owned infrastructure. In doing so, the Parties agree that the Tri-Party Agreement that allocates capacity in the CCMA South Plant is not implicated.
- B. The scope of this Agreement covers the WHCTL/LS and service areas of the Parties as depicted in Exhibit A attached. The Parties understand and agree that future service to additional service areas and the assignment/conveyance of capacity in the CCMA South Plant must be the subject of one or more additional agreements, subject to approval, for an assignment of a portion of Schertz's wastewater treatment capacity in the CCMA South Plant, and future expansion of CCMA South Plant capacity by the parties to that certain South Plant Wastewater Services and Funding agreement dated August 26, 2014 between Cibolo Creek Municipal Authority ("CCMA"), Schertz, and the City of Cibolo (the "Tri-Party Agreement").
- C. The assignment/conveyance of any capacity in the WHCTL/LS necessarily requires that Schertz be successful in the assignment of wastewater treatment capacity owned by Schertz in the CCMA South Plant to GVSUD, as contemplated by that certain CCMA South Plant Capacity Agreement between Schertz and GVSUD approved and executed contemporaneously with this Agreement.

II.

THE WHCTL/LS CAPACITY

Section 2.1 Project Construction

(a) Schertz is in the process of constructing and paying for the WHCTL/LS and all facilities necessary to collect and convey wastewater to the CCMA South Plant including but not limited to sanitary sewer collection lines; lift stations; appurtenances; easements and rights of

ways; connection to the existing CCMA South Plant; and associated design, testing and inspection of facilities.

(b) The WHCTL/LS was designed and is being constructed to convey 765,870 gallons per day, to support a currently estimated 3,126 LUE's based on a currently estimated LUE equivalency of 245 gallons per day. The WHCTL/LS was estimated to cost \$12,918,000.00, or \$16.87 per gallon.

Section 2.2 WHCTL/LS Plans and Specifications

(a) All construction plans, design calculations and specifications of the WHCTL/LS and any amendments thereto necessary to design and construct GVSUD tie-ins shall be provided by Schertz to GVSUD. GVSUD shall provide tie-in, metering and lateral line designs and specifications in accordance with Schertz construction standards and specifications, or an agreed upon equivalent.

(b) Schertz and GVSUD shall coordinate all future tie-ins and the calculation of average daily flows per tie-in at the time of the earlier of: plat submittal, building permit submittal, or request for connection for developments in the GVSUD Service Area served by the WHCTL/LS.

III. ASSIGNMENT OF CAPACITY

Section 3.1 Capacity Assignment

(a) Subject to the pre-requisite stated in I (C) above, and the terms and conditions stated herein, Schertz does hereby assign to GVSUD wastewater flow capacity in the Schertz's WHCTL/LS sufficient to provide wastewater service for 75,000 gpd an initial total of 306 LUE's. (equivalent to 75,000 gpd average daily flow) at no cost to GVSUD.

(b) Discharge to the system will be metered and actual flows will be evaluated annually (beginning one year after the start of flow from GVSUD to the WHCTL/LS) to assess actual average and peak flows. If evaluation reveals that additional connections can be made without flow into the system exceeding an average daily flow of 75,000 gpd, the allowable number of LUEs (based on a unique adjusted average daily flow) that may be connected under the agreed upon initial allocation of 75,000 gpd will be adjusted no less than annually by utilization of the calculation reflected in the spreadsheet attached hereto as Exhibit B. GVSUD will not allow connection beyond the original 306 LUEs based on 245 gallons per day per LUE until an annual adjustment based on the methodology reflected in Exhibit A is approved in writing by authorized representatives of the Parties.

(c) Subject to the pre-requisite approval stated in I (C) above, and the terms and conditions stated herein, Schertz shall assign/convey to GVSUD wastewater flow capacity in the WHCTL/LS sufficient to provide wastewater service to an additional total of 75,000 gallons per day at an estimated cost of \$16.87 per gallon to GVSUD with the final cost per gallon being based

on the final demonstrated cost of initial construction of the WHCTL/LS divided by the initial design average daily flow.

(d) GVSUD shall pay for the additional total of 75,000 gpd in a lump sum, up front total amount of \$1,264,392.00 or as adjusted based on Section III (c) above. The requirement to assign the additional capacity for the stated consideration shall be the point in time when a development application is submitted that reflects that 75% of the initial total of 306 LUE's (subject to a modified number of LUE's as allowed for in Section III(b) above) assigned have been allocated to development. Allocation of capacity to development shall be the first of: plat approval, building permit application or request for connection.

(e) Notwithstanding any other terms of this agreement, GVSUD agrees to make timely investigation and cause repair to be made to its collection and conveyance system if inflow and infiltration or illicit discharges to the WHCTL/LS are suspected or detected.

(f) GVSUD will be responsible for ensuring that the influent entering the WHCTL/LS from their service area complies with the Schertz' and CCMA's pretreatment requirements. GVSUD agrees to enforce these pretreatment requirements and take such action as is necessary to control the strength of raw industrial sewage reaching the WHCTL/LS in order that the quality of discharge from the CCMA South Plant as required by any permit may be maintained. GVSUD will assist and cooperate in good faith at all times to ensure compliance with applicable, federal state and local regulations and permit requirements, including any request for information and records.

(g) The Parties acknowledge that the costs stated above are for capacity in the WHCTL/LS and do not include all the costs. It is the further understanding of the Parties that it is intended for GVSUD to pay the same costs and fees in the same manner and amounts that Schertz pays for receiving wastewater treatment at the CCMA South Plant.

IV.

Treatment Charge and Maintenance Fees

Section 4.1 Treatment Charge

GVSUD will pay Schertz a monthly treatment charge based on the actual metered flows into the WHCTL/LS to offset the treatment cost charged to the City of Schertz by the CCMA to treat wastewater.

Section 4.2 Maintenance Fee

GVSUD will pay Schertz an Annual Line Maintenance Service Fee ("ALMSF") by February 1 of each year based on the allocated LUEs as of January 1 of each year. The ALMSF is intended to cover the cost of sewer main and lift station operation and maintenance in the WHCTL. The ALMSF for February 1, 2024 shall be based on the then-applicable LUE to gallons per LUE equivalency, with the initial cost of \$40.00 per day based on 245 gallons per day per LUE. The ALMSF is subject to no greater than a 3% annual increase, and any such increase shall require

notice of not less than 90 days prior to the conclusion of GVSUD's budget cycle which ends on September 30 of each year.

V. REPRESENTATIONS

Section 5.1 Representations

(a) Each Party represents that:

(1) This Agreement, the transactions contemplated herein, and the execution and delivery of this Agreement have been duly authorized.

(2) This Agreement, the representations and covenants contained herein, and the consummation of the transactions contemplated hereby, will not violate or constitute a breach of any contract or other agreement to which the Party is a party, or any order, judgment, or decision against the Party.

(3) After proper authorization and execution by each Party, and upon receipt of all required statutory and regulatory approvals by each Party, this Agreement is a valid and binding Agreement of each Party enforceable according to its terms.

(b) Each signatory to this Agreement represents that they are duly authorized to sign the Agreement on behalf of entity they purport to represent herein for the terms and consideration contained herein.

VI. DEFAULT REMEDIES

Section 6.1 Default by GVSUD

In the event of default by GVSUD, Schertz may give written notice of such default to GVSUD, specifying the failure or default relied upon. If GVSUD fails to fully cure the default specified in such notice within thirty (30) days after receipt of such notice and GVSUD has failed to use reasonable efforts to attempt to cure such default, Schertz shall have the right to pursue all legal or equitable remedies, except as otherwise provided in this Agreement or applicable law. Schertz may employ attorneys to pursue its legal rights and, if Schertz prevails before any court or agency of competent jurisdiction, GVSUD shall be obligated to pay all expenses incurred by Schertz, including reasonable attorney's fees.

Section 6.2 Default by Schertz

In the event of default by Schertz, GVSUD may give written notice of such default to Schertz specifying the failure or default relied upon. If Schertz fails to fully cure the default specified in such notice within thirty (30) days after receipt of such notice and Schertz has failed to use reasonable efforts to attempt to cure such default, GVSUD shall have the right to pursue all legal or equitable remedies, except as otherwise provided in this Agreement or applicable law. GVSUD

may employ attorneys to pursue its legal rights and, to the extent permitted by law, if GVSUD prevails before any court or agency of competent jurisdiction, Schertz shall be obligated to pay all expenses incurred by GVSUD, including reasonable attorney's fees.

VII. MISCELLANEOUS

Section 7.1 Severability

The provisions of this Agreement are severable and, if any provision or part of this Agreement or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement to other persons or circumstances shall not be affected thereby.

Section 7.2 Captions

The captions appearing at the first of each numbered section or paragraph in this Agreement shall never be considered or given any effect in construing this Agreement.

Section 7.3 Applicable Law and Venue

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Texas. Any action in law or equity brought to enforce or interpret any provision of this Agreement shall be brought in a court of competent jurisdiction with venue in the Guadalupe County.

Section 7.4 Parties in Interest

This Agreement shall be for the sole and exclusive benefit of the Parties signatory hereto and does not confer any benefit to any third party and no such third party shall have standing to sue or enforce this Agreement.

Section 7.5 Entire Agreement

This Agreement constitutes the entire agreement and supersedes all prior agreements and understanding, both written and oral, between Schertz and GVSUD, with respect to the subject matter hereof, but shall be read, interpreted and implemented as a component of the Comprehensive Settlement Agreement between the Parties.

Section 7.6 Waiver and Amendment

Failure to enforce or the waiver of any provision of this Agreement or any breach or nonperformance by either Party shall not be deemed a waiver by the other Party of the right in the future to demand strict compliance and performance of any provision of this Agreement. No officer or agent of either Party is authorized to waive or modify any provision of this Agreement. No

Schertz to provide sewer service on account of any other cause not reasonably within the control of Schertz.

Section 7.9 Multiple Originals

This Agreement shall be executed in a number of counterparts, each of which shall be deemed for all purposes an original and all such counterparts shall together constitute and be one and the same instrument.

Section 7.10 Amendment or Modification

This Agreement may be modified, amended, or terminated only by a written instrument executed by duly authorized representatives of both Schertz and GVSUD.

Section 7.11 Binding Agreement; Assignment

(a) This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective Parties hereto provided, however, that nothing herein shall prevent the Parties hereto or their respective successors, legal representatives, or assigns, by mutual agreement in writing, from revising or amending this Agreement as may be necessary in the future because of changed circumstances or otherwise.

(b) GVSUD may not assign all or any part of its rights and obligations hereunder without the express written consent of Schertz but such consent shall not be unreasonably withheld.

Section 7.12 Remedies.

It is not intended hereby to specify (and this Agreement shall not be considered as specifying) an exclusive remedy for any default by either Party, but all such other remedies existing at law or in equity shall be cumulative including, without limitation, specific performance may be availed of by either Party, as may be allowed by applicable law. The prevailing Party shall be entitled to any reasonable attorney's fees, court costs or other expenses incurred in bringing or defending any suit alleging such default or claim.

Section 7.13 Actual Damages.

No Party shall be liable or have any responsibility to the other for any indirect, special, consequential, punitive or delay-related or performance-related damages including, without limitation, lost earnings or profits. Such limitation on liability shall apply to any claim or action, whether it is based in whole or in part on agreement, negligence, strict liability, tort, statute or other theory of liability.

Section 7.14 Governmental Functions.

(a) Notwithstanding any provision to the contrary herein, this Agreement is a contract for and with respect to the performance of governmental functions by governmental entities.

(1) The services provided for herein are governmental functions, and Schertz and GVSUD shall be engaged in the conduct of a governmental function while providing and/or performing any service pursuant to this Agreement.

(2) The relationship of GVSUD and Schertz shall, with respect to that part of any service or function undertaken as a result of or pursuant to this Agreement, be that of independent contractors.

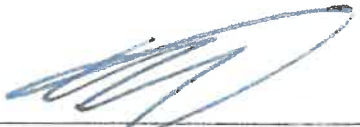
(3) Nothing contained herein shall be deemed or construed by the Parties, or by any third party, as creating the relationship of principal and agent, partners, joint ventures, or any other similar such relationship between the Parties.

(b) Each Party reserves and does not waive any defense available to it at law or in equity as to any claim or cause of action whatsoever that may arise or result from or in connection with this Agreement. This Agreement shall not be interpreted nor construed to give to any third party the right to any claim or cause of action, and neither Schertz nor GVSUD shall be held legally liable for any claim or cause of action arising pursuant to or in connection with this Agreement except as specifically provided herein or by law.

(c) Neither Party waives or relinquishes any immunity or defense on behalf of itself, its Board Members, Councilmembers, officers, employees, and agents because of the execution of this Agreement and the performance of the covenants and agreements contained herein.

IN WITNESS WHEREOF, the parties have herein unto set their hands on duplicate originals, on this 17 day of May 2023.

CITY OF SCHERTZ



Steve Williams, City Manager

ATTEST:



Sheila Edmondson, City Secretary

GVSUD



Steve Cooper, Board President

ATTEST:



James Hendrix, Board Secretary

CITY OF SCHERTZ MASTER SEWER PLAN SOUTH



LEGEND

CP =	CAPITAL IMPROVEMENT PLANNED UTILITY
MP =	MASTER PLAN UTILITY
EX =	EXISTING SEWER TRUNKLINE
CCMA =	CIBOLO CREEK MUNICIPAL AUTHORITY
LI =	LIFTSTATION
WWT =	WASTE WATER TREATMENT PLANT
SEWER SHED ID	SEWER SHED ID
	CATCHMENT POINT
	CIBOLO CREEK SEWER SHED
	DREIZ CREEK SEWER SHED
	SALTILLO CREEK SEWER SHED
	WOMAN HOLLERING CREEK SEWER SHED

Underground drainage systems along Schertz, the northern portion of watershed from which will be collected from Cibolo South sewer shed.

Thru Main (within alignment)

City/County Dock Boundary

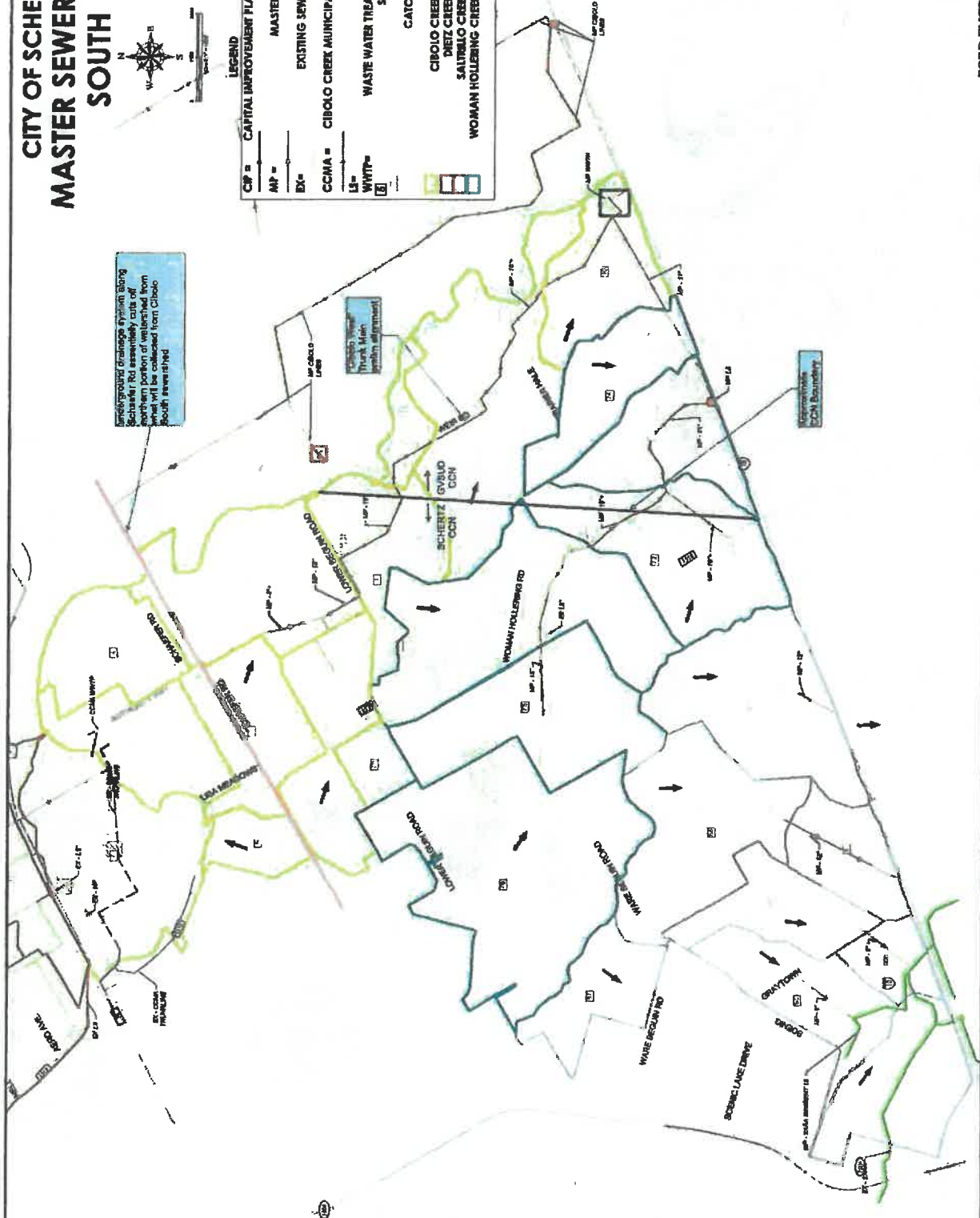


EXHIBIT
A

Woman Hollering Creek Trunk Line & Lift Station
Actual LUE Allotment Calculation - Annual Review

Design Based on 245 gpd/LUE

# LUE beginning of month	# LUE End of month	Average # of LUE for the month	Average Day Flow per LUE	Peak Day Flow per LUE	Contingency Factor (if needed)	Number of LUE available at 75,000 gpd ADS	Number of LUE available at 245 gpd/LUE Planning	Net LUE additional
10	12	11	190.9091	477.2727		306.1	306.1	86.7
Jan-24								
Feb-24		0						
Mar-24		0						
Apr-24		0						
May-24		0						
Jun-24		0						
Jul-24		0						
Aug-24		0						
Sep-24		0						
Oct-24		0						
Nov-24		0						
Dec-24		0						
Annual Average Day Flow (Collection System Data)								
Annual Average Day Flow (Treatment Plant Data (CMAA))								

Key Data Point

Key Data Point = Number of LUEs available to not exceed 75,000 contract

Peaking Factor Precipitation Calculation (in/day)

Day	Flow Meter Start	Flow Meter End	Total for Day	Reduce I&I	Peaking Factor Precipitation Calculation (in/day)
1-Jan-24	0	2100	2100	2100	
2-Jan-24	2100	4200	4200	2100	
3-Jan-24	4200	6300	6300	2100	
4-Jan-24	6300	8400	8400	2100	
5-Jan-24	8400	10500	10500	2100	
6-Jan-24	10500	12600	12600	2100	
7-Jan-24	12600	14700	14700	2100	
8-Jan-24	14700	16800	16800	2100	
9-Jan-24	16800	18900	18900	2100	
10-Jan-24	18900	21000	21000	2100	
11-Jan-24	21000	23100	23100	2100	
12-Jan-24	23100	25200	25200	2100	
13-Jan-24	25200	27300	27300	2100	
14-Jan-24	27300	29400	29400	2100	
15-Jan-24	29400	31500	31500	2100	
16-Jan-24	31500	33600	33600	2100	
17-Jan-24	33600	35700	35700	2100	
18-Jan-24	35700	37800	37800	2100	
19-Jan-24	37800	39900	39900	2100	
20-Jan-24	39900	42000	42000	2100	
21-Jan-24	42000	44100	44100	2100	
22-Jan-24	44100	46200	46200	2100	
23-Jan-24	46200	48300	48300	2100	
24-Jan-24	48300	50400	50400	2100	
25-Jan-24	50400	52500	52500	2100	
26-Jan-24	52500	54600	54600	2100	
27-Jan-24	54600	56700	56700	2100	
28-Jan-24	56700	58800	58800	2100	
29-Jan-24	58800	60900	60900	2100	
30-Jan-24	60900	63000	63000	2100	
31-Jan-24	63000	65100	65100	2100	
Total for Month		65100 gallons			
Monthly Average Day		2100 gpd Avg			
Monthly Average Day per LUE		190.9 gpd/LUE			

CALCULATION

SINCE THE

Exhibit B

**CIBOLO CREEK MUNICIPAL AUTHORITY
SOUTH WASTEWATER TREATMENT PLANT
CAPACITY AGREEMENT**

BETWEEN

THE CITY OF SCHERTZ, TEXAS

AND

**GREEN VALLEY SPECIAL UTILITY
DISTRICT**

**CIBOLO CREEK MUNICIPAL AUTHORITY SOUTH WASTEWATER TREATMENT
PLANT CAPACITY AGREEMENT**

This Cibolo Creek Municipal Authority South Plant Wastewater Treatment Capacity Agreement (“Agreement”) is made and entered into as of the ____ day of _____, 2023 (the “Effective Date”) by and between the City of Schertz, Texas (“Schertz”) a municipal corporation of the State of Texas, and Green Valley Special Utility District (“GVSUD”), a political subdivision of the State of Texas, individually referred to herein as a “Party” and collectively as “Parties”.

This Agreement does not amend the terms, conditions or funding obligations of that certain South Plant Wastewater Services and Funding agreement dated August 26, 2014 between Cibolo Creek Municipal Authority (“CCMA”), Schertz, and the City of Cibolo (the “Tri-Party Agreement”).

RECITALS

WHEREAS, the Parties entered into a Mediated Settlement Agreement (“MSA”) and agreed to use their best efforts to draft a final Comprehensive Settlement Agreement consistent with the MSA; and,

WHEREAS, an essential term of the MSA is the development of an Agreement that allocates current and future capacity within the Cibolo Creek Municipal Authority South Plant (“CCMA South Plant”) for the treatment of wastewater that originates within the respective certificated sewer service areas of the Parties; and,

WHEREAS, Schertz is a participant in the Tri-Party Agreement that establishes the terms and conditions to fund the construction of the CCMA South Plant and to receive wholesale wastewater treatment services from the plant; and,

WHEREAS, Schertz has agreed to assign a portion of the treatment capacity rights owned by Schertz so that the wastewater conveyed to the CCMA South Plant contemplated by the MSA may be treated; and,

WHEREAS, the Parties to this Agreement have determined that it is in their best interest to negotiate and agree upon the terms and conditions for an assignment of a portion of the treatment capacity rights owned by Schertz in the CCMA South Plant as part of their Comprehensive Settlement Agreement; and,

WHEREAS, the Parties hereby find that the terms and conditions set forth herein represent what the Parties believe to be in the respective best interest of each Party and their respective existing and future customers.

NOW THEREFORE, the Parties, for and in consideration of the covenants and agreements herein set forth to be kept and performed by them respectively, have agreed to and do hereby agree together as follows:

AGREEMENT

I.
ESSENTIAL TERMS OF AGREEMENT

A. Current Capacity

1. Schertz assigns CCMA South Plant treatment capacity at no cost to GVSUD sufficient to service a maximum of 75,000 gpd. As used throughout this Agreement, any reference to gallons per day (gpd) shall mean the gpd based upon average daily flow as determined by the Parties through the monitoring on flow meters at the points where GVSUD wastewater flows enter the Schertz lift station or trunk lines. The Parties agree that the capacity assigned in this Agreement is capacity owned by Schertz in the CCMA South Plant that must be utilized by the flowage of wastewater into the CCMA South Plant through Schertz owned infrastructure. In doing so, the Parties agree that the Tri-Party Agreement that allocates capacity in the CCMA South Plant is not implicated.

2. Schertz agrees to assign up to an additional 50,000 gpd capacity upon request by GVSUD at the City of Schertz actual cost paid, inclusive of principal and interest, for the pro rata share of cost for the 50,000 gpd for said WWTP. The additional capacity may not be requested until a minimum 60,000 gpd out of the initial 75,000 gpd assigned to GVSUD has been utilized.

3. Full payment for the additional 50,000 gpd capacity of \$2,030,643.60 shall be made to Schertz by GVSUD when the CCMA South Plant begins receiving flows from GVSUD in excess of the initial 60,000 gpd of average daily flow.

4. The capacity, terms and conditions contemplated herein are subject to, and may be limited by, the available capacity of the trunk lines transporting wastewater to the CCMA South Plant. The Parties will develop an information sharing protocol to track the status of capacity utilization.

5. Schertz agrees to undertake all necessary efforts to effectuate the assignment of the wastewater capacity in the CCMA South Plant contemplated in this Agreement, including to the extent determined to be necessary, obtaining the consent of all parties to the Tri-Party Agreement to such assignment.

6. GVSUD will pay Schertz a monthly treatment charge based on the actual metered flows into Schertz-owned and operated wastewater trunklines and/or lift stations to offset the treatment cost charged to the City of Schertz by the CCMA to treat wastewater.

7. GVSUD will pay Schertz an amount equal to any impact fee charged by CCMA at time of connection, it being the agreement and understanding of the Parties that the first phase of the CCMA South Plant has been fully financed pursuant to the terms of the Tri-Party Agreement and such impact fees are expected to be utilized for the purpose of offsetting capital costs associated with the planned future expansion of the CCMA South

Plant as well as for any other lawful purpose for impact fee proceeds. The Parties acknowledge that a new study and impact fee may be adopted by CCMA that could require amendment of the Tri-Party Agreement. Green Valley SUD will evaluate and review the existing Tri-Party Agreement to determine and identify whether the terms and obligations are or are not acceptable to Green Valley SUD. The Parties intend to reach consensus on the interpretation of the terms and obligations in the Tri-Party Agreement, and to seek approval of an amendment to that agreement with other parties, if necessary to effectuate the terms hereof.

B. Future Capacity

1. The Parties acknowledge that the City of Schertz and CCMA have agreed that future expanded capacity in the CCMA plant will be provided to GVSUD at a price and terms that are equal or better to those provided to the City of Schertz. GVSUD and the City of Schertz will cooperate, with CCMA's support, to achieve any agreements or amendments to the Tri Party Agreement deemed necessary.

2. It is the understanding of the Parties that prior to beginning design and eventual construction of future CCMA South Plant expansions, CCMA will provide written notice to GVSUD of the proposed expansion. GVSUD will have 60 days to provide a written response to CCMA indicating whether it is interested in pursuing the acquisition of a portion of the capacity in the proposed CCMA South WWTP expansion. Thereafter, GVSUD shall exercise due diligence to determine the feasibility of financing for the acquisition of capacity in the proposed CCMA South Plant expansion, and thereafter, within 60 days of its expression of interest, shall either notify CCMA in writing of its commitment to fund and pay for the additional capacity GVSUD requests, or of its decision not to participate in the proposed expansion.

3. GVSUD shall pay the operational and maintenance, treatment and impact fee costs for capacity in future CCMA South Plant expansions that are equal to those charged by CCMA to Schertz for Schertz capacity in such future expansions.

4. In the event the City of Schertz obtains any additional capacity in the CCMA South Plant as a result of non-acquisition of all or a portion by the City of Cibolo of its 250,000 gpd under the Tri Party Agreement, the City of Schertz agrees to negotiate in good faith with GVSUD to provide shared allocation of additional capacity in the first phase of the CCMA South Plant.

5. The Parties acknowledge the capacity assignment of this Agreement are between GVSUD and Schertz, and that any such capacity assignment does not amend the Tri-Party Agreement, including any existing payment obligation between Schertz and CCMA in the Tri-Party Agreement. GVSUD's utilization of any such capacity assignment in this Agreement will be subject to the existing terms and conditions of Schertz's rights under the Tri-Party Agreement. This includes the payment of CCMA impact fees which would

otherwise be payable in the same manner and amounts as if the capacity was being used and developed by the City of Schertz in its certificated area.

6. GVSUD may utilize the capacity assigned in this Agreement for wastewater flows originating from properties south of IH 10 at a price and terms equal to or less than those applicable to the City of Schertz when transported in facilities owned and operated by GVSUD. In such event, GVSUD will assess and collect CCMA impact fees which would otherwise be payable in the same manner and amounts as if the capacity was being used and developed by the City of Schertz in its certificated area. Should such occur, GVSUD will provide CCMA with the opportunity to file an application at the TCEQ to expand the impact fee service area to include such land so that impact fees can be assessed and collected or will work with CCMA to implement an alternative solution to effectuate this same purpose. The Parties to this Agreement have a mutual understanding and expectation that the transferred or sold "capacities" in treatment facilities covered by this Agreement are intended for and will be primarily used for customers and development in the City limits or ETJ of the City of Schertz, or in the "wedge" area where certificated to GVSUD.

II. REPRESENTATIONS

Section 2.1 Representations

(a) Each Party represents that:

(1) This Agreement, the transactions contemplated herein, and the execution and delivery of this Agreement have been duly authorized.

(2) This Agreement, the representations and covenants contained herein, and the consummation of the transactions contemplated hereby, will not violate or constitute a breach of any contract or other agreement to which the Party is a party, or any order, judgment, or decision against the Party.

(3) After proper authorization and execution by each Party, and upon receipt of all required statutory and regulatory approvals by each Party, this Agreement is a valid and binding Agreement of each Party enforceable according to its terms.

(b) Each signatory to this Agreement represents that they are duly authorized to sign the Agreement on behalf of entity they purport to represent herein for the terms and consideration contained herein.

III. DEFAULT REMEDIES

Section 3.1 Default by GVSUD

In the event of default by GVSUD, Schertz may give written notice of such default to GVSUD, specifying the failure or default relied upon. If GVSUD fails to fully cure the default specified in such notice within thirty (30) days after receipt of such notice and GVSUD has failed to use reasonable efforts to attempt to cure such default, Schertz shall have the right to pursue all legal or equitable remedies, except as otherwise provided in this Agreement or applicable law. Schertz may employ attorneys to pursue its legal rights and, if Schertz prevails before any court or agency of competent jurisdiction, GVSUD shall be obligated to pay all expenses incurred by Schertz, including reasonable attorney's fees.

Section 3.2 Default by Schertz

In the event of default by Schertz, GVSUD may give written notice of such default to Schertz specifying the failure or default relied upon. If Schertz fails to fully cure the default specified in such notice within thirty (30) days after receipt of such notice and Schertz has failed to use reasonable efforts to attempt to cure such default, GVSUD shall have the right to pursue all legal or equitable remedies, except as otherwise provided in this Agreement or applicable law. GVSUD may employ attorneys to pursue its legal rights and, to the extent permitted by law, if GVSUD prevails before any court or agency of competent jurisdiction, Schertz shall be obligated to pay all expenses incurred by GVSUD, including reasonable attorney's fees.

**IV.
MISCELLANEOUS**

Section 4.1 Severability

The provisions of this Agreement are severable and, if any provision or part of this Agreement or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement to other persons or circumstances shall not be affected thereby.

Section 4.2 Captions

The captions appearing at the first of each numbered section or paragraph in this Agreement shall never be considered or given any effect in construing this Agreement.

Section 4.3 Applicable Law and Venue

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Texas. Any action in law or equity brought to enforce or interpret any provision of this Agreement shall be brought in a court of competent jurisdiction with venue in the Guadalupe County.

Section 4.4 Parties in Interest

This Agreement shall be for the sole and exclusive benefit of the Parties signatory hereto and does not confer any benefit to any third party and no such third party shall have standing to sue or enforce this Agreement.

Section 4.8 Force Majeure

If for any reason of force majeure, either Schertz or GVSUD shall be rendered unable, wholly or in part, to carry out its obligations under this Agreement, then if the Party shall give notice of the reasons in writing to the other Party within a reasonable time after the occurrence of the event, or cause relied on, the obligation of the Party giving the notice, so far as it is affected by the force majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period. The term "force majeure" as used in this Agreement shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, orders or actions of any kind of government of the United States or of the State of Texas, or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakage or accident to machinery, pipelines, or other structures and any inability on the part of Schertz to provide sewer service on account of any other cause not reasonably within the control of Schertz.

Section 4.9 Multiple Originals

This Agreement shall be executed in a number of counterparts, each of which shall be deemed for all purposes an original and all such counterparts shall together constitute and be one and the same instrument.

Section 4.10 Amendment or Modification

This Agreement may be modified, amended, or terminated only by a written instrument executed by duly authorized representatives of both Schertz and GVSUD.

Section 4.11 Binding Agreement; Assignment

(a) This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective Parties hereto provided, however, that nothing herein shall prevent the Parties hereto or their respective successors, legal representatives, or assigns, by mutual agreement in writing, from revising or amending this Agreement as may be necessary in the future because of changed circumstances or otherwise.

(b) GVSUD may not assign all or any part of its rights and obligations hereunder without the express written consent of Schertz but such consent shall not be unreasonably withheld.

Section 4.12 Remedies.

It is not intended hereby to specify (and this Agreement shall not be considered as specifying) an exclusive remedy for any default by either Party, but all such other remedies existing at law or in equity shall be cumulative including, without limitation, specific performance may be availed of by either Party, as may be allowed by applicable law. The prevailing Party shall be entitled to any reasonable attorney's fees, court costs or other expenses incurred in bringing or defending any suit alleging such default or claim.

Section 4.13 Actual Damages.

No Party shall be liable or have any responsibility to the other for any indirect, special, consequential, punitive or delay-related or performance-related damages including, without limitation, lost earnings or profits. Such limitation on liability shall apply to any claim or action, whether it is based on whole or in part on agreement, negligence, strict liability, tort, statute or other theory of liability.

Section 4.14 Governmental Functions.

(a) Notwithstanding any provision to the contrary herein, this Agreement is a contract for and with respect to the performance of governmental functions by governmental entities.

(1) The services provided for herein are governmental functions, and the City and GVSUD shall be engaged in the conduct of a governmental function while providing and/or performing any service pursuant to this Agreement.

(2) The relationship of GVSUD and the City shall, with respect to that part of any service or function undertaken as a result of or pursuant to this Agreement, be that of independent contractors.


(3) Nothing contained herein shall be deemed or construed by the Parties, 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.

(b) Each Party reserves and does not waive any defense available to it at law or in equity as to any claim or cause of action whatsoever that may arise or result from or in connection with this Agreement. This Agreement shall not be interpreted nor construed to give to any third party the right to any claim or cause of action, and neither the City nor GVSUD shall be held legally liable for any claim or cause of action arising pursuant to or in connection with this Agreement except as specifically provided herein or by law.

(c) Neither Party waives or relinquishes any immunity or defense on behalf of itself, its Board Members, Councilmembers, officers, employees, and agents because of the execution of this Agreement and the performance of the covenants and agreements contained herein.

IN WITNESS WHEREOF, the parties have herein unto set their hands on duplicate originals, on this ____ day of _____ 2023.

CITY OF SCHERTZ



Steve Williams, City Manager

ATTEST:



Sheila Edmondson, City Secretary

GVSUD



Steve Cooper, Board President

ATTEST:



James Hendrix, Board Secretary