



City of Cibolo, Texas
City Council Regular Meeting
February 13, 2024

SUBJECT: Discussion/Action on a Resolution Authorizing the City Manager to Pay the Southern Plant Payments for a Future Wastewater Treatment Facility as stated in the Agreement Between the City of Cibolo, Texas, the City of Schertz, and the Cibolo Creek Municipal Authority.

SUBJECT: Discussion/Action on a Memorandum of Understanding by and between the Cibolo Creek Municipal Authority (“CCMA”), the City of Schertz, Texas ("Schertz"), and the City of Cibolo, Texas ("Cibolo") Concerning the Southern Plant Wastewater Services and Funding Agreement (“Agreement”) and Authorize the City Manager to Sign the MOU.

BACKGROUND:

Together, the Resolution and the MOU represent the City of Cibolo’s commitment to proceed with its obligation to utilize the CCMA Southern Plant and to make its financial contribution to the CCMA Southern Plant per the terms of the Southern Plant Wastewater Services and Funding Agreement (“Agreement”), while it continues complete the mediated settlement with GVSUD concerning the Certificate of Convenience and Necessity (CCN) area for wastewater service.

The Southern Plant Wastewater Services and Funding Agreement (“Agreement”) was originally executed on August 26, 2014, by the Cibolo Creek Municipal Authority (“CCMA”), the City of Schertz, Texas ("Schertz"), and the City of Cibolo, Texas (“Cibolo”). The Agreement provides and defines the 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.

CCMA has completed the construction of the Southern Plant and, per the Southern Plant Payment Terms in Section 4 of the Agreement, Cibolo may connect to the Southern Plant under the following term:

- 4(a) Cibolo may connect to the Southern Plant at any time and Schertz agrees to subordinate a portion, not to exceed fifty percent (50%) of its right to the exclusive use of the Southern Plant, provided that (1) Cibolo pays CCMA and CCMA pays Schertz...; and (2) Cibolo pays a proportionate share of the operation and maintenance expenses to the Southern Plant, both budgeted and actual....

Further, Section 4(b) states payment arrangements for the Southern Plant Bonds shall be divided between Schertz and Cibolo such that Schertz is obligated to solely make those payments for the first ten years (Years 1 – 10) of the Agreement. Starting in 2025, the City of Schertz and the City of Cibolo will each contribute to the bond payments for next ten years (Years 11 – 20) , and the City of Cibolo becomes obligated to solely make those payments for the last ten years (Years 21 – 30) of the Southern Plant Bond payment schedule (see Attachment 3).

The following is an abbreviated history of the Southern Plant Wastewater Services and Funding Agreement (“Agreement”) between CCMA, Schertz and Cibolo and the Mediated Settlement between GVSUD and Cibolo:

PREVIOUS ACTIONS

- August 26, 2014..... CCMA, the City of Schertz, and the City of Cibolo entered into 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 (see Att. 3);
- October 23, 2018 First Amendment to the Southern Plant Wastewater Services 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, amends Exhibit B concerning increased costs of the Southern Plant, and adds a new Exhibit D to document the increase in debt service requirements on the 2018 Bonds by the Cities of Schertz and Cibolo (See Att. 4);
- August 1, 2023..... City of Schertz approved a resolution for the 2nd amendment and provided the City Manager authority to execute the amendment;
- August 10, 2023..... CCMA board approved the 2nd Amendment to the Agreement, authorizing the General Manager to execute the amendment; and
- August 22, 2023..... Cibolo City Council approved the 2nd Amendment to the Agreement, authorizing the City Manager to execute the Amendment.
- November 6, 2023 Cibolo and GVSUD representatives, including attorneys, meet for the first official mediated settlement discussion. Another date is needed to continue the settlement discussions.
- November 14, 2023 Cibolo City Council approved the 3rd Amendment to the Agreement, authorizing the City Manager to execute the Amendment. This amendment provides an extension of 90 days to November 27, 2023, to the date by which Cibolo must inform the City of Schertz if it chooses to connect to the Southern Plant.
- November 2023 CCMA’s Board and the Schertz City Council each approve the 3rd Amendment to the Agreement.
- December 18, 2023..... Cibolo and GVSUD representatives, including attorneys, meet for the second official mediated settlement discussion and reach a framework agreement for a settlement.
- January 23, 2024..... Cibolo City Council approves the Mediated Settlement Agreement between Green Valley Special Utility District (GVSUD) and the City of Cibolo Concerning the Certificate of Convenience and Necessity (CCN) Area between GVSUD and City of Cibolo.

GVSUD and Cibolo Litigation (Case No. 1:16-CV-0062 7-LY). City Council approved a Mediated Settlement Agreement on January 23, 2024. This Mediated Settlement Agreement contains essential deal points and City Council will still need to approve a final Comprehensive Settlement Agreement. The provisions in the Mediated Settlement Agreement cover the following topics:

- Transport Capacity
- Treatment Capacity
- Capacity Assignments Details
- Disannexation of the GVSUD Santa Clara WWTP Site
- Consent to CCMA Capacity Assignments
- Bolton Line Cost Contribution
- 13.248 Agreement
- Litigation
- Process for Settlement and Dismissal
- Cibolo Opt-in Requirement for CCMA Southern WWTP

These terms were agreed to in mediation between the two parties in December 2023. *As stated in Section 10.e in the Mediated Settlement Agreement, “Green Valley SUD and the City of Cibolo acknowledge that they must obtain consent and approval of certain terms and conditions of the Final Settlement Agreement from the Public Utility Commission of Texas (“PUC”) and that such PUC consent and approval is a necessary and essential condition of the Final Settlement Agreement.”*

NEXT STEPS: The City of Cibolo will deliver to CCMA and the City of Schertz the Resolution and MOU. Both entities will need to approve the MOU.

As for the GVSUD and the City of Cibolo’s litigation, the Mediated Settlement Agreement approved by City Council on January 23rd contains essential deal points to resolve the litigation, but “does not contain all of the details necessary to accomplish the terms and conditions contemplated herein, but rather, will be the basis for drafting a Final Settlement Agreement, including customary releases, and additional attachments and materials or terms necessary to effectuate the terms of this Mediated Settlement Agreement, which final Comprehensive Settlement Agreement shall be presented to the City Council for the City of Cibolo and to the Board of Directors for Green Valley SUD, for their approval” (per Section 10.a in the agreement). Per the agreement, the attorneys for both parties will “will prepare and file a Joint Advisory to the Court and an amended Motion to Abate to continue the present abatement of the Federal court lawsuit in order to facilitate the finalization of all settlement steps and actions necessary, which may include the formal approval of other governing bodies.”

FINANCIAL IMPACT:

When the City of Cibolo commits to connect to the CCMA Southern Plant upon sending to CCMA and the City of Schertz the Resolution and MOU before February 29, 2024, and CCMA and Schertz each approve the MOU, Cibolo will be obligated to assume payments for outstanding debt per the Agreement and support the maintenance and operations of the Southern Plant. The debt has a 30 year payment term as explained in this cover sheet (see Attachment 3). Lastly, the City of Cibolo and the City of Schertz will partner with CCMA on future expansions to the Southern Plant, including debt; any future expansion will require City Council approval.

Separately, as explained in the MOU, the City of Cibolo will need to fund the design, construction, and maintenance of wastewater infrastructure to serve the approximately 3,200 acres of CCN area (Attachments 4 and 5), plus fulfill all financial obligations contained in the Mediated Settlement Agreement (see Item 15B, Council Agenda January 23, 2024). *As with the City Council's adopted 5 Year Capital Improvement Program in the Fiscal Year 2024 Budget, the more than \$50 million in proposed wastewater infrastructure will be funded from multiple sources.* These wastewater projects will be built over time. Timing is based on funds on hand, collection of impact fees, user fees, agreements with developers, debt issuance, and the pace of development to name some factors.

MOTION (Resolution): I move to approve a Resolution Authorizing the City Manager to Pay the Southern Plant Payments for a Future Wastewater Treatment Facility as stated in the Agreement Between the City of Cibolo, Texas, the City of Schertz, and the Cibolo Creek Municipal Authority.

MOTION (Resolution): I move to approve a Memorandum of Understanding by and between the Cibolo Creek Municipal Authority ("CCMA"), the City of Schertz, Texas ("Schertz"), and the City of Cibolo, Texas ("Cibolo") Concerning the Southern Plant Wastewater Services and Funding Agreement ("Agreement") and Authorize the City Manager to Sign the MOU.

SUBMITTED BY: Wayne Reed, City Manager, ICMA-CM

ATTACHMENTS:

1. Resolution
2. Memorandum of Understanding (MOU)
3. Southern Plant Bond Payment Schedule
4. Map – Transfer of Certificate of Convenience and Necessity (CCN) Area between GVSUD and City of Cibolo
5. Map - List of Cibolo Planned WW Infrastructure