

**City Council
Agenda Memo**



**City Council
Meeting Date: October 24, 2013**

TO: Larry D. Gilley, City Manager

FROM: Theresa James, Assistant City Attorney

SUBJECT: Written Resolution Authorizing Mayor to Negotiate and Execute a Letter of Intent by the City of Abilene with the Cities of Midland and San Angelo to Memorialize Their Mutual Interest in the Sharing of Existing and To-Be-Developed Water Supplies as Part of the West Texas Water Partnership

GENERAL INFORMATION

The Cities of Abilene, Midland and San Angelo entered into an Interlocal Agreement dated April 9, 2011 authorizing the three cities (the "Cities") to work together to evaluate and develop water management strategies to provide for the short-term and long-term water needs of their customers and residents. The Cities engaged as their consultants the law firm of Lloyd Gosselink Rochelle & Townsend, P.C. and the engineering firms of Enprotec/Hibbs & Todd, Inc. and HDR, Inc. to evaluate the viability of a series of short-term and long-term water management strategies.

The consultants have evaluated and discussed with the Cities potential short-term and long-term cooperative water management strategies. The City of Abilene has determined that there is a continued benefit to working with the cities of Midland and San Angelo to further evaluate and develop cooperative water management strategies to address future water supply needs. The City of Abilene recognizes that the development of new cooperative water management strategies will allow for sharing in existing and to-be-developed supplies among the Cities.

The City of Abilene wishes to formally express its interest in the future sharing of water supplies among the Cities and wishes to adopt a written Resolution authorizing the Mayor to negotiate and execute, on behalf of the City of Abilene, the Letter of Intent for Water Supply Development and Delivery. In general, the Letter of Intent authorizes the City and its representatives to continue work with the Cities of Midland and San Angelo in the analysis, evaluations, and development of long-term cooperative water management strategies contemplated by the April 9, 2011 Interlocal Agreement and the Letter of Intent.

FUNDING/FISCAL IMPACT

The Written Resolution and Letter of Intent will have an indirect fiscal impact on the City of Abilene. There will be costs for consultant services related to the work necessary to evaluate the water management strategies. The Cities have agreed that the costs of the consultants will be shared equally between the three cities. The anticipated costs for such consultants will continue to be budgeted during each fiscal year budget and will be funded from the Water Department Water and Sewer Fund.

STAFF RECOMMENDATION

It is recommended that the City Council authorize, by written resolution, the Mayor to negotiate and enter into a Letter of Intent with Midland and San Angelo.

ATTACHMENTS

Written Resolution and Letter of Intent (included in Written Resolution as Exhibit A).

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| Prepared by: Name <u>Theresa James</u> Title <u>Assistant City Attorney</u> | Item No. <u>6.2</u> | Disposition by City Council <input type="checkbox"/> Approved Ord/Res# _____ <input type="checkbox"/> Denied <input type="checkbox"/> Other _____ City Secretary |
|---|---------------------|--|

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS AUTHORIZING THE MAYOR TO NEGOTIATE AND EXECUTE A LETTER OF INTENT AMONG THE CITIES OF ABILENE, MIDLAND, AND SAN ANGELO, TEXAS FOR WATER SUPPLY DEVELOPMENT AND DELIVERY.

WHEREAS, the City of Abilene, Texas (the “City”), entered into an Interlocal Agreement dated April 9, 2011 between the City of Abilene (“Abilene”), the City of Midland (“Midland”), and the City of San Angelo (“San Angelo”), Texas authorizing the three cities (the “Cities”) to work together to evaluate and develop water management strategies to provide for the short-term and long-term water needs of their customers and residents (the “Agreement”); and

WHEREAS, the Cities have engaged as their consultants the law firm of Lloyd Gosselink Rochelle & Townsend, P.C. and the engineering firms of Enprotec/Hibbs & Todd, Inc. and HDR, Inc. to evaluate the viability of a series of short-term and long-term water management strategies; and

WHEREAS, the Cities’ consultants have evaluated potential short-term and long-term cooperative water management strategies, and have provided to the Cities a detailed analysis of the viability of such short-term and long-term strategies; and

WHEREAS, the Cities’ consultants have concluded their analysis and evaluation of the full breadth of short-term and long-term water management strategy options and provided the results of that analysis to the Cities; and

WHEREAS, the City has participated in the analysis and evaluation of short-term and long-term water management strategies explored pursuant to the Agreement; and

WHEREAS, the City has determined that there is a continued benefit to working with the cities of Midland and San Angelo to further evaluate and develop cooperative water management strategies to address future water supply needs; and

WHEREAS, the City recognizes that the development of new cooperative water management strategies will allow for sharing in existing and to-be-developed supplies among the Cities; and

WHEREAS, the City wishes to formally express its interest in the future sharing of water supplies among the Cities and wishes to authorize the Mayor to negotiate and execute, on behalf of the City, the Letter of Intent for Water Supply Development and Delivery attached hereto as Exhibit A.

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

1. The above recitals are true and correct.
2. The City Council hereby finds that it is in the best interest of the City to enter into the Letter of Intent among the Cities of Abilene, Midland, and San Angelo in order to memorialize its interest in the future sharing of existing and to-be-developed water supplies in order to most efficiently utilize water throughout the region.
3. The City Council authorizes the Mayor to negotiate and execute the Letter of Intent on behalf of the City.
4. The City Council authorizes the City and its representatives to continue to work with the Cities of Midland and San Angelo in the analysis, evaluation, and development of long-term cooperative water management strategies contemplated by the Agreement and the Letter of Intent.

ADOPTED this 24th day of October, 2013.

ATTEST:

Danette Dunlap, City Secretary

Norman Archibald, Mayor

APPROVED:

T. Daniel Santee, City Attorney

EXHIBIT A

LETTER OF INTENT FOR WATER SUPPLY DEVELOPMENT AND DELIVERY

This Letter of Intent for Water Supply Development and Delivery (the “LOI”) is entered into by and between the City of Abilene, Texas (“Abilene”), the City of Midland, Texas (“Midland”), and the City of San Angelo, Texas (“San Angelo”), all home-rule cities incorporated and operating under the laws of the State of Texas and their respective city charters. The cities of Abilene, Midland, and San Angelo may be collectively referred to herein as the “Parties” or the “Cities.”

Recitals:

WHEREAS, the Brazos G Regional Water Planning Group and the Region F Water Planning Group project a future deficit in water supplies for each of the Parties; and

WHEREAS, the Parties determined that they share common interests and objectives regarding the pursuit of water management strategies to meet those future deficits; and

WHEREAS, on April 9th, 2011, the Parties entered into an Interlocal Agreement to cooperate in the evaluation, selection, and development of water management strategies for short-term and long-term regional water supplies (the “Interlocal Agreement”); and

WHEREAS, pursuant to the Interlocal Agreement the cities of Abilene, Midland, and San Angelo have been working together to evaluate the feasibility of several long-term cooperative water management strategies to address their future water demands; and

WHEREAS, the Parties continue to evaluate opportunities to pursue cooperative water management strategies that could be shared among them in order to maximize cost efficiency and minimize environmental impacts; and

WHEREAS, the Parties understand that bringing new cooperative water management strategies online will allow some portion of existing water supply sources held by Abilene, Midland, and San Angelo to be available for use by one or more of the Parties; and

WHEREAS, the Parties recognize that sharing in water supplies out of the Cities’ existing supply sources, as well as future cooperative water management strategies, will best maximize the utilization of water throughout the West Texas region; and

WHEREAS, the Parties wish to memorialize their mutual interest in the sharing of existing and to-be-developed water supplies.

NOW THEREFORE, the Parties agree as follows:

Agreement:

This LOI is intended only as an expression of interest and is not intended to be binding upon the Parties, except with respect to the provisions described in Section A (“Binding Understandings”). To the extent the Parties agree to move forward and supply water to one another either out of existing or to-be-developed supply sources, the obligations of each of the Parties will be enumerated in a water supply agreement (“Water Supply Agreement”) to be executed by and among the Parties relating to the supply of water to be transferred, the actual price of the water sold and transferred, ownership and construction of the facilities, and any necessary permitting obligations. Each of the Parties acknowledges that in light of the complex nature of any Water Supply Agreement and the details to be addressed therein, the execution of this LOI does not represent a warranty by any of the Parties as to their ability to complete negotiations and execute a Water Supply Agreement.

A. Binding Understandings

1. The Parties hereby represent and warrant that they intend to share in existing and to-be-developed water supplies at some point in the future, and agree to collaboratively participate in the regional water planning and state water planning process so as to ensure that such intentions are reflected in the Brazos G Regional Water Plan and Region F Water Plan.

B. Non-Binding Understandings

1. Evaluation and Development of Water Management Strategies: The Parties will work together, as part of the West Texas Water Partnership, to evaluate and develop future water supplies for use by the cities of Abilene, Midland, and San Angelo.
2. Water Sources: The Parties will share in water supplies to be developed by the West Texas Water Partnership, including but not limited to: (i) possible sharing of existing supplies in O.H. Ivie Reservoir; (ii) future groundwater supplies to be acquired by the Parties; (iii) water supplies made available from the Cedar Ridge Reservoir, a to-be-constructed new water supply reservoir on the Clear Fork Brazos River that is being permitted by the City of Abilene; and (iv) any other water supplies that may feasibly be allocated among the Parties. Such sharing of supplies shall only be accomplished upon the execution of and pursuant to the terms of a Water Supply Agreement.
3. Facilities and Infrastructure: To the extent that new facilities and/or infrastructure are necessary to store, treat, and transport water to be shared among the Parties, the Parties will cooperate in the planning, financing, construction, and operation of such facilities.

4. Payment: The Parties will pay an equitable, pro rata, share of the cost associated with developing new water supplies and the cost of transportation and use of existing water supplies pursuant to a Water Supply Agreement.
5. Other Partners: The Parties may consider other partners in the development of new water supplies and potential sharing of those supplies pursuant to a Water Supply Agreement.

This LOI shall become effective as of the last date reflected below.

AGREED AND ACCEPTED BY:

CITY OF ABILENE

ATTEST

Mayor

City Secretary

Approved:

Date:

City Attorney

CITY OF SAN ANGELO

ATTEST

Mayor

City Secretary

Approved:

Date:

City Attorney

CITY OF MIDLAND

ATTEST

Mayor

City Secretary

Approved:

Date:

City Attorney