

**City of East Bethel**  
**City Council Agenda**  
City Council Work Meeting – 6:00 p.m.  
Date: June 17, 2015



**Item**

- |                |            |  |
|----------------|------------|--|
| <b>6:00 PM</b> | <b>1.0</b> | <b>Call to Order</b>                       |
| <b>6:01 PM</b> | <b>2.0</b> | <b>Adopt Agenda</b>                        |
| <b>6:02 PM</b> | <b>3.0</b> | <b>MCES Contract Modification Proposal</b> |

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# City of East Bethel City Council Work Meeting Agenda Information

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**Date:**

June 17, 2015

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**Agenda Item Number:**

Item 3.0

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**Agenda Item:**

MCES Contract Modification Proposal

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**Requested Action**

Review the MCES Contract modification proposal for the Wastewater Services Agreement

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**Background Information:**

Staff initiated negotiations with MCES in January 2014 to request modifications to the Wastewater Service Agreement (WSA), the contract that defines the terms and conditions of our financial obligations to the MET Council for our portion of the debt owed for the sewer treatment facilities. The City’s request was the elimination of the provisions of the Reserve Capacity Loan and its associated SAC goals and interest on unmet goals and equalization of SAC rates and flow charges to that of the urban rates. The first two meetings were with Pat Born, MET Council Regional Administrator, and his staff. These meetings outlined a process for the City to present our proposals and request to a Metro-Cities Committee appointed to hear this matter and MCES staff.

After six meetings between November 2014 and June 2015, we have a proposal that merits serious consideration by the City. The proposal, which was offered by MCES Staff and presented to Mayor Voss and City Staff on June 8, 2015, was a response to a similar counter offer made by the City on April 28, 2015 and achieves the majority of our original objectives. Their offer is summarized as follows:

- Sets a \$2M cap on the Reserve Capacity Loan (RCL). Once the debt of the RCL reaches the \$2M cap this would trigger the termination of the RCL contract and its payback requirements based on annual SAC goals.  
*Benefit to the City- this provision removes the doubts of negotiating the RCL debt with no conditions or requirements and eliminates the uncertainty of the position of the MCES in regards to this matter at some point in the future. Settling this matter at this time removes the risk of both the City and the MCES having representatives attempting to resolve this issue that have little or no knowledge of the background and the details involved in this extremely complicated issue.*
- At the termination of the RCL the City would begin repayment of the \$2M cap amount over 10 years at an interest rate of 2.73%.  
*Benefit to the City – this provision eliminates the potential of the City facing a debt that has the potential to be in the range of \$20M to \$30M in 2032. The cost of repaying the loan cap of \$2M over a 10 year term would be \$2.312M with annual payments of \$231,000. This payment could be covered by other City bond debt reduction that will*

occur in 2022, the use of the RCL loan payment or other non-levied funds. This payment could be structured in a manner that would have a neutral affect on City tax levies. A 15 year term would also be available at annual payment of \$164,278 for a total cost of \$2.464M.

The City’s risk is minimal that we would owe less than \$2M in SAC goal charges and interest rates at the conclusion of the loan.

- If this proposal is approved by Council and the MCES, our SAC rates would increase at the urban rate with an additional increment of \$700 for each unit until the \$2M RCL cap is triggered. At that time our SAC rate would be frozen until the urban rate becomes equal to our SAC rate.

Benefit to the City – this would eliminate the 4.7 to 4.9 % annual increase in our current SAC cost schedule and base this fee on the lesser increase of the urban SAC rate. Even with the \$700 increment, our SAC rate would even out in 2018 - 2019 and be \$3,065 less than the current projected SAC rate in 2032 (\$6,300).

- RCL loan payments equal to the annual flow charges would cease once the \$2M loan cap is triggered.

Benefit to the City-assuming the cap limit occurs in 2021, the City could potentially save \$3M on future charges for this obligation.

All of the above savings are based on contract obligations of our current Wastewater Services Agreement (WSA) with MET Council.

Based on analysis provided by the City and the current growth projections by the MET Council, the development forecasts needed to meet the SAC requirements of the RCL are unrealistic and this loan balance will increase exponentially and reach the proposed \$2M cap around 2024. The cap could potentially be reached by 2021 if SAC units continue to progress at their present pace. Savings to the City could potentially reach \$30M by 2032 if the City accepts the proposed modifications to the WSA (\$30M RCL costs + \$3M RCL loan payments based on flow charges minus the \$2.3M for loan cap repayment). This number does not account for the SAC cost increases which would place East Bethel at a competitive disadvantage in relation to other Cities or any costs by the City needed to subsidize this increase.

The MET Council Environmental Services Division is requesting a response from City Council as to this proposal. If the City is agreeable to this proposal, this matter could be scheduled for presentation at the July 28, 2015 MET Council meeting.

**Attachments:**

- Attachment 1 - Wastewater Services Agreement
- Attachment 2 – City Proposal for Contract Modification
- Attachment 3 – Reserve Capacity Loan Summary
- Attachment 4 - Summary of Options
- Attachment 5 – MCES Proposed Contract Modification
- Attachment 6 - WSA Amendment # 1

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**Fiscal Impact:**

As noted above

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**Recommendation(s):**

Staff is requesting direction from Council as to a response to MECS regarding the endorsement of this proposal as a modification to our current Wastewater Service Agreement (WSA).

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**City Council Action**

Motion by: \_\_\_\_\_

Second by: \_\_\_\_\_

Vote Yes: \_\_\_\_\_

Vote No: \_\_\_\_\_

No Action Required: \_\_\_\_\_

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+++++ **WASTEWATER SERVICE AGREEMENT**  
**Between**  
**City of East Bethel**  
**and**  
**Metropolitan Council**

**THIS AGREEMENT** (“Agreement”), effective on the date of execution by both parties, is made and entered into by and between Metropolitan Council, a public corporation and political subdivision of the State of Minnesota (“Council”) and the City of East Bethel, a Minnesota municipal corporation (“City”).

**RECITALS**

1. Pursuant to Minnesota Statutes § 473.517, subd. 1, the Council shall allocate current costs of operation, maintenance, and debt service (“Current Costs”) among and paid by all local government units which discharge wastewater directly or indirectly into the metropolitan disposal system. For purposes of this Agreement, the above described payments are referred to herein as municipal wastewater charges (“MWC”). The Council’s wastewater treatment plant, interceptor and effluent pipes to serve the City will be a part of the metropolitan disposal system.
2. Pursuant to Minnesota Statutes § 473.517, subd. 3, the Council shall allocate the reserved capacity portion of the costs of acquisition, betterment, and debt service of the interceptors and treatment works (“Reserved Capacity Costs”) among and paid by all local government units through a sewer availability charge (“SAC”) for each new connection **or increase in capacity demand to the metropolitan disposal system.**
3. Pursuant to Minnesota Statutes § 473.517, subd. 6, the Council may provide for the deferment of payment of all or part of the allocated costs pursuant to Minnesota Statutes § 473.517, subd. 3, **repayable with interest at the Council’s average rate of borrowing.**
4. The Council’s 2030 Water Resources Management Policy Plan (“Policy Plan”) provides for Council ownership and operation of wastewater facilities to serve rural area communities that want to accommodate growth, for which the planning designation Rural Growth Center has been provided in the Policy Plan. The City has requested, and the Council has approved, the City’s designation as a Rural Growth Center (“Rural Growth Center”).
5. The Council’s Policy Plan provides wastewater service to the City through wastewater treatment facilities to be constructed specifically to serve the City initially, and that are also planned so that these facilities may serve a portion of the city of Oak Grove or other communities in the future. The City has submitted, and the Council has approved, the City’s 2030 Comprehensive Sewer Plan.

6. The Council's Policy Plan policy on rates and charges provides that: (a) municipal wastewater charges will be allocated to communities uniformly, based on flow; and (b) sewer availability charges for a Rural Growth Center shall be based on the reserve capacity of the wastewater treatment facility and the Council's debt service specific to the Rural Growth Center.
7. The Council is currently designing the East Bethel wastewater treatment facility, MCES Project 801620 to serve the City. Construction is scheduled for 2011-2012.
8. Council and City have determined that it is in their best interests to enter into this Agreement in order to specify SAC matters for the City and to specify the terms for contingent loans for part of the reserve capacity charges and other related matters.
9. The Council has authorized its Regional Administrator to enter into this Agreement pursuant to Business Item No. 2010-355 passed by the Council on October 27, 2010. The City has authorized its Administrator to enter into this Agreement pursuant to a motion passed by the City Council on November 3, 2010.

**NOW, THEREFORE**, for valuable consideration, the receipt of which is acknowledged by both parties, the parties agree as follows:

**ARTICLE I**  
**Financial Terms and Conditions**

**1.01 Municipal Wastewater Charges (MWC).**

a. Allocation. Council shall measure the City's wastewater flow and allocate current costs consistent with the methodology used throughout the metropolitan disposal system to allocate Current Costs among and charge local government units in the form of MWC, as may be amended from time to time. The Council's regular MWC billings to the City shall begin for the calendar year 2014 based on the wastewater flow for the period July 1, 2012 – June 30, 2013. Prior to that regular cycle, the Council's MWC billings to the City for the calendar year 2013 shall be based on the estimated number of SAC units served prior to June 30, 2012, flow estimates/SAC and the duration of such usable connections within the subject period. Council shall invoice the City monthly. City shall pay Council within thirty (30) calendar days of each billing.

b. City Obligation - Charges. The City acknowledges its obligation under Minnesota Statutes, including, but not limited to, § 473.519, to adopt and maintain a system of charges for the use and availability of the metropolitan disposal system located within the City which will assure that each recipient of wastewater treatment services within or served by the City will pay its proportionate share of the Current Cost charges allocated to the City by the Council under Minnesota Statutes, § 473.517, as required by federal law and regulations.

c. On or before December 31, 2011, the City shall submit to the Council, for review and approval, a proposed ordinance implementing a system of volumetric charges for the use and availability of the metropolitan disposal system, and shall make modifications in such system if notified by the Council, as needed to comply with the provisions of Minnesota Statutes § 473.519, the Council's Waste Discharge Rules and federal law and regulations. Upon approval, the Municipality shall maintain such system of volumetric charges in accordance with section 473.519.

d. City Obligation – Connections. The City agrees that within twelve (12) months of service being available, the City shall mandate connections to the metropolitan disposal system and will pay the Council SAC for connections in the business district described as Project 1 Phase One.

e. Reservation of Rights. Nothing in this article shall be deemed to limit the Council's rights to add-to, amend or change its method of allocating and/or collecting costs under Minnesota Statutes, section 473.517, subdivision 1.

#### 1.02 Sewer Availability Charges (SAC).

a. City Obligation. The City acknowledges its obligation under Minnesota Statutes, including, but not limited to, § 473.517 subd. 3, to pay Reserved Capacity Costs allocated to the City by the Council under § 473.517, subd. 3. These costs are currently allocated to cities by the Council through the Sewer Availability Charge (SAC) system, based on the number of residential equivalent SAC units which become connected within the City either directly or indirectly to the metropolitan disposal system. City acknowledges and agrees that SAC and reporting for it will be due beginning twelve (12) months prior to startup of the wastewater treatment facility. The City acknowledges and agrees that it is liable for SAC whether or not it collects, or is able to collect, such amounts from any property owners or other third parties.

b. Implementation of SAC System. Under the current SAC system, the City shall be responsible for monitoring, reporting of connections, and other duties in accordance with Council's policies and procedures for collecting SAC charges. If under the current SAC system, the City chooses to collect charges from the owners of the property connected to City sewers which are connected to the metropolitan disposal system, it shall be solely responsible for billing and collecting such charges from the property owners.

c. Reservation of Rights. Nothing in this article shall be deemed to limit the Council's rights to add-to, amend or change its method of allocating and/or collecting costs under Minnesota Statutes, section 473.517, subdivision 3 as it pertains to the SAC rate and general SAC collection requirements and procedures.

d. East Bethel's City-Specific SAC (hereafter "East Bethel SAC"). Council shall establish the East Bethel SAC pursuant to the Council's policies and SAC procedures. The East Bethel SAC shall initially be based on the wastewater treatment facility debt service specific to the City, as estimated in Exhibit A. The estimated capital costs described in Exhibit A, and the East Bethel SAC based on the associated debt service, may be adjusted after final project costs have been determined and if needed for additional project costs should they occur prior to the end of the designation of the city of East Bethel as a Rural Growth Center. Adjustments, if any, to the SAC rates will not be retroactive.

Council and City agree that the East Bethel SAC has been determined, based on the following factors: (1) debt service and/or capital costs on City-specific capital costs based on financing over a term extending to 2030 at an interest rate based on the actual rate(s) of financings used by the Council to fund the project costs, currently estimated at 3.0% for the initial facility and 4.5% for the future expansion; (2) 2030 Comprehensive Plan forecast of 5,500 SAC units; (3) a constant SAC unit growth rate of approximately 10.6% annually from 2012 through 2030; (4) reserve capacity determination using cumulative SAC units as forecasted for the currently used portion of total capacity; (5) fixed East Bethel SAC rate increases of 3% annually; and (6) East Bethel SAC computed to recover the present value of reserve capacity of debt service as determined in (1) hereinbefore.

Council and City agree that the East Bethel SAC based on the capital costs in Exhibit A and the above factors, shall be \$3,300 in 2012, increasing 3% annually to \$5,600 in 2030. East Bethel SAC may be adjusted if the final capital costs and interest rates are materially different than expected.

e. Nothing in this Agreement prohibits or restricts the sewer, SAC or other related charges that the City may or may not charge to property owners within the City.

### 1.03 Reserve Capacity Loans.

a. Amount. If at the end of each calendar year, starting with the year 2012, the SAC units attributed (either i), actually paid, or ii) loaned as described in this paragraph) to the Council by the City on an annual basis, are below the estimate of growth for the year based on the 2030 Comprehensive Plan forecast for the City used to set the rates as described herein, the deficiency shall be considered a Reserve Capacity Loan ("Reserve Capacity Loan") from the Council to the City, pursuant to M.S. 473.517 subd. 6. Interest shall accrue on the prior year-end balance at 3.6% APR annually. In years where the actual SAC paid by the City to the Council exceeds the estimate, the surplus SAC shall be considered a payment against any then outstanding loans. If such a surplus occurs and no loan balance is then outstanding, no rebate shall occur, however, the amount of units paid over the cumulative forecast shall be available to offset a future year shortage (that is, to reduce the required loan in a future year when the annual SAC units paid are less than forecast).

b. Payment. If a Reserve Capacity Loan balance is outstanding at any year-end, the City shall pay, at a minimum, an annual amount set by the Council which shall be an amount not greater than the ordinary municipal wastewater charge to be charged to the City in that same calendar year based on the community's annual flow volume in the metropolitan disposal system. The payment shall be applied first to interest accrued and the remainder against the cumulative outstanding principal on the loan. During the first five years of the Loan, the Council may require a lesser payment to allow the City to gradually adjust its retail sewer charges or other revenues to cover the Loan payments.

Minimum payments on the loan shall be determined by the Council in January of each year and included on monthly bills, provided however, that the Council may estimate the loan payment requirements for the first two months of each year and reconcile the difference in the March bill of each year.

c. Prepayment. The City may prepay all or part of the loan at any time to avoid additional interest accrual.

d. Developing Community. The Council agrees that if: a) the City meets the conditions of the Council to become a Developing Community as determined by the Council; or b) another city is provided sewer service through the East Bethel wastewater treatment facilities; or c) the City reaches its current 2030 Comprehensive Sewer Plan population forecast, or d) at the conclusion of the 2030 Water Resources Policy Plan (*i.e.* at the end of the year 2030), the East Bethel SAC rate may be frozen by the Council at the then current rate and retained at that rate, even though that rate is a higher rate than the urban SAC until such time as the outstanding loan is entirely repaid. This term shall survive the Agreement until the entire Loan is repaid, or the condition in Section 1.03(e) occurs:

e. The parties agree that the terms of the Agreement are intended to handle the short or medium term problem that planned growth is deferred from the expectations of the Comprehensive Plans. However, if 30 years after the first Loan is recorded, substantial planned growth has not occurred and expectations at that time are that it may continue to be below 2030 forecasts, the parties agree to renegotiate in good faith to provide for an end to the Loan that does not require an unreasonable burden on the sewer rates of the still small City.

**Comment [W1]:** It's my understanding that Dan has shown that this won't work in EB where there is no existing customer base and the thus the MWC will be very little in the early years. What do you think about this which they would be allowed to raise in any manner they chose (perhaps from a developer??)

## ARTICLE II

### Conveyance of Interceptor Ownership to City

#### 2.01 Transfer.

If the Council determines that the interceptor constructed along Viking Blvd. and STH 65 no longer serves a regional benefit, the Council will transfer to the City and the City

agrees, without payment from the Council, to accept title and ownership of that portion of the aforementioned interceptor within the City. Such transfer may occur at any time after determination in the sole discretion of the Council that the aforementioned interceptor no longer serves a regional benefit and certification by the Council that the interceptor to be transferred is in good operating condition.

### **ARTICLE III Compliance with Council Rules and Policies**

#### **3.01 Infiltration and Inflow.**

The City shall comply with the Council's policy and procedures on Infiltration/Inflow and its standards for allowable peak hour to average daily wastewater flow. On or before June 30, 2012, the City shall submit its proposed Infiltration/Inflow program to the Council for review and approval and shall adopt and follow any recommendations of the Council regarding inflow and infiltration into the City's sewage collection system.

#### **3.02 Waste Discharge Rules.**

The City acknowledges that all discharges to the City's sewage collection system are subject to the Council's Waste Discharge Rules and any other rules or requirements adopted by the Council relating to the metropolitan disposal system. The City shall adopt a sanitary sewer use ordinance which ensures City compliance with Council's policies and Waste Discharge Rules, however amended. The City agrees to cooperate with the Council in enforcement of Council's rules and enforcement requirements. Nothing in this Agreement prohibits or limits the Council's right to make general changes to the Waste Discharge Rules.

#### **3.03 Comprehensive Plan.**

The City has prepared and adopted its 2030 Comprehensive Plan Update and Tier II Comprehensive Sewer Plan, in accordance with Minnesota Statutes §§ 462.355, subd. 1a and 473.864, subd. 2. The Council has approved the City's Tier II Comprehensive Sewer Plan and authorized the City to put its 2030 Comprehensive Plan Update into effect.

In accordance with Minnesota Statutes, section 473.858, subd. 1, and section 473.865, subd. 3, upon approval and adoption by the City of the comprehensive plan, the City shall adopt or amend official controls to ensure planned, orderly, and staged development consistent with the comprehensive plan and so as not to conflict with the comprehensive plan. The City shall submit copies of such official controls to the Council in accordance with Minnesota Statutes, section 473.865, subd. 1.

Nothing in this agreement shall modify the City's obligations under the referenced statutes or in the Comprehensive Plan.

**ARTICLE IV**  
**Notices**

Any notice or demand which may or must be given or made by either party to this Agreement, under the terms of this Agreement and any statute or ordinance, shall be in writing and shall be sent by certified mail, return receipt requested, or delivered in person, to the other party addressed or delivered as follows:

General Manager  
Environmental Services  
Metropolitan Council  
390 North Robert Street  
St. Paul, MN 55101

City Administrator  
2241 221<sup>st</sup> Avenue NE  
East Bethel, MN 55011

**ARTICLE V**  
**General Provisions**

**5.01 Successors and Assignment.**

The Covenants of this Agreement shall be binding upon and inure to the benefit of the parties, their successors, and assigns. The City may neither assign nor transfer any rights or obligations under this Agreement without the prior consent of the Council and a fully executed Assignment Agreement, executed by authorized representatives of the parties to this Agreement.

**5.02 Amendments.**

The terms of this Agreement may be changed only by the mutual agreement of the parties. Such changes shall be effective only upon execution of written amendments executed by authorized representatives of the parties to this Agreement.

**5.03 Non-Waiver.**

If the Council fails to enforce any provision of this Agreement, that failure does not waive the provision or any other provision or the Council's right to enforce it at a later date.

**5.04 Contract Complete.**

This Agreement contains all negotiations and agreements between the Council and the City related to the matters included herein. No other understanding regarding this Agreement, whether written or oral, may be used to bind either Party.

**5.05 Construction of Agreement.**

This Agreement is intended to assist in implementing the Council's policy plans and system plans and shall be interpreted consistently with the provisions and intent of such plans.

**5.06 Severability.**

The provisions of this Agreement shall be deemed severable. If any part of this Agreement is rendered void, invalid or unenforceable, such rendering shall not affect the validity and enforceability of the remainder of this Agreement unless the part or parts which are void, invalid or otherwise unenforceable shall substantially impair the value of the entire agreement with respect to either Party.

**5.07 Liability.**

Except as provided elsewhere in this Agreement, each Party agrees that it will be responsible for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of the other Party and results thereof. The liability of the Council and the City shall be governed by the provisions of Minnesota Statutes, chapter 466, and other applicable law. Nothing in this Agreement shall constitute or be construed as a waiver by the Council or the City of any statutory limits on or exceptions to liability.

**5.08 Council Audits.**

In accordance with Minnesota Statutes, section 16C.05, subd. 5, the City's books, records, documents, and accounting procedures and practices relevant to this Agreement are subject to examination by the Council and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Agreement.

**5.09 Government Data Practices.**

The City and Council must comply with the Minnesota Government Data Practices Act, Minnesota Statutes, chapter 13, as it applies to all data provided by the Council under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the City under this Agreement. The civil remedies of Minnesota Statutes, section 13.08, apply to the release of the data referred to in this clause by either the City or the Council.

**5.10 Conformance to Law.**

The parties to this Agreement acknowledge and agree to the following:

a) This Agreement addresses certain of the rights and obligations to the parties under Minnesota Statutes, chapter 473, but this Agreement is not intended to be a complete description of all rights and obligations of the parties with respect to each other that may exist under such chapter or other provisions of law.

b) Future changes in Minnesota Statutes, chapter 473, and other applicable law may modify the rights and obligations of the parties with respect to each other and such changes in law shall take precedence over any provisions of this Agreement that may be inconsistent and irreconcilable with such changes.

**5.11 Venue.**

This Agreement shall be governed by the laws of the State of Minnesota. Venue for all legal proceedings arising out of this Agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

**5.12 Recitals.**

The Recitals are hereby incorporated into and made a part of this Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the dates indicated below.

**METROPOLITAN COUNCIL**

Approved as to Form:

\_\_\_\_\_  
Office of General Counsel

By: \_\_\_\_\_

Its: Regional Administrator

Date: \_\_\_\_\_

MC Contract 10I024

**FOR THE CITY OF EAST BETHEL**

By: \_\_\_\_\_

Title: Mayor

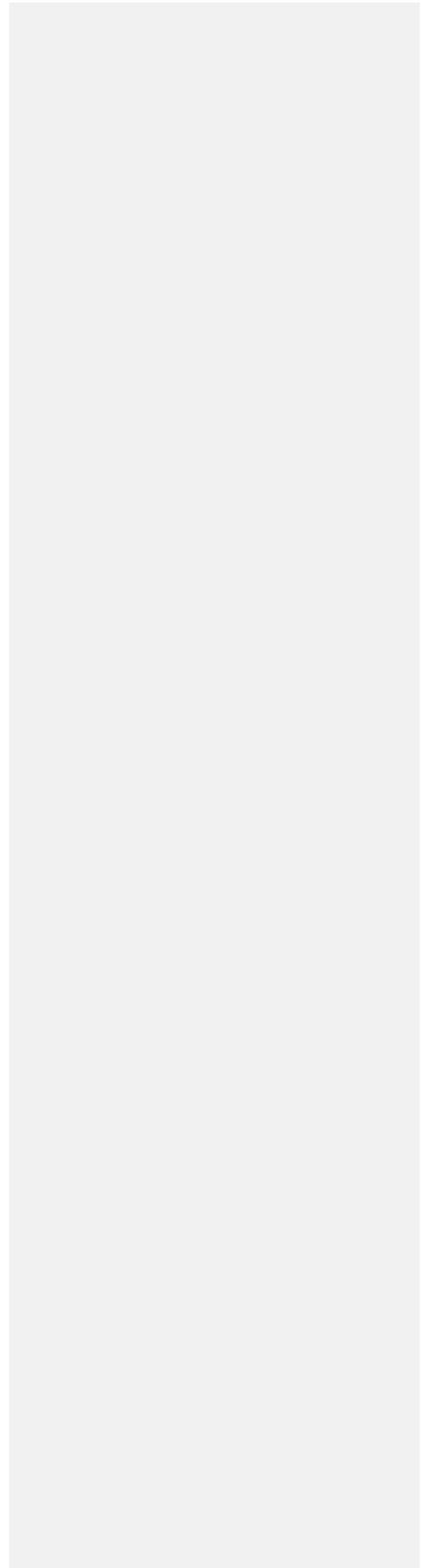
Date: November 3, 2010

**ATTEST:**

By: \_\_\_\_\_

Title: City Administrator

Date: November 3, 2010



**EXHIBIT A**  
**ESTIMATED CAPITAL COSTS FOR**  
**EAST BETHEL WASTEWATER TREATMENT FACILITIES**

Component	Est. Cost (1)
<b>Initial Project</b>	
Influent Storage (2)	\$ 600,000
Wastewater Treatment Plant (3)	9,500,000
Treated Water Distribution System (4)	5,700,000
Land Application Facilities (5)	1,600,000
Land Acquisition (6)	600,000
<hr/>	
Total - Initial Project	\$18,000,000
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<b>Future Facility Expansion (3)</b>	
Plant Expansion	\$10,000,000
Treated Water Distribution	2,000,000
Land Application Facilities (incl. land)	<u>2,000,000</u>
Total-Expansion	\$14,000,000

**Notes:**

1. Estimated cost includes construction, engineering, inspection, and administration.
2. Incremental cost of increasing size of influent interceptor sewer from STH 65 to treatment facility from 24-inch diameter to 60-inch diameter. This option is being used in lieu of providing storage within the wastewater treatment facility.
3. Plant will be constructed in phases. Initial phase has 0.41 mgd capacity. Future facility expansion (approx. year 2020) will increase capacity to 1.22 mgd.
4. Pipeline to convey treated water from wastewater treatment plant to the two initial land application facilities.
5. Facilities designed to distribute treated water such that it infiltrates through the soil and recharges the groundwater.
6. Cost of acquiring two land application sites (\$60,000 for one; free long-term use of second site) and two-thirds of the wastewater treatment plant site, which is planned to serve portions of Oak Grove, and potentially Ham Lake, in the future.

## **City of East Bethel Wastewater Services Agreement Modification Proposal, 4-28-15**

After a number of discussions concerning the terms of the East Bethel Wastewater Services Agreement (WSA) with MCES, the consensus of all parties was that the number established for and the probability of achievement of the SAC goals for the Reserve Capacity Loan (RCL) Program are unrealistic. If the intent is to resolve this matter at this time, what is the compromise solution that is acceptable to both the City and MCES.

The City understands that MCES is concerned about precedence in this issue and potential amendments to existing policy. The City also recognizes that there seems to be nothing more than moral support from Metro Cities in regards to our situation. Finally, the City is aware that MCES has a similar agreement with Elko-New Market and changes to our agreement may initiate an identical request to amend their WSA.

Even with these considerations, the East Bethel situation is unique and requires special consideration due to the regional benefit of the demonstration aspects of this project. The value of the demonstration portion of this project should be justification, in and of itself for WSA modification, considering the potential region wide benefits the East Bethel project can provide for future waste treatment options and ground water recharge. The real significance and worth of this project will be realized in new approaches and solutions to address problems of the renewal of groundwater resources. There is a compelling argument that the importance of the environmental contribution substantiates our initial proposal for contract amendment that included the elimination of the Reserve Capacity Loan and the equalization of our SAC and flow charges consistent with all other users in your system.

I would also point out that although East Bethel and Elko-New Market were both approved as "Rural Growth Centers" for the purpose of MCES project funding, the similarities end there. The major differences between East Bethel and Elko-New Market are:

- East Bethel has 12 customers on their system, Elko-New Market has 1,400;
- East Bethel's sewer system serves only one mile along and only the west side of Hwy 65. Within this mile, one half of the area is undevelopable and the remaining service is accessible to only 15 vacant and developable parcels. Elko-New Market's collection system is in place to serve the City's existing customer base with future extensions in contiguous increments;
- East Bethel is served by Hwy. 65, a commuter route, with little or no regional significance north of US 10 in Blaine. Elko-New Market is served by Interstate 35.
- Elko-New Market's request for MCES funding was based on existing capacity issues with their wastewater treatment plant and receiving stream discharge concerns. East Bethel's system was funded and constructed based on the demonstration benefits of the project and unrealistic growth projections with no customer base.

Therefore it is the City of East Bethel's contention that the potential benefits of the demonstration aspects of our project and the non-comparable difference between East Bethel and Elko-New Market render precedence concerns and comparisons with Elko-New Market to be non-issues in the relative evaluation and consideration for WSA modifications.

The following is a summary of the City's recommendation for addressing this matter and the most recent proposal from MCES:

### **City Proposal, March 2015**

- Eliminate the Reserve Capacity Loan
- Establish a SAC requirement of 2,280 for the City
- Establish an agreeable increment for an additional SAC charge over the existing urban rate that would remain in effect until the 2,280 total SAC units were satisfied
- Establish a charge that would be 50% greater than our annual flow charge that would remain in place until the 2,280 total SAC units were satisfied
- Plant expansion would be addressed as a separate item if and when the need for expansion occurs.

### **MCES Response Proposal, 4/20/15**

Keep the current WSA agreement in place but cap the loan amount at \$2M. When the loan exceeds \$2M it would trigger the renegotiation of the contract. This leaves the contractual expectation of SAC units based on the 2030 Comp Plan forecast and leaves the Reserve Capacity Loan (RCL) mechanism in place, which includes the requirement to pay annual loan payments (limited to annual municipal wastewater charges).

East Bethel SAC rates are proposed to increase \$100 per year from the current 2015 rate of \$2,850. If SAC units are paid at the Thrive forecast, the RCL hits the \$2M trigger in 2023.

No format, outline or proposals for renegotiations are specified as part of this proposal which is a major concern of the City.

### **Counter City Proposal, 4-28-15**

Keep the current WSA agreement in place and SAC rate increases of \$100 annually but cap the loan amount at \$2M. If the loan exceeds \$2M it would trigger the **cancellation** of the current WSA contract and the **elimination** of the RCL. The City would pay off the loan amount at the current MCES cost for borrowing with the term of the repayment to be mutually agreed upon by both parties.

If cancellation of the contract occurs, the City's SAC Rate would be frozen until the urban rate is matched and then would continue in an amount equal to the urban rate. The City's flow charge would also remain the same as the urban rate and additional charges would be eliminated. Plant expansion would be addressed as a separate item if and when the need for expansion occurs.

## Rural Growth Center (RGC) - East Bethel Reserve Capacity Loan (with actual capital cost)

**Key Assumptions and Terms:**

- 1 \$24.87 million capital cost for plant plus a \$14m (in 2010 \$) expansion in 2023 (the interceptor cost is recovered separately under a cost sharing agreement).
- 2 50 RECs are planned in 2014, growing 17% per year until 5,500 RECs in 2032 (per Comp Plan).
- 3 The SAC rate is increased 4.8% per year, rounded to the nearest \$10.
- 4 The SAC rate is computed to recover present value (at estimated borrow rate for this project of 2.73%) of reserve capacity portion of capital costs over 20 years.
- 5 If SAC units paid are less than planned (based on 2030 forecast), an annual Reserve Capacity Loan is automatically made (at MCES' average borrowing rate).
- 6 Principal and interest is payable on the loan annually (at year-end) with a maximum payment equal to Municipal Wastewater Charges paid in the same year.
- 7 Interest on financing at 3.6% is charged on beginning year balance payable by year end. No interest charged during year of deficiency.

	SAC Rate	SAC Units			Anticipated SAC Revenue based on Forecast SAC units	Actual SAC Revenue	Beginning Balance	Reserve Capacity Loan					Year-End Balance
		Contract	Actual	Variance				New Borrowing	Loan Payment	Interest Rate	Interest Accrued	Principal Paid	
2012	3,300	-	16	16	-	-	-	-	-	3.6%	-	-	(42,560)
2013	2,600	-	40	40	-	-	(42,560)	165,300	-	3.6%	-	-	122,740
2014	2,720	50	8	(42)	136,000	178,560	122,740	194,350	40,000	3.6%	4,419	-	281,509
2015	2,850	59	1	(58)	168,150	2,850	281,509	234,750	44,000	3.6%	10,134	-	482,393
2016	2,990 4.91%	69	4	(65)	206,310	11,960	482,393	285,360	46,000	3.6%	17,366	-	739,119
2017	3,130 4.68%	81	6	(75)	253,530	18,780	739,119	347,440	48,000	3.6%	26,608	-	1,065,167
2018	3,280 4.79%	95	8	(87)	311,600	26,240	1,065,167	425,980	52,000	3.6%	38,346	-	1,477,493
2019	3,440 4.88%	111	10	(101)	381,840	34,400	1,477,493	525,420	54,000	3.6%	53,190	-	2,002,103
2020	3,610 4.94%	130	12	(118)	469,300	43,320	2,002,103	704,880	-	3.6%	72,076	-	2,779,059
2021	3,780 4.71%	152	13	(139)	574,560	49,140	2,779,059	863,200	-	3.6%	100,046	-	3,742,305
2022	3,960 4.76%	178		(178)	704,880	-	3,742,305	1,057,050	-	3.6%	134,723	-	4,934,078
2023	4,150 4.80%	208		(208)	863,200	-	4,934,078	1,295,040	-	3.6%	177,627	-	6,406,745
2024	4,350 4.82%	243		(243)	1,057,050	-	6,406,745	1,586,960	-	3.6%	230,643	-	8,224,348
2025	4,560 4.83%	284		(284)	1,295,040	-	8,224,348	1,943,880	-	3.6%	296,077	-	10,464,304
2026	4,780 4.82%	332		(332)	1,586,960	-	10,464,304	2,383,500	-	3.6%	376,715	-	13,224,519
2027	5,010 4.81%	388		(388)	1,943,880	-	13,224,519	2,920,500	-	3.6%	476,083	-	16,621,102
2028	5,250 4.79%	454		(454)	2,383,500	-	16,621,102	3,576,960	-	3.6%	598,360	-	20,796,421
2029	5,500 4.76%	531		(531)	2,920,500	-	20,796,421	4,391,080	-	3.6%	748,671	-	25,936,173
2030	5,760 4.73%	621		(621)	3,576,960	-	25,936,173	5,323,530	-	3.6%	933,702	-	32,193,405
2031	6,040 4.86%	727		(727)	4,391,080	-							
2032	6,330 4.80%	841		(841)	5,323,530	-							
		<u>5,554</u>			<u>28,547,870</u>								
					<u>Discount Rate</u>	<u>2.73%</u>							
					<u>Net Present Value</u>	<u>19,581,454</u>							

## Summary of Current Agreement and Proposed Contract Modification

	<b>Existing Wastewater Services Agreement</b>	<b>MCES Proposed Contract Modification June 2015</b>	<b>Notes</b>
RCL (ReserveCapacity Loan)	As Attached	Cap@\$2M,RCL is terminated when \$2M Cap is reached	
SAC Goals(Units)	5,500	2,280	
SAC Rates	\$2,850 (2015) \$2,990 (2016)	Urban Rate (2,485) + \$700 for 2016 - \$3,185	
SAC Rate Increases	4.7 - 4.9% annual increase	Urban Rate	
Demo Costs	\$9.5M	Excluded from City Debt	
WWTP Expansion Costs	Expansion would occur once 2,280 SAC units were connected)	Excluded as part of costs (This would be addressed as a separate issue at the time expansion may be required	
RCL Loan Payment	100% of flow based on urban rate charges	RCL Loan Payment of 100% of flow charges goes away when \$2M cap is reached	
Flow Charges	Urban Rate	Urban Rate	

**Draft of 6/12/15;**  
**Not reviewed by Legal staff; for discussion only**

**METROPOLITAN COUNCIL**  
390 North Robert Street, St. Paul, MN 55101  
(651) 602-1000  
**AMENDMENT NUMBER TWO**  
to  
**CONTRACT FOR SERVICES**  
Metropolitan Council Contract Number 1OI024

Whereas: Council and City agree that \$9,482,681 is determined to be a reasonable estimate of the net “demonstration costs” of the effluent water infiltration permitting, design and build technology, and that this cost will provide benefits to the entire region;

Whereas: The Council determines it is not in the interest of the Region, that the City payments on the Reserve Capacity loans become a negative credit rating for the City and/or damage the competitiveness of the City in attracting the growth needed to reasonably utilize the wastewater facilities built there;

Whereas: The City’s financial advisor, Ehlers and Associates, has indicated that if the aforementioned loans do exceed \$2 million there is a real possibility of adverse credit consequences to the City;

Whereas: This Contract, before this amendment, allows renegotiation and relief for the City should the original plan for growth not materialize, as evidenced by lack of anticipated growth and large loan balances;

Whereas: The City is already seeing substantially lower growth than anticipated in the original agreement, at least in part due to the recession;

Whereas: The Council and the City both now have a substantially lower forecast for future growth, as documented in the Thrive MSP 2040; and

Whereas: the City has requested limits and definition of consequences should the low growth continue, before adverse economic damages are incurred and sooner than the provision in this contract prior to this amendment.

Therefore: The **City of East Bethel** (City) and the **Metropolitan Council** (Council) agree that the Wastewater Service Agreement, entered on December 9, 2010, is amended in the following particulars.

**1. ARTICLE I Financial Terms and Conditions**

**ARTICLE I Financial Terms and Conditions, Section 1.02 Sewer Availability Charges (SAC), Subsection d. Paragraph 3 is DELETED and the following language is INSERTED in its place:**

In Exhibit A, \$9,482,681 shall be excluded from the East Bethel cost pool used to determine the East Bethel SAC. As a result, Council and City agree that the East Bethel SAC will be based on \$16,485,734 of capital costs (see Exhibit A), and the SAC rate will be \$3,185 in 2016, which is the \$2,485 urban rate plus a \$700 increment. This \$700 increment will remain in effect

until the 2,280 SAC unit capacity of the initial facility is reached, until the Reserve Capacity Loan balance reaches \$2 million (see Item 2 in this Amendment Two), or the City is deemed a developing community by the Council and eligible to be treated the same for SAC purposes as the urban SAC cost pool, per the requirements of Thrive MSP 2040 and the Water Resources Policy Plan.

There will be no adjustments of 2015 or prior charges.

## **2. ARTICLE I Financial Terms and Conditions**

**ARTICLE I Financial Terms and Conditions, Section 1.03 Reserve Capacity Loans, DELETE** Subsection e. and **REPLACE** with the following:

The Reserve Capacity Loan balance will not be allowed to exceed \$2 million. If it reaches \$2 million:

- 1) The SAC rate will be capped at the then current rate and remain fixed until the urban SAC rate catches up, or until the original obligation is fully satisfied, whichever comes first. Thereafter, East Bethel's SAC rate will equal the urban SAC rate.
- 2) No further debt will accrue, the Reserve Capacity Loan payments (limited to Municipal Wastewater Charges) will cease, and the City will pay off the \$2 million loan on either a 10 or 15 year fixed amortization payment plan (with the term at the City's discretion) at 2.73% interest (the cost of Council's capital for the original project).

## **3. EXHIBIT A CAPITAL COSTS FOR EAST BETHEL WASTEWATER TREATMENT FACILITIES:**

EXHIBIT A CAPITAL COSTS FOR EAST BETHEL WASTEWATER TREATMENT FACILITIES is **DELETED** and EXHIBIT A - FINAL CAPITAL COSTS FOR EAST BETHEL WASTEWATER TREATMENT FACILITIES is **INSERTED** in its place.

<b>EXHIBIT A</b>			
<b>FINAL CAPITAL COSTS FOR</b>			
<b>EAST BETHEL WASTEWATER TREATMENT FACILITIES</b>			
	Reuse (1)	Non Reuse	Total
<b>Water Reclamation Plant</b>			
Design Fees		\$1,483,069	\$1,483,069
Land Acquisition Fees (2)		\$555,390	\$555,390
Verification Total		\$565,000	\$565,000
Interceptor Storage (3)		\$600,000	\$600,000
Influent Hauling		\$175,200	\$175,200
WWTP Construction Cost (4)		\$11,827,980	\$11,827,980
61.1% of Verification Costs		\$345,215	\$345,215
MCES Administration Costs		\$346,713	\$346,713
45% of Planning		\$187,167	\$187,167
<b>Reclaimed Distribution Line and Application Basins (5)</b>			
Reclaimed Design Costs	\$660,142		\$660,142
LAB Design Costs	\$319,000		\$319,000
Reclaimed Line Land Acquisition Costs	\$363,163		\$363,163
LAB Land Acquisition Costs	\$59,800		\$59,800
MCES Reclaimed Line Construction Costs	\$6,320,851		\$6,320,851
LAB Construction Costs	\$1,096,250		\$1,096,250
Contingency	\$25,000		\$25,000
38.9% of Verification Costs	\$219,785		\$219,785
MCES Administration Costs	\$293,912		\$293,912
30% of Planning	\$124,778		\$124,778
Alternative piping cost estimate (6)		\$400,000	\$400,000
<b>Total</b>	<b>\$9,482,681</b>	<b>\$16,485,734</b>	<b>\$25,968,415</b>
<b>Wastewater Reuse Demonstration Total</b>			<b>\$9,482,681</b>
<b>Wastewater Treatment Plant Total (capital costs in the E.B. cost pool)</b>			<b>\$16,485,734</b>

**Notes:**

1. East Bethel reuse demonstration costs.
2. Cost of acquiring two land application sites (\$60,000 for one; free long-term use of second site) and two-thirds of the wastewater treatment plant site, which is planned to serve a portion of Oak Grove in the future.
3. Incremental cost of increasing size of influent interceptor sewer from STH 65 to treatment facility from 24-inch diameter to 60-inch diameter. This was built in lieu of providing storage within the wastewater treatment facility.
4. For initial phase which has 0.41 mgd capacity.
5. Pipeline to convey treated water from wastewater treatment plant to the two initial land application facilities, and facilities designed to distribute treated water such that it infiltrates through the soil and recharges the groundwater.
6. Discharge to surface water would require a short pipeline and a discharge structure (cost is MCES engineering staff estimate; such a facility was not designed).

March 13, 2013

**SENT VIA EMAIL AND HARDCOPY USPS**

Mr. Jack Davis  
City Administrator  
City of East Bethel  
2241 – 221<sup>st</sup> Avenue NE  
East Bethel, MN 55011  
[jack.davis@ci.east-bethel.mn.us](mailto:jack.davis@ci.east-bethel.mn.us)

**Re: East Bethel Wastewater Service Agreement  
Metropolitan Council Contract Number 10I024  
AMENDMENT NUMBER ONE NOTICE TO PROCEED**

Dear Mr. Davis:

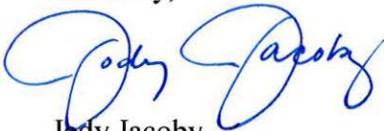
Enclosed is a fully executed copy of Amendment Number One to the Agreement for the above referenced project. You are hereby authorized to proceed in accordance with the provisions of the Amendment.

Mr. Jason Peterson is the Metropolitan Council Project Manager for this project. Mr. Peterson has full authority to act on behalf of the Metropolitan Council on all matters related to the services to the extent that these matters are within the terms of this Amendment and the original contract. The Project Manager does not have the authority to change the Contract or in any way obligate the Council to adjust the Contract Price or Contract Time.

Mr. Peterson is the only person authorized to provide direction to your firm relative to the services to be furnished under this Amendment and the original Contract. I trust that this information will facilitate your work under this Amendment.

If you have any questions or clarifications concerning the above, please call Mr. Peterson at (651) 602-1614.

Sincerely,



Jody Jacoby  
Contracts Manager

JLJ/rdh

Enclosure

cc: Jason Peterson, w/attachment; Miriam Lopez-Rieth, w/attachment; CPU contract file, w/attachment

n:\CPUMCES\2010\10I024\Amendments\Amendment One NTP\_10I024

**METROPOLITAN COUNCIL**  
390 North Robert Street, St. Paul, MN 55101  
(651) 602-1000

**AMENDMENT NUMBER ONE**  
to  
**CONTRACT FOR SERVICES**

Metropolitan Council Contract Number 10I024

The City of East Bethel and the Metropolitan Council agree that the Wastewater Service Agreement entered on December 9, 2010, is amended in the following particulars.

**1. ARTICLE I Financial Terms and Conditions**

**“ARTICLE I Financial Terms and Conditions, Section 1.02 Sewer Availability Charges (SAC), Subsection d. Paragraphs 2 and 3 are DELETED and the following language is INSERTED in its place:**

Council and City agree that the East Bethel SAC has been determined, based on the following factors: (1) debt service and/or capital costs on City-specific capital costs based on the actual rate(s) of financing used by the Council to fund the project costs, currently estimated at 2.73% for the initial facility and 4.5% for the future expansion; (2) 2030 Comprehensive Plan forecast of 5,500 SAC units; (3) growth beginning with 50 SAC units in 2013; (4) reserve capacity determination using cumulative SAC units as forecasted for the currently used portion of total capacity; and (5) East Bethel SAC computed to recover the present value of reserve capacity of debt service as determined in (1) hereinbefore.

Council and City agree that the East Bethel SAC based on the capital costs in Exhibit A - Revised and the above factors, shall be \$2,600 in 2013, increasing approximately 5% annually thereafter. East Bethel SAC may be adjusted if the final capital costs and interest rates for the initial facility, and/or capital costs, interest rate, and timing of the future expansion, are materially different than estimated.”

**2. ARTICLE I Financial Terms and Conditions**

**“ARTICLE I Financial Terms and Conditions, Section 1.02 Sewer Availability Charges (SAC), INSERT the following language as Subsection f.**

f. The City owns a wastewater treatment plant serving the Castle Towers area. The City intends to acquire the wastewater treatment plant serving the Village Green area. In accordance with the Council’s SAC policy and procedure, the City will not owe SAC for the currently served properties in those two areas. However, these units shall not be counted as part of the 5500 SAC units described in Article 1.02d.”

3. **ARTICLE I Financial Terms and Conditions**

“ARTICLE I Financial Terms and Conditions, Section 1.03 Reserve Capacity Loans, Subsection a. Amount. ~~DELETE~~ *the year 2012* and ~~INSERT~~ *the year 2013.*”

4. **EXHIBIT A ESTIMATED CAPITAL COSTS FOR EAST BETHEL WASTEWATER TREATMENT FACILITIES:**

“EXHIBIT A ESTIMATED CAPITAL COSTS FOR EAST BETHEL WASTEWATER TREATMENT FACILITIES is ~~DELETED~~ and EXHIBIT A - REVISED ESTIMATED CAPITAL COSTS FOR EAST BETHEL WASTEWATER TREATMENT FACILITIES is ~~INSERTED~~ in its place.”

Except as amended hereby, the provisions of the above-referenced contract shall remain in force and effect without change.

IN WITNESS WHEREOF, the parties have caused this amendment to be executed by their duly authorized representatives.

**CITY OF EAST BETHEL**

**METROPOLITAN COUNCIL**

By: 

By: 

Its: Mayor  
Date: 2/20/2013

Its: Regional Administrator  
Date: 3.5.2013

By: 

Its: City Administrator  
Date: 2/21/2013

**EXHIBIT A REVISED**

**ESTIMATED CAPITAL COSTS FOR  
EAST BETHEL WASTEWATR TREATMENT FACILITIES**

Component	Est. Cost (1)
<b>Initial Project</b>	
Influent Storage (2)	\$ 600,000
Wastewater Treatment Plant (3)	12,200,000
Treated Water Distribution System (4)	5,000,000
Land Application Facilities (5)	1,600,000
Land Acquisition (6)	600,000
<hr/>	
<b>Total – Initial Project</b>	<b>\$20,000,000</b>
<hr/>	
<b>Future Facility Expansion (3)</b>	
Plant Expansion	\$10,000,000
Treated Water Distribution	2,000,000
Land Application Facilities (incl. land)	<u>2,000,000</u>
<b>Total Expansion</b>	<b>\$14,000,000</b>

**Notes:**

1. Estimated costs includes construction, engineering, inspection, and administration.
2. Incremental cost of increasing size of influent interceptor sewer from STH 65 to treatment facility from 24-inch diameter to 60-inch diameter. This option is being used in lieu of providing storage within the wastewater treatment facility.
3. Plant will be constructed in phases. Initial phase has 0.41 mgd capacity. Future capacity expansion (approx. year 2023) will increase capacity to 1.22 mgd.
4. Pipeline to convey treated water from wastewater treatment plant to the two initial land application facilities.

5. Facilities designed to distribute treated water such that it infiltrates through the soil and recharges the groundwater.
6. Cost of acquiring two land application sites (\$60,000 for one; free long-term use of second site) and two-thirds of the wastewater treatment plant site, which is planned to serve portions of Oak Grove, and potentially Ham Lake, in the future.