

EAST BETHEL CITY COUNCIL MEETING

JUNE 17, 2015

The East Bethel City Council met on June 17, 2015, at 6:00 p.m. for the City Council Work Meeting at City Hall.

MEMBERS PRESENT: Steve Voss Ron Koller Tim Harrington
Brian Mundle Tom Ronning

ALSO PRESENT: Jack Davis, City Administrator
Mark Vierling, City Attorney

1.0 The June 17, 2015, City Council Work Meeting was called to order by Mayor Voss at 6:00
Call to Order p.m.
2.0 **Harrington stated I'll make a motion to adopt tonight's agenda. Koller stated I'll**
Adopt **second.** Voss stated any discussion? All in favor say aye?" **All in favor.** Voss stated
Agenda opposed? That motion passes. **Motion passes unanimously.**

3.0 Davis presented the staff report, indicating staff initiated negotiations with MCES in
MCES January 2014 to request modifications to the Wastewater Service Agreement, the contract
Contract that defines the terms and conditions of our financial obligations to the Metropolitan
Modification Council for our portion of the debt owed for the sewer treatment facilities. The City's
Proposal 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 the SAC rates and
flow charges to that of the urban rates. The first two meetings were with Pat Born,
Metropolitan 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:

- The modification would set a \$2 million cap on the Reserve Capacity Loan. Once the debt of the Reserve Capacity Loan reaches the \$2 million cap this would trigger the termination of this loan contract and its payback requirements based on annual SAC goals.

The benefit to the City for this provision: It would remove the doubts of renegotiating the Reserve Capacity Loan debt with no conditions or requirements and eliminates the uncertainty of the position of the MCES in regard to this matter at some point in the future. Settling this matter at this time also 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 details involved in this extremely complicated matter.

- At the termination of the Reserve Capacity Loan, the City would begin repayment of the \$2 million cap amount over 10 years at an interest rate of 2.73%.

The benefits to the City for this provision: It eliminates the potential of the City facing a

debt that has the potential to be in the range of \$20 million to \$30 million in 2032. The cost of repaying the loan cap of \$2 million over a 10-year term would be \$2.31 million with annual payments of \$231,000. This payment could be covered by other City bond debt reduction that will occur in 2022, or with the use of the Reserve Capacity 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 \$2.46 million.

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

- If this proposal is approved by City Council and the MCES, our SAC rates would increase at the urban rate with an additional increment of \$700 for each unit until the \$2 million Reserve Capacity Loan cap is triggered. At that time, our SAC rate would be frozen until the urban rate equals our SAC rate.

The benefit to the City for this provision: It 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

- The Reserve Capacity Loan payments equal to the annual flow charges would cease once the \$2 million loan cap is triggered.

The benefit to the City for this provision: Assuming the cap limit occurs in 2021, it could save the City potentially \$3 million on future charges for this obligation.

All of the above savings are based on contract obligations of our current Wastewater Services Agreement with Metropolitan Council.

Based on analysis provided by the City and the current growth projections by the Metropolitan Council, the development forecasts needed to meet the SAC requirements of the Reserve Capacity Loan are unrealistic and this Loan balance will increase exponentially and reach the proposed \$2 million 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 \$30 million by 2032 if the City accepts the proposed modifications to the Wastewater Services Agreement. 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 Metropolitan 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 Metropolitan Council meeting.

Staff is requesting direction from Council as to a response to the Metropolitan Environmental Services regarding the endorsement of this proposal as a modification to our current Wastewater Service Agreement.

Davis stated in my opinion, this is a really, really good deal.

Koller stated I have one question here. At the very beginning it says, contract and its

payback requirement is based on annual SAC goals. Who sets the goals? Davis responded the Met Council sets the goals. If you'll turn to your Attachment. Koller asked can they make the goals unachievable like they are now? Davis stated if you'll turn to the Attachment that says, Rural Growth Center East Bethel, you'll see what the SAC goals are per year through 2032. These increase at an annual rate of 10.9% so the goal for 2015 is 59 units. The goal for 2032, the last year of the Contract, is 841 units. So, these goals are already set in the Contract and they're in this table.

Harrington stated my question on this \$2 million Loan, not this year or next year, but could we pay that off and be done with this completely? Davis answered that would have to be a provision we'd have to work out with them. I think we'd have to wait until this \$2 million cap is triggered first. At that time, we could pay the loan off. I don't think we could do anything to prepay the existing loan if there's a cap trigger on it.

Davis stated just in our loan payments that we have to make on this based on our flow charges, we'll be paying, based on these growth rates, \$3.4 million just as a Loan payment regardless of what's left over if we don't meet these SAC goals. So, from that basis alone, just paying off the cap amount is saving at least \$1 million there. In the worst-case scenario, if we have limited or almost no development, you can see at the end of this term we would owe \$32 million. Again, we expect more development to happen than that. But, we could be faced with the situation where, at the end of the term of the Loan, we haven't met our SAC goals and it comes up to \$20 million, \$25 million, \$30 million. What's going to happen then? Currently, there's no terms or no conditions for the renegotiations. In 2032, I don't think too many of us will still be here, except maybe Brian. And, we're going to be dealing with a situation in which... Voss stated wait, that's 15 years from now. Davis stated I'm sorry, 17. Voss stated some of us may still be here.

Davis stated with two of us here, then, we'll be dealing with a whole different cast of players, probably, from both sides. Also, we don't know what the position of the Met Council will be at that time. In all probability, what will happen is this thing has the potential to be 'kicked down the road' again. So, we do eliminate the uncertainty of that situation. It could be forgiven at that time but no one has a 'crystal ball.'

Ronning stated for the most part, the changes look like positive direction but there's no reference. For instance 1.02, Sewer Availability Charge, c., 'Nothing in this article shall be deemed to limit the Council's right to add to, amend, or change this method of allocation and/or collecting costs under Minnesota Statutes...' I didn't notice anything that would supersede those references.

Davis asked which section of the Agreement was that Tom? Ronning replied 1.02.c. The reason I bring that up is the intentions, probably right now, are honorable and great but the next guy comes along and reads this stuff and says, 'Well, we've got a chance to dip into these pockets.' Davis stated one thing that happens with this is, essentially, this goes away and we fall under the same rules that every other system, with the exception of one in their system of 106 other users, is under for the SAC rates.

Davis explained that once this \$2 million cap is triggered, again, if you'll look at the Reserve Capacity Loan Chart, in this far left-hand column, it shows what the year-end balance of the debt would be. We did this one just to show what would happen if we have almost limited development through 2021. We would hit this cap at that time, which if we accept these provisions and the Met Council accepts these, then this Reserve Capacity Loan

is eliminated. So, we don't have any SAC goals after that. Met Council will get their money as we actually collect the SAC charges. It may be over a period of time but there's no SAC goals to meet or interest to pay on those unmet goals.

Ronning stated in other words, it isn't written in here yet but that would be deleted or replaced by something. Davis stated under Subsection d., of 1.02, Paragraph 2, would have to be substantially revised. Ronning asked 1.02b.? Davis stated under d, which would be the next page. Paragraph 3 would have to be eliminated. Ronning stated I think that was part of the language that Paragraph 3 would be eliminated. Davis stated yeah, and also I had a talk with them yesterday and today about Paragraph 2. That one would no longer be applicable either to this situation. Of the five conditions, there's only two that maybe they still want to keep that in there, that it meets their Comp Plan. Also, under 1.03, there's another section of that, that would be eliminated. All this language would have to go back and be updated to accommodate what the current numbers are. There's also an amendment to this Contract, Amendment 1, that actually changed our SAC rates, which was enacted in 2013. We did this to get a little relief up front but in doing so, we increased the SAC rate increase from 3% a year to essentially 5% a year.

Ronning asked that's the urban charge, isn't it? The one year jumps to like \$3,165, I think, next year? Davis stated if we go with this, we'll be paying the urban rate plus a \$700 increment for each SAC unit until that \$2 million loan cap is triggered. Once that's triggered, then we have no more SAC increases until the urban rate catches up with the East Bethel rate.

Ronning stated this is an example, it isn't an article, section or anything. Davis stated there's a chart that shows the comparisons. That chart that Tim showed you shows what our current rate is. It was \$2,720 last year. It increased to \$2,850 this year. It goes up 4.7% to 4.9% a year. In 2018 to 2019, based on that rate, that catches up with what we do even if they add the \$700 increment. From there on out, we're going to be paying less even until that \$2 million cap is triggered as far as SAC rates go.

Ronning stated and it looks good but it's not enforceable. Summary of current agreement and proposed contract modification, now I don't mean to pick things apart, I'm just. Davis stated no, all that is, is just to show a comparison of what we have now to what's proposed.

Ronning stated they're going to be aware, or are aware, of, there's little 'hooks' in here where they can go back. Somebody new comes along, they can go back and do whatever they want. The one, for instance, that I mentioned. There's two or three like that. 'Nothing in this article shall be deemed to limit Council's right to add to, amend, or change its method of allocating and/or collecting costs.' I know there's at least another one, maybe, I forgot my notes at home.

Davis stated someone correct me if I'm wrong in that interpretation, but I think that's kind of 'boiler plate' language that's applicable to everyone within the system. We are within the system. Even if we weren't under this Reserve Capacity Loan, we would probably still be under those same obligations. Ronning stated that's not the reserve, that's the Sewer Availability Charge, the SAC.

Voss stated the way I read it is it just says they have the right to amend and change the SAC rates. Davis stated correct, whether we're under the urban program or the Reserve Capacity

Loan, whatever. Voss stated they're not going to give up that right, obviously.

Davis stated as long as we're in the Met Council system, which we are, we'll be subject to that type of contractual language, in my opinion. Pick different plants or areas that have different rates, correct? If we get to the point, we're under the urban rate.

Ronning stated we would have arbitrarily been picked under different rates the way we were set up. Voss asked right now? Ronning stated yeah. Voss stated that's what the City initially agreed to. Ronning stated if they did it once, they can do it again.

Davis stated but from where we sit, I think this is the end of the negotiations on this. They've come again full circle. This offer was made in the presence of their highest staff level person, Lisa Thompson. This is most of what we originally set out to do. Our original goal was to get this Reserve Capacity Loan eliminated as a requirement of the City. If we approve this, it doesn't get eliminated tomorrow but it will be gone in six to nine years. And, it will be gone at a cost that we can afford. As I had stated earlier, in 2022 the Castle Towers Sewer Plant comes off the books. We're currently paying about \$150,000 - \$160,000 a year on that. Those funds could be used to turn around and pay this off. Also, this year too, as far as our Loan payment goes based on our flow charges, we'll be getting a bill from Met Council in January for \$28,000. This is going to go up as our use increases. Once we hit this trigger, this \$2 million trigger on this Reserve Capacity Loan, the additional flow charges go away. Over the life of this, it could be in the neighborhood of \$3.5 million.

Ronning stated the direction of what's identified looks great. Just the couple little 'hooks' left in there. It was clarified that changed as specified later on in this Agreement or something that would give a lot more comfort to it, for me. Davis stated we can certainly bring that to their attention and get that interpretation done and see if it's something that's unique to this Agreement or if it's standard to the Agreements, they have with all their users.

Voss stated I would agree with Jack, at the meeting is, their about as far out on negotiations as they can, as they dare go, I guess. Meeting them all face-to-face was good just for understanding where they're coming from. Although the meeting started a little bit odd in that we talked about demonstration costs right away and the first they said was, 'Well, actually it's higher than what we told you it was.' To make them look a little better, that they're waiving it. So, we had a discussion about that for a while. But, I think, particularly Jason's worked pretty tough and I think it's at the point where the staff can support it but then it goes to the Committees. If you don't have staff support, going to the Committees, it's not going to get anywhere. They've asked us to be at that meeting too the end of July to help emphasize what our wants and what staff's willing to support.

Ronning stated it won't, probably, affect any of us except Brian, you know, as far as any criticism or something. But, I hope it doesn't sound boisterous or something. I sat through five sets of national negotiations with Ford Motor Company and I had lead responsibility in the last two. And, if it don't say it, or isn't clarified, it isn't there. So, you can't go back, really, later and say, 'Well, I didn't see this before.' 'Well, that's your responsibility to catch these things.'

3.0 Davis stated I certainly understand that if that's something that's unique to us, then perhaps

it's something that needs to be addressed. What I can do is find out if it's unique to us or if it's just standard to everybody in the system. If it's standard to everybody in the system, then we're part of the system and they're not going to change that just for us. Voss stated that's just a call to Jason right? Davis replied right.

Ronning stated the guy might be great. If it turns into a Brian Prichard, what's his name, Brian? Davis replied Bryce. Ronning stated Bryce Prichard, hang on. If somebody's told that isn't there, I don't care what you said you'd do. Where am I wrong Mr.?

Vierling stated well, you're right in the sense that the contract, that the 'Devil's always in the details.' Ronning replied yes. Vierling stated I don't think you have the final contract that they're proposing in front of you. Ronning stated hopefully not. Vierling stated I expect that they'll be coming up with that, I'd hope they'll come up with that long before the July meeting so that City, staff, and everybody would have a chance to take a look at it. But, conceptually, under the memorandum that you have there, if they can follow through and do a clean draft of the Agreement that makes the revisions that you want, I think that's where you want to go. Ronning stated that's what I was saying. I think that the direction looks great.

Davis stated essentially, that's what they're requesting now is direction of the City. Are the general terms that they're proposing, are they acceptable so they can go ahead and start the process of getting this before their Committees and the Met Council to get this approved and ratified.

Voss asked are they going to draft a new agreement? Davis answered they are and it just so happens that I have a resolution in case we want to act on this at the regular meeting. One of the phrases in the resolution is that Paragraph 2 will be revised. And, I had the conversation with them yesterday and today about the need for revisions in that. They said they would work on that.

Ronning stated we've got to remember that there's no re-opener identified in there. What you do now is permanent. It's not like three years from now you can talk to them. You can talk to them as much as you want, sure, but they don't have to listen.

Voss stated so I guess I'm not clear. Assuming that we give the indication to Met Council that we're fine with this, they're going to draft a new Agreement soon? Davis replied yes. Voss stated okay.

Ronning stated I don't know if you want to 'toss your hand.' Voss asked what's that? Ronning stated I don't know if you want to 'toss your hand in' until you see what there is. If we say that we're good with this and then they give us their next proposal or language or something.

Vierling stated I think you can certainly indicate that you give it concept approval. Ronning stated absolutely. Voss stated yeah. There's nothing to approve Davis stated and that's all they're asking for. They're asking for direction because they're not going to go ahead if we don't tell them, 'Look, yes we're interested in pursuing this.' If we don't give them some kind of direction on where we stand, then they're not going to bring it further until they get some kind of direction from us as to what our position is.

but what kind of concurrence? Mundle asked are you just looking for direction? Davis stated we're looking for direction but really, probably, what we should do is discuss that here and probably it should come in a form of a vote. We could actually add it to the agenda and vote to direct staff to communicate with Met Council that we're interested in pursuing this proposal as generally outlined and that there may be some further discussions needed for contract modification and clarification.

Voss asked do we even need to vote on it if we're just giving staff direction? Vierling stated I think it sends a better message to the Met that you concur with the concept and you want to pursue it. You just, however, want to see the final contract and all the terms. Ronning stated it doesn't go backwards. Voss stated they're not going to have minutes to state to that effect so it's still staff. Ronning stated I bet he goes back without 'empty hands.' Vierling stated I think what Met staff wants to hear is that the City is interested in proceeding. Voss stated okay. Ronning stated I lied, it wasn't the last two it was the last three. Voss asked any other discussion?

Ronning asked do you want to try and throw something together? We going to try to tack that on this evening? Davis stated yeah, we can add that to the agenda and I'll just basically review what we discussed in Work Session and request that you approve direction to staff to communicate with Met Council that we're in conceptual agreement with their offer and we'd like to proceed but we reserve seeing the final contract before we do any formal approval. Voss stated why don't you just bring it up during the Administrator section. Then we don't have to amend the agenda.

Davis asked does anybody have any question about this? Because I've been on this now for a year and a half and been working with this whole project for four years and if we can come to terms with this, this is going to be a real asset in terms of us not being obligated for a large potential debt in the future.

Ronning stated I don't mean to sound like the voice of criticism, just the voice of caution. Davis stated no, and I appreciate those comments and those things should be looked at to make sure we're not overlooking anything. But, just generally, from the broad perspective of this, this is a very, very good deal for the City. Ronning agreed and stated yeah.

Ronning asked have you kind of considered what the potential total savings are? Davis stated a lot of it's based on speculation. If you go worst case scenario it could be \$30 million. If there's 30% growth, it could be \$10 million. But, either way, it's going to be enough to really, really be significant. And, the thing about these SAC goals is, you know, they grow at 10.9% so it's an exponential type of growth rate. So, the goal for this year is 59 units but then how long does it take 59 to double at 10.9% and then how long does it take that to double.

Ronning asked what is it, \$2,280? Instead of \$5,554? Davis stated yes, that goal was reduced too. That would only be in effect if even at this \$2 million cap rate wasn't hit for say 15 years, which would be great also. If we don't ever hit this \$2 million cap, we're succeeding. Voss stated that's a good thing. Davis stated on the other side, which is a good thing. So, whichever way we go with this, it's almost like a win-win situation for us.

Voss stated okay, any other discussion? All right, so Jack will bring it up in Council Reports. Any other matters to discuss in Work Meeting?

Brown-
Wilbert

Ronning stated I was at a funeral thing in Fargo this week and this, what's it called, something Brown-Wilbert? I saw their operation up there. It's a pretty good place. They must be all over. Davis stated they said they had 17 locations. Ronning stated that was a good sized one up there.

4.0
Adjourn

Harrington stated I'll make a motion to adjourn. Mundle stated I'll second. Voss stated any discussion? All in favor say aye?" All in favor. Voss stated opposed? Hearing none motion passes. Motion passes unanimously.

Meeting adjourned at 6:37 p.m.

Submitted by:

Carla Wirth

TimeSaver Off Site Secretarial, Inc.