

## Environment Committee

Meeting date: August 11, 2016

For the Metropolitan Council meeting of August 26, 2015

**Subject:** Amendment to East Bethel Wastewater Services Agreement

**District(s), Member(s):** All

**Policy/Legal Reference:** MS 473.517; 2040 Water Resources Policy Plan; and Council Administrative policy 3-2-5 (re. SAC)

**Staff Prepared/Presented:** Jason Willett, 651-602-1196

**Division/Department:** MCES c/o Leisa Thompson, 651-602-8101

### Proposed Action

That the Metropolitan Council authorizes its Regional Administrator to execute an amendment to the Wastewater Service Agreement with East Bethel according to the attached agreement (Amendment 2).

### Background

In November 2009, pursuant to the Water Resources Policy Plan and City request, the Council authorized building an advanced water reclamation plant to serve East Bethel (the City). A Wastewater Service Agreement between the City and Council was signed in December 2010. The plant was built for \$25.8 million and began operations in June 2014. The agreement, per policy, requires that the City pay Municipal Wastewater Charges at the same rate as urban cities, but pay a higher City-Specific Sewer Availability Charge (SAC) rate (their 2015 SAC rate is \$2,850 versus the urban rate of \$2,485).

Due to very low growth since construction of the facility began, City tax payers, who don't benefit from the service and originally were not expected to pay, have been burdened economically with tax increases to pay wastewater and water bond debt service. The City's bond rating and growth potential are at risk, and the Region is at risk of not using the wastewater, or city water supply, capacity built for them.

The City asked for financial relief, so Metro Cities, at MCES request, formed a stakeholder work group in late 2014 that included seven urban city officials from St. Paul, Roseville, Andover, Golden Valley, Apple Valley, North St. Paul and Metro Cities to discuss possible revisions to the Wastewater Service Agreement. The group met four times and shared subsequent information through email. Minutes and presentation materials are available upon request.

Based on the terms that are proposed to change, the East Bethel SAC rate would not be required to recover the net costs of the water reuse demonstration part of the project (\$9.5 million) and the SAC loan mechanism would be capped at \$2 million. If that occurs, the City's financial advisor suggested credit damage could be realized by the City. The City will be required to pay a \$700 increment in their SAC rate over the urban SAC rate for each new household or equivalent and if the cap is reached, would have to pay off the \$2 million loan.

The proposed changes increase the possibility that the City will not pay the reserve capacity cost intended, by policy, to be paid by their SAC ratepayers. However, this is uncertain and depends on growth.

### **Rationale**

- Staff believes that the water reclamation aspects of the plant costs can be characterized fairly as a benefit to the entire region, so eliminating the \$9.5 million demonstration costs from the East Bethel cost pool is appropriate.
- Setting a maximum \$2 million loan balance recognizes that the contract as originally structured is not working, and if left as is, would create anti-growth pressure on the city potentially causing uncompetitive rates inhibiting development and credit issues. The existing contract recognizes and allows for renegotiation if the growth plan doesn't work, but only in 2046, which is too late to avoid real damage.

### **Funding**

If this amendment is approved, the reserve capacity costs of the East Bethel cost pool would be less, meaning that the East Bethel SAC rate is less than it would be under the existing contract, and the urban SAC pool pays for the difference, which is about half of the \$9.5 million demonstration costs that are proposed to be excluded from the East Bethel cost pool. This results in an increase in the SAC rate applied to all other communities and a very slight increase in Metropolitan Wastewater Charges.

### **Known Support / Opposition**

The Metro Cities work group was unanimously supportive of the exclusion of the demo costs and all who expressed opinions also supported the loan maximum that was added after the group's last meeting.

East Bethel's City Council rejected a concept staff made in April 2015 that included continuing the Reserve Capacity Loan, albeit with a \$2 million trigger for renegotiation rather than the current proposal that caps the loan and provides definitive terms at that point. This revised proposal eliminates the City concern about the uncertainty of renegotiation in later years when different parties would be involved, and the City now supports the compromise.

**METROPOLITAN COUNCIL**  
390 North Robert Street, St. Paul, MN 55101  
(651) 602-1000  
**AMENDMENT**  
to  
**CONTRACT FOR SERVICES**  
Metropolitan Council Contract Number 10I024 Amendment Two  
City of East Bethel Amendment 2015 A

**WHEREAS**, the **Metropolitan Council** (“Council”) and the **City of East Bethel** (“City”), collectively, “the Parties,” entered into a Wastewater Service Agreement (“Agreement”) effective December 9, 2010, and amended on March 5, 2013; and

**WHEREAS**, the Parties have a substantially lower forecast for future growth for the region than was anticipated at the execution of the Agreement, and the City is already experiencing lower growth than anticipated; and

**WHEREAS**, the Council has determined that it is in the best interest of the Region to avoid causing the City to incur a negative credit rating through enforcing the terms of the Agreement currently in effect; and

**WHEREAS**, the Parties agree that \$9,482,681 is 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;

**NOW THEREFORE**, in consideration of the promises made in the Agreement and through this amendment, the Agreement is amended in the following particulars:

- 1. AMENDMENT 1 to the Wastewater Service Agreement, executed on March 5, 2013,** is void and will be given no legal effect.
- 2. ARTICLE I Financial Terms and Conditions**

**ARTICLE I Financial Terms and Conditions, Sewer Availability Charges (SAC), Section 1.02 Subsection d. Paragraphs 2 and 3 and Exhibit A** are all **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 incurred by the Council on City-specific capital costs based on financings over a term extending to 2032 at a 2.73% interest rate for the initial facility and 4.5% for the planned future expansion (hereafter “East Bethel Cost Pool”); (2) the 2030 Comprehensive Plan forecast of 5,500 SAC units; (3) a constant SAC unit growth rate of approximately 17% annually; (4) reserve capacity determination using cumulative SAC units as forecasted for the used portion of total capacity; and (5) East Bethel SAC rate computed to recover the present value of the reserve capacity portion of debt service on the East Bethel Cost Pool as determined in (1) above, which results in an East Bethel SAC rate that will be \$700 higher than the Urban SAC Pool’s rate every year (except as noted below).

As described in Exhibit A, \$9,482,681 shall be excluded from the East Bethel Cost Pool used to determine the East Bethel SAC rate. As a result, the Council and City agree that the East Bethel SAC rate is based on \$16,302,455 of capital costs, as shown in Exhibit A, and the above factors, 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 unless and until: i) the Reserve Capacity Loan balance reaches \$2 million, or ii) the City is qualified for and 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 charges for 2015 or prior charges.

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

**ARTICLE I Financial Terms and Conditions, Section 1.03 Reserve Capacity Loans** is amended with the following language being **INSERTED** as Subparagraph f:

The Reserve Capacity Loan balance will not be allowed to exceed \$2 million under any circumstances. If it reaches \$2 million, the following conditions shall immediately apply and supersede any contradictory language in this Agreement:

- 1) The then-existing East Bethel SAC rate shall be capped at the then current rate and remain fixed until the urban pool's SAC rate catches up, or until the original obligation is fully satisfied, whichever comes first. Thereafter, East Bethel will be considered part of the Urban SAC Pool.
- 2) No further Reserve Capacity Loans will accrue past the \$2,000,000 cap and the existing Reserve Capacity Loan payments will end. However, the City will pay off the \$2 million loan on a 10 - 20 year fixed amortization payment plan (with the term at the City's option) at 2.73% interest (the cost of Council's capital for the original project).

### **4. 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 Revised - FINAL 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.

*The remainder of this page is intentionally blank. Signature page to follow.*

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

**CITY OF EAST BETHEL**

**METROPOLITAN COUNCIL**

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**Its:** \_\_\_\_\_  
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