

Environment Committee

Meeting date: February 26, 2013

For the Metropolitan Council meeting of February 27, 2013

Subject: Authorization to Adopt Council Resolution 2013-1, which authorizes the Regional Administrator to Negotiate and Execute an amendment to the Memorandum of Understanding (MOU) between the City of Lake Elmo and the Council to Address Planning Issues

District(s), Member(s): District 12, Council Member Harry Melander

Policy/Legal Reference: Minnesota Statute Section 473.175

Staff Prepared/Presented: Kyle Colvin, Assistant Manager, Engineering Services (651-602-1151)

Division/Department: Environmental Services / Technical Services

Proposed Action

That the Metropolitan Council adopt attached Resolution No. 2013-1, which modifies and clarifies the scope and nature of the Memorandum of Understanding (MOU) between the City of Lake Elmo and the Council to address planning issues, and authorizing its Regional Administrator to negotiate and execute a binding amendment to the Memorandum of Understanding with the City consistent with the attached Resolution.

Background

The City of Lake Elmo has submitted a comprehensive plan amendment (Review File No. 20599-1) for the I94 Corridor area which includes city-wide sewerage staging forecasts through 2030. Sewerage development staging within Lake Elmo was originally identified and agreed to through a memorandum of understanding (MOU) between the Council and the City in 2005. In 2010 the Council through Resolution 2010-8 and a separate MOU, provided relief of Wastewater Inefficiency Fees (WIF), as identified under Council Resolution 2005-20. Resolution 2010-8 relieves the City of WIF and extends the sewerage development milestones one year for each year that regional residential Sewer Availability Charge (SAC) units collected is less than 50% of the rolling ten-year average for the metropolitan area. Due to the recession SAC collections have been below the rolling ten-year average for the period of 2007-2011. However, because of the economic recovery, and increased residential development activity, there will be no extension for 2012. As a result, the original milestone of 515 new sewerage residential units by 2010 has now been extended to 2015.

The city's comprehensive plan amendment for the I94 Corridor identifies a total of 515 city-wide sewerage residential units by 2015, consistent with the rules for extension, and a total of 5,600 new sewerage residential equivalent connections by 2030 which satisfies the sewerage forecast milestone set forth in the original 2005 MOU.

The proposed amendment to the MOU shall recognize the deferment of WIF to 2015 and the City's revised sewerage staging forecasts as stated in the comprehensive plan amendment.

The Council intends to issue new System Statements and forecasts by December 31, 2015. Any changes to the forecasts will be incorporated into the MOU by a future amendment.

Rationale

The resolution and related MOU amendment will bring into alignment 1) the WIF deferment, 2) the revised city-wide sewerage forecasts, and 3) the original sewerage milestones as identified in the original 2005 MOU.

Known Support / Opposition

The City of Lake Elmo understands and supports the need to officially amend the original MOU to recognize the change in forecasted sewerage development milestones.

**PROPOSED RESOLUTION
METROPOLITAN COUNCIL**

390 Robert Street North, Saint Paul, Minnesota 55101

RESOLUTION NO. 2013-1

MODIFYING AND CLARIFYING THE SCOPE AND NATURE OF THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF LAKE ELMO AND THE METROPOLITAN COUNCIL TO ADDRESS PLANNING ISSUES

WHEREAS, in September 2002, the Council found that a proposed comprehensive plan update submitted by the City may substantially depart from and may have a substantial impact on metropolitan system plans, and subsequently required the City to modify its proposed plan update to ensure the City's proposed plan update did not have a substantial impact on or contain a substantial departure from metropolitan system plans; and

WHEREAS, the City appealed the Council's "final decision," but in August 2004, the Minnesota Supreme Court concluded the Council has the statutory authority to require modifications to the City's proposed plan update and affirmed the Council's "final decision"; and

WHEREAS, in January 2005, the Mayor of Lake Elmo and the Chair of the Metropolitan Council signed a Memorandum of Understanding, subsequently ratified by their respective governing bodies, that outlined certain criteria for guiding the City and the Council as the City modified its proposed plan update to ensure conformity with metropolitan system plans; and

WHEREAS, on July 27, 2005, the Council adopted Resolution No. 2005-20 and granted the City's request for additional time within which to submit its update comprehensive plan, but the Council deemed it appropriate and necessary to attach certain requirements and conditions to the time extension to ensure the Memorandum of Understanding would be successfully implemented over time and ensure costly regional infrastructure is used effectively and efficiently; and

WHEREAS, Council Resolution No. 2005-20 established certain population, household, and residential equivalent unit ("REC") levels the City is required to meet beginning in 2010 and extending through 2030; and

WHEREAS, Council Resolution No. 2005-20 required the City to pay the Council by January 31, 2011 a wastewater inefficiency fee ("WIF") if the City did not meet its REC commitments in the 2007 to 2010 timeframe; and

WHEREAS, the WIF is intended to help pay the operation, maintenance, and capital costs of underutilized regional wastewater infrastructure and the costs of providing regional sewer service for development elsewhere in the region that would have occurred within the City; and

WHEREAS, the City requested temporary relief from the WIF payment due in January 2011 because the prolonged downturn of the economy made it difficult for the City to meet its population, household, and employment REC commitments for the 2007 to 2010 timeframe; and

PROPOSED RESOLUTION

WHEREAS, on March 24, 2010, the Council adopted Council Resolution No. 2010-08 and agreed to provide the City with its requested relief subject to the execution of a binding Memorandum of Understanding acknowledging the City's continuing agreement to comply with the requirements and conditions stated in Council Resolution No. 2005-20; and

WHEREAS, the City has prepared a proposed amendment to its comprehensive plan for the South of 10th Street Area, but the staging of development served by wastewater in the proposed amendment may not technically comply with the Memorandum of Understanding (as amended on March 24, 2010) between the Council and the City; and

WHEREAS, the City's proposed comprehensive plan amendment reflects the City's efforts to plan consistent with the Memorandum of Understanding (as amended), the requirements of the Metropolitan Land Planning Act, and the Council's adopted policies and metropolitan system plans; and

WHEREAS, the Metropolitan Council is updating its metropolitan development guide, and in that process, is examining forecasted growth through 2040 and will continue dialog with the City regarding the long-term forecasted growth and pace of growth for the City.

NOW THEREFORE, BE IT RESOLVED:

1. Consistent with the MOU granting the City relief from the WIF, Paragraph 3(i) of Council Resolution 2005-20 (as amended on March 24, 2010) is changed to reflect a compressed schedule for development through 2030 to read as follows:

	Households	Population	RECs*	
2010	2,779	8,069	0	
2015	3,519	9,677	615	(515 residential, 100 employment)
2020	5,114	14,064	2,520	(1,750 residential, 770 employment)
2025	6,524	17,941	4,670	(3,400 residential, 1,270 employment)
2030	8,727	24,000	6,600	(4,900 residential, 1,700 employment)

* Includes 500 RECs existing Cimarron, 200 RECs existing Village, 300 RECs existing Eagles Point

2. This modification and clarification of the Memorandum of Understanding (as amended on March 24, 2010) is effective on the date the Council and the City enter into a binding agreement under which the City acknowledges this modification and clarification and states its continued agreement to comply with the requirements and conditions stated in the Council Resolutions and the Memorandum of Understanding.

PROPOSED RESOLUTION

3. The Regional Administrator is authorized to negotiate and execute on behalf of the Council a Memorandum of Understanding consistent with this Resolution.
4. Except for the modifications and clarifications identified in this Resolution, the requirements and conditions of Council Resolution Nos. 2005-20 and 2010-08 shall remain in force and effect without change.

Adopted this ____ day of February, 2013.

Susan Haigh, Chair

Emily Getty, Recording