

**City of Lake Elmo  
Washington County  
State of Minnesota**

**Resolution No. 2013-45**

**A RESOLUTION AUTHORIZING EXECUTION OF A REVISED  
MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF  
LAKE ELMO AND THE METROPOLITAN COUNCIL REGARDING  
DEVELOPMENT STAGING AND WASTEWATER INEFFICIENCY FEES**

**WHEREAS**, in February 1997 the Metropolitan Council submitted to the City of Lake Elmo a system statement that advised the City of the Metropolitan Council's recently adopted policy planning documents and metropolitan system plans and identified population projections and other planning elements the City should incorporate into its plan as the City fulfilled its 2008 decennial review obligations under section 473.864 of the Metropolitan Land Planning Act; and

**WHEREAS**, in September 2002, the Metropolitan Council found that the proposed 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 Metropolitan Council's "final decision" to the Minnesota Court of Appeals and ultimately the Minnesota Supreme Court; and

**WHEREAS**, in August 2004, the Minnesota Supreme Court concluded the Metropolitan Council has the statutory authority to require modifications to the City's proposed plan update and affirmed the Metropolitan 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 Metropolitan Council as the City modified its proposed plan update to ensure conformity with metropolitan system plans; and

**WHEREAS**, in June 2005, the City requested the Metropolitan Council to allow the City additional time within which to submit its updated comprehensive plan to the Metropolitan Council; and

**WHEREAS**, on July 27, 2005 the Metropolitan Council granted the City's extension request when it adopted Council Resolution No. 2005-20, but the Council deemed it appropriate and necessary to attach certain conditions and requirements to the time extension to ensure the Memorandum of Understanding is successfully implemented over time and ensure costly regional infrastructure is used effectively and efficiently; and

**WHEREAS**, Paragraph 3(i) of Council Resolution No. 2005-20 establishes certain population, household and residential equivalent unit (REC) levels the City is required to meet beginning in 2010 and extending through 2030; and

**WHEREAS**, Paragraph 3(i)(iii) of Council Resolution No. 2005-20 requires the City to pay the Metropolitan Council by January 31, 2011 a “wastewater inefficiency fee” (WIF) if the City does 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 has made it difficult for the City to meet its population, household and REC commitments for the 2007 to 2010 timeframe; and

**WHEREAS**, on March 4, 2010 the Metropolitan Council adopted Council Resolution No. 2010-08 and agreed to provide the City with the requested relief; and

**WHEREAS**, the City authorized execution of an amended Memorandum of Understanding at its November 16, 2010 meeting acknowledging the City’s continuing agreement to comply with the requirements of and conditions of Stated in Resolution 2005-20; and

**WHEREAS**, the City prepared an amendment to its Comprehensive Plan that was reviewed by the Metropolitan Council at its February 27, 2013 meeting; and

**WHEREAS**, said Comprehensive Plan amendment reflects the City’s efforts to plan consistent with the Memorandum of Understanding as amended and included revised population, household, and sewer staging forecasts consistent with the relief authorized under Metropolitan Council Resolution No. 2010-08; and

**WHEREAS**, the Metropolitan Council authorized the City to place the Comprehensive Plan amendment into effect at its February 27, 2013 meeting; and

**WHEREAS**, the Metropolitan Council additionally adopted Resolution No. 2013-01 at its February 27, 2013 meeting, which modified and clarified the scope and nature of the Memorandum of Understanding to address planning issues brought out by the City’s Comprehensive Plan amendment and to specifically reflect a revised schedule for development through 2030; and

**WHEREAS**, the modification/clarification made by Resolution No. 2013-01 is effective on the date the Metropolitan Council and the City enter into a binding agreement under which the City acknowledges the modification/clarification and states its continuing agreement to comply with the requirements and conditions stated in previous Council resolutions and the Memoranda of Understanding entered into by the Metropolitan Council and the City; and

**WHEREAS**, as the Metropolitan Council updates its metropolitan development guide it will examine forecasted growth through 2040 and continue a dialogue with the City regarding long-term forecasted growth and pace of growth for the City; and

**WHEREAS**; It is the City’s expectation that periodic discussions will continue with the Met Council regarding the status of economic activity in order to continue to consider potential future adjustments to the MOU in the following areas: 1) the potential for the City to propose alternative REC considerations (in lieu fees), 2) the overall number of mandated REC units that are appropriate based on the current and anticipated market demand for housing and commercial development, 3) the potential to evaluate the long-term viability of the current scope and pace of mandated development, and in particular to extend the scope of the agreement out to 2040 given current and anticipated economic conditions, the 2010 census report, and any 2014 framework evaluations conducted by the State Legislature and/or the

Met Council, and 4) that the calculation method for extending the WIF assessment is a reasonable reflection of the economic conditions so as not to expose the City to undue risk or liability of paying the WIF fees.

**NOW THEREFORE, BE IT RESOLVED:** that the City Council of the City of Lake Elmo hereby agrees to amend the Memorandum of Understanding between the City and the Metropolitan Council and authorizes execution of the revised Memorandum of Understanding attached hereto as Exhibit "A".

Passed and duly adopted this 21<sup>st</sup> day of May 2013 by the City Council of the City of Lake Elmo, Minnesota.

**CITY OF LAKE ELMO**

By: \_\_\_\_\_  
Mike Pearson  
Mayor

(Seal)

ATTEST:

\_\_\_\_\_  
Adam Bell  
City Clerk