



**TOWN OF ALPINE
SPECIAL COUNCIL MEETING**

**WASTE WATER TREATMENT FACILITIES AGREEMENT
BETWEEN NORTHSTAR UTILITY
AND THE TOWN OF ALPINE**

AUGUST 24TH, 2006

Please note: These minutes are a summary only of a tape-recorded meeting.

(clerk's note: Tape # 1 of 2 starts here)

The mayor called the meeting to order at 7:07 p.m. and the clerk established a quorum through a roll call. Council members present: Don Jorgensen, D.R. Hutchinson, Shirley Brown, and Donn Wooden. Mayor Lloyd also present.

Staff Present: Brenda Bennett, Treasurer; Tracy Matthews, Clerk; and James Phillips, Chief of Police.

Contracted Staff: Leon Kjellgren, Nelson Engineering; and Elizabeth Koeckeritz, Town of Alpine attorney.

Others: Victoria DeCora, local resident; Kathy Ellsworth, North Star Utility; Lisa Paddleford, Alpine Junction, LLC; Andy Ujvary, local resident; and Roy Post, local resident.

The mayor opened the special council meeting advising the meeting could be used as a workshop or to act on the WWTP Agreement with North Star Utility. Elizabeth Koeckeritz reviewed the most recent WWTP draft dated 8/17/06 for the public and council.

A. WASTEWATER TREATMENT FACILITIES AGREEMENT -- PAGE 1 OF 10:

1) RECITALS: Ms. Koeckeritz advised the third "WHEREAS" contains additional explanation of the normal household strength of wastewater per day (maximum flow). North Star Utility will have access to 511 ERUs (191,625 gallons) of wastewater capacity and the Town 556 ERUs (208,375 gallons) of wastewater capacity. The fifth "WHEREAS" will have a deadline of June 30th, 2007 rather than a deadline of six months from the effective date of the contract. North Star Utility had locked into the rate of \$5,000.00 hookup fee for its customers and, therefore, changing the date would give the TOA customers the same opportunity. According to Kathy Ellsworth, NSU, the most recent discussion centered on the fact the \$5,000.00 hookup fee could be raised on June 30th, 2007 if need be.

B. WASTEWATER TREATMENT FACILITIES AGREEMENT --- PAGE 2 OF 10: Ms. Koeckertiz reviewed page two which identifies the fact the TOA agrees to diligently pursue the financing, design and construction of the plant in a timely manner. The Town shall complete the plant no later than September 30th, 2008. If there are issues beyond the Town's control, there is some flexibility; however, the Town agrees to do everything it possibly can to finish on time.

In regard to capacity, the plant shall have a minimum capacity of 400,000 gallons per day which the plant can be expanded up to 800,000 gallons per day. The TOA will also operate the plant under the supervision of an appropriately certified operator(s) as required by the DEQ. The TOA will also discharge all effluent from the plant under its existing permit which may be expanded time to time. The Town is solely responsible for any enlargements or modifications of the discharge permit necessary to accommodate flows from the plant.

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C. WASTEWATER TREATMENT FACILITIES AGREEMENT --- PAGE 3 OF 10:

Section (f) FEES AND RATES: The TOA shall charge NSU an appropriate rate for the treatment and discharge originating from its customers and this fee will be in excess of and in addition to the original ERU fee (a "User Fee"). This rate will be on the same formula currently used by the Town to determine sewer user rates for its customers.

Section 2. Obligations of North Star Utility:

(a) Financial Commitment: NSU agrees to prepay to the Town the capacity fee for no less than 371 of the 511 ERUs allocated to prior to June 30th, 2007. In several areas within this paragraph "in cash" was added to any area in which NSU is to prepay as requested by Leon Kjellgren; the Town does not want letters of credit and, therefore, "in cash" was added for clarity. Additionally, the third sentence in this paragraph was changed from "six (6) months after the effective date" to "June 30th, 2007"; this sentence indicates the length or term the capacity fee is at \$5,000.00. Both parties agree that if the actual cost of the plant should be less than projected costs, than NSU should be issued a proportionate refund according to its allocated capacity.

Mr. Kjellgren asked to discuss paragraph 2 of page 3 in which North Star Utility (NSU) agrees to prepay to the Town the capacity fee for no less than 371 of the 511 ERUs allocated to NSU prior to June 30th, 2007. Verbiage in this sentence was agreed upon to change to "no later than June 30th, 2007." Some of the ERUs may be needed to pay the bills prior to June 30th, 2007. Ms. Ellsworth agreed that the Town of Alpine (TOA) may call at anytime prior to June 30th, 2007 for some of the ERUs and essentially NSU agrees to pay no less 371 of the ERUs by June 30th, 2007. Additionally, changes were added to this section which states that "beginning on July 1st, 2007 the capacity fee per ERU may increase in the town's sole discretion."

The August 17th, 2006 draft indicates that both parties must agree to any increase in ERU costs. According to Leon Kjellgren, the \$5,000.00 ERU cost was actually estimated to be \$5,100.00 in the financial plan devised by Bob Norton of Nelson Engineering who rounded down for simplicity sake. The ERU cost at \$5,000.00 was agreed upon by the council at the last council meeting to remain at \$5,000.00 as an enticement on both sides of the river to buy into the plant. The ERUs have some relationship to the plant itself and, therefore, the TOA should be the sole indicator as to when the ERU rate should increase as it is the Town's sole responsibility to fund and operate the treatment plant, according to Leon Kjellgren. The Town has no interest in "robbing" the south side of the river as it would be doing the same to the existing TOA customers.

Kathy Ellsworth disagreed with this statement by Mr. Kjellgren initially as the TOA and NSU are entering into a partnership and NSU should be involved in rate increase discussions. Mr. Kjellgren expressed having no qualms of NSU being involved in discussions, however, the final decision has to be made by the entity in charge of the plant. Additionally, the cost of operation can fluctuate and it is the Town's responsibility to cover the costs of operation. Mr. Kjellgren advised that the ERU rate may be increased in exchange for lowering the monthly user fee rate; however, the financial plan is not set up this way. Mr. Kjellgren feels changes to the monthly user fees should also be at the sole discretion of the TOA. If the Town is charged with the responsibility of operating the plant then it should determine the ERU fee and monthly user fee rates. The council and staff explained the Town as a municipality cannot raise rates without public input and passing an ordinance which requires three readings. After discussion all parties, including Kathy Ellsworth, agreed there does not have to be consensus and the Town has the sole ability to change the ERU rate. However, the TOA agrees to consult with North Star prior to any rate increase.

Mr. Kjellgren advised the last sentence should be stricken altogether in Section A as the ERU fee has been established at \$5,000.00 and should not be lower. Ms. Ellsworth agreed to this statement from a practical standpoint, however, NSU has given a contractual agreement to its prospective customers that if for some reason they have over paid their ERU fee at

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\$5,000.00 they will be issued a refund. She requests the verbiage remain in the agreement. All parties agreed for it to remain.

RESERVE ACCOUNTS: Donn Wooden inquired what reserve accounts have been established for the plant. Mr. Kjellgren advised the financial plan takes into account this statutory requirement for reserve accounts and so much per year is set aside that in 2027 at least \$2.8 million should be set aside in reserve accounts. Moreover, Ms. Koeckertiz advised the statute states that an "adequate depreciation fund" is established and the amount isn't clearly defined.

(b) Availability of Funds: One addition to this section was the phrase "in cash" which was added to the second sentence which states that upon 30 days written notice from the Town, NSU will make such sums available "in cash" to the Town. Also, verbiage was added to the end of this section which states NSU will demand payment on the "ILOC" (Individual Letters of Credit) immediately upon receipt of said notice.

(c) Exclusive Provider and Franchise Agreement: Overall, a separate franchise agreement will be negotiated between both parties in the future. This section indicates that until such time as North Star has sold all of its allocated ERU', the Town agrees not to compete with North Star Utility for any clients on the north side of the Snake River. Mr. Kjellgren expressed his concern that this section gives North Star the absolute authority to provide wastewater services in the North Alpine. The Town of Alpine can only affect within its own boundaries. For example, if someone else beyond NSU wants to bore under the river and pay for expansion of the treatment plant, the opportunity to do so should not be removed. North Star will retain its ERU capacity as outlined in this agreement.

The following was stricken from the draft agreement after lengthy discussion: "The Town agrees that it shall not compete with North Star for any clients on the north side of the Snake River and that North Star shall be the exclusive provider of treatment services for wastewater originating from the north side of the Snake River for any future Town residents. North Star shall have the first right and opportunity to offer sewer service, and, therefore, ERUs to existing and potential customers on the north side of the Snake River until such time as North Star has recaptured all prepayment amounts for ERUs contributed to the Town."

This section sets forth that NSU shall offer ERU capacity in the plant to its customers at the cost as paid by the North Star to the Town per ERU; provided, however, that beginning January 31st, 2007 North Star shall be allowed to add interest.

(Tape # 1 – Side B Starts here)

The mayor recessed the meeting and reconvened at approximately 8:00 p.m. to allow time for Elizabeth Koeckeritz and Kathy Ellsworth time to add the revised changes to the agreement.

D. WASTEWATER TREATMENT FACILITIES AGREEMENT --- PAGE 4 OF 10:

Section 2 - # C – Continued: After discussion the word "exclusive" was deleted from the second sentence in which the Town offers a franchise to offer sewer service to residents of the TOA on the north side of the Snake River at such times as properties are annexed into the Town during the term of this agreement.

(d) Exclusive Plant: This section indicates North Star agrees that once the plant is constructed and fully operational, it will receive all necessary wastewater treatment services form the plant, and North Star shall not construct any additional or secondary treatment plant so long as sufficient capacity exists to service NSU customers. If capacity isn't sufficient the parties agree to cooperatively work together to expand the plant up to its maximum build-out capacity of 800,000 gallons. Mr. Kjellgren feels this section should also cover septic tanks, for example, what if Snake River Junction wanted to install an individualized septic system. Kathy Ellsworth indicated they cannot require someone to tie into North Star Utility. Currently, the NSU service boundaries include Alpine Meadows Subdivision and the Flying

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Saddle Lodge. According to Elizabeth Koeckeritz the prohibition of septic tanks can be covered once the land is annexed into the Town of Alpine.

(e) **Collection and Transmission Infrastructure:** The word “maintain” was added to this section to read: “North Star will construct and maintain, at no cost to the Town, all necessary collection and transmission infrastructure (including a transmission conduit beneath the Snake River) for the collection of raw sewage originating from the north side of the Snake River, transportation of said sewage beneath the river, and delivery of said sewage to a mutually agreeable point where the sewage will enter the head of the plant for treatment (the “Point of Connection”). The Cost of such construction is not included in the ERU prepayment to the Town and is considered the sole responsibility of North Star.”

(f) **Service Charges:** This section indicates that North Star agrees to pay the TOA on a monthly rather than a quarterly basis pursuant to the TOA invoicing the utility.

(g) **Discharge Requirements:** This section indicates NSU will adopt rules and regulations for its customers detaining its wastewater policies. Essentially, the utility agrees not to allow its customers to discharge waste in violation of the Town’s ordinances which may change time to time. The following verbiage was added: “North Star agrees to reimburse the Town for any damage to the Plant or the Town’s infrastructure due to sewage dumping practices in violation of this clause. North Star Further agrees to pay any fines and/or legal costs imposed by any regulatory agency or the Town due to the sewage dumping practices of North Star’s customers.”

(h) **Maintenance Reserve Account:** After discussion from the last meeting this new section was added which sets forth that North Star will maintain an adequate depreciation fund, in North Star’s sole discretion, to provide for the repair and replacement of North Star’s Sewage System upstream from the Point of Connection. The clerk asked for this clause to specifically include the collection and transmission lines of NSU to the “Point of Connection.” The Treasurer asked for this clause to be according to state statute which Ms. Ellsworth the statute would only cover the Town and not the utility.

Ms. Wooden inquired what the average life of the conduit line would be which runs underneath the Snake River. Mr. Kjellgren stated the PVC pipe (C-900 pipe,) being installed is adequate as long as the pipe is bedded correctly. In Jackson iron pipe was utilized. Mr. Kjellgren stated, “All you really have to do is to be able to go through a capitol recovery factor and payments that allow you to say ‘replace that’ in a time that is going to be necessary to replace it. But that pipe out to be able to stay in the ground in this soil for 75 years if it is installed correctly. That’s the big question.” Within 35 years manholes will need to be replaced according to Mr. Kjellgren, however, the pipe should last twice as long. He feels an increase of 3% per year for inflation would be adequate.

3. **Mutual Agreement to Complete:**

(a) The Town and North Star hereby acknowledge that the other party has made commitments to its residents and customers to provide sewer service through this plant no later than September 30th, 2008 and both customers and residents both Parties to provide a necessary service.

(b) and (c) **Inability to Complete Town and North Star:** This section states that in the event the Town would be unsuccessful in obtaining any portion of financing support form the State of Wyoming, the Town shall notify NSU in writing and shall have forty-five (45) days form the date of the receipt of the notice to obtain alternate financing sources for its portion of the costs of the plant, including alternate loan sources. Additionally, if North Star is unable to obtain alternate financing sources, the Town will proceed to complete the entire Plant, and North Star will repay the Town for its proportionate share of costs according to a mutually negotiated cost-repayment plan. Ms. Brown expressed concern the Town may be able to obtain lower interest rate loans from other sources vs. the utility company if the need arises. Mr. Kjellgren questioned whether the Town could be legally committed to something that open-ended and gray.

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According to Kathy Ellsworth the agreement, in and of itself, is a lose commitment. This section states that, for example, if the Town misses one round of SLIB funding, NSU will carry on with the plant until the TOA receives its funding and can pay the utility back. Ms. Ellsworth advised the intent is not to charge the TOA excessive interest rates but to rather ensure the plant is built irregardless of funding difficulties by either party. Moreover, if for some reason the Town cannot obtain funding the utility will fill in the gaps for funding only for the interim until the next round of funding is available to the TOA.

Mr. Kjellgren advised emergency loan applications may be completed and funded within 60 days. All parties agreed to change the length from 45 days to 60 days. Ms. Ellsworth offered that verbiage should be changed in this section from "to complete the entire plant" to "that portion of the Plant for which the Town was unable to receive funding for." This verbiage clarifies the intent of this section is for either party to help the other through funding difficulties.

4. **Obligations of the Parties upon Completion of Plant:** This section identifies the fact the plant, in order to operate, must have customers paying monthly user fees which is thirty-six dollars (\$36.00) per month through the end of the year 2017. Both parties agree in 2009 to obtain a certain number of new Plant users who will pay user fees, as detailed within Table 1.0 (see page 5 of 10). Although capacity in the plant has been sold through ERUs, in the event no one actually hooks up to the plant, than each party agrees to pay a "readiness to serve" fee in lieu of the user fee to the point that the sum of the actual user fees plus the "readiness to serve fee" equals the Total User Fees Generated Per month as detailed in Table 1.0. NSU refers to the "Readiness to Serve Fee" as a "dry tap fee."

Mr. Kjellgren advised the theory in this section is right; however, isn't exactly what he had in mind during prior negotiation discussions. He asked for the last column in Table 1.0 is deleted altogether. After discussion by both parties, the following changes were made to this section:

1) This section will be changed to reflect the fact the \$36.00 per month user fee is an *"initial estimate"* fee and "through the end of the year 2017" will be stricken from the first sentence. The monthly user fee is subject to change based on inflation of operational costs, DEQ regulation changes, etc.

2) Starting in 2009, North Star commits to provide a minimum number of Plant users who will pay User Fees and Table 1.0 will be changed to reflect the number of Plant Users projected from North Star from 2009-2012. If in the event NSU cannot provide the targeted, minimum amount of Plant Users, NSU will pay a "readiness to serve" fee for each absent User Fee according to Table 1.0.

3) Below Table 1.0 the asterisk sentence will be changed to read that *"*Beyond 2012, North Star agrees to achieve User Fee level as set forth in Exhibit A"* (Exhibit A is within the Nelson Engineering Financial Plan).

4) It was finally agreed upon that the "Readiness to Serve Fee" will only be subject to North Star rather than both parties. Initially, Kathy Ellsworth expressed concerns that if the north side is paying an "in lieu fee" than the Town should have to as well; where the funds come from to pay for the Town's "in lieu fee" NSU doesn't care. Mr. Kjellgren countered with several items. The Town is assigned the responsibility to operate this new plant irregardless; therefore, the "Readiness to Serve Fee" is essential to ensure North Star's minimum level of User Fees needed to run the plant. Additionally, according to Leon Kjellgren, the Town may want to use different options to meet its share of the minimum User Fees such as directing funds from the Town's General Fund rather than using a "Readiness to Serve Fee". The Town has to be responsible for this plant, make its loan payments to the state, provide services to both the north and south sides of the river, but there are different ways the Town can do this rather than the "Readiness to Serve Fee."

5) Also, according to Leon Kjellgren the "Readiness to Serve Fee" is "in addition to" the User Fees rather than "in lieu of." This "in lieu of" will be stricken from the section. NSU agreed to the changes.

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(Tape # 2 of 2 Begins Here – Side A)

6) All agreed the “books” or financial records of the Town and of NSU are open to each partner. Quarterly meetings will be held to discuss finances, concerns, and issues and additional meetings can occur if necessary.

5. Transfer of North Star’s System: This section sets forth several terms for the transferring of the utility which includes its entire sewer collection and transportation system upstream of the Point of Connection to the Town of Alpine at no expense to the Town. The “Transfer Criteria” is as follows:

- 1) At NSU’s sole discretion, it determines it has recaptured all costs from the planning, design, permitting, construction, operation, and maintenance of said utility such that North Star Utility has “zero debt.”
- 2) Full and accurate disclosure by NSU to the Town of its economic status and provision by NSU of any valid third-party agreements and “as built” plans for review by the Town.
- 3) An inspection of NSU agreements and “as built” plans for review by the Town.
- 4) Performance testing of the North Star Utility Sewer System to the satisfaction of the Town in its sole discretion.
- 5) A determination by the Town, in its sole discretion, that the NSU sewer system is in acceptable condition for operation and maintenance
- 6) A determination by the Town, in its sole discretion, that it has the financial and technical ability to acquire the NSU sewer system.

NSU or the Town will give six (6) months written notice to the other party of intention to determine whether the Transfer Criteria have been met, and upon such mutual determination, the parties will consider and mutually decide upon means to effect the transfer of the NSU sewer system.

Mr. Leon Kjellgren advised the Town should not pay for any costs associated with the transfer of the utility including bonding costs. If the Town desires inspections in order to transfer the utility, the costs should be borne by North Star Utility. The Town will only assume the utility if it meets performance testing requirements, which isn’t specifically mentioned in the revised draft. Additionally, Mr. Kjellgren advised verbiage should be added in which the Town will require performance testing of the utility and based on the results of the testing a performance bond may or may not be required. Whatever the costs, Mr. Kjellgren feels NSU should pay for all costs associated with the transfer of the utility. If the transfer of the utility is delayed due to NSU paying all costs, Mr. Kjellgren is agreeable to the delay. Kathy Ellsworth advised all of these areas of concern are included in this section.

Mr. Kjellgren voiced his strong concern that only one pipe is being installed under the Snake River to bring the raw sewage to the sewer plant. He is adamantly against a single line and cannot recommend to the Town of Alpine Council and Mayor to accept only one line. However, he realizes it is their decision whether to inherit the system with only one transfer pipe. The Town will either accept the utility as it is or they will require the owners to bring it to the standards identified by the Town. The Town currently has no “right of review” of the plans of the NSU collection system which is normally the case with any new subdivision.

Kathy Ellsworth believes this section, as written, does not obligate the Town to inherit the NSU system. She expressed confusion as one side of the Town’s “camp” doesn’t want NSU to sell the system to anyone and allow the Town first rights to inherit the system. Yet on the other hand, the other side of the Town’s “camp” believes the Town isn’t doing NSU any favors by inheriting the system. Ms. Koeckertiz believes the Town should absolutely no when and to whom the utility is being sold/ transferred to as it will be serving the Town’s new annexed residents. This partnership, in part, is being entered into based on the fact the Town believes NSU to be a solvent company. NSU has no right to reassign the utility without the Town’s consent and knowledge, according to Ms. Koeckertiz. All parties agreed to the new verbiage added to this section regarding transfer of ownership criteria.

6. Indemnity: This section includes an indemnity clause for both sides and also includes the conduit beneath the Snake River.

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7. **Insurance:** According to Elizabeth Koeckeritz NSU can put the Town on its liability insurance policy; however, the Local Government Liability Pool for the Town of Alpine indicates the Town cannot put NSU on its insurance policy. She also discussed with AllState Insurance obtaining a “builders risk policy” which NSU can be added for a minimal cost.

This section of the WWTP agreement states NSU agrees to maintain in force liability insurance during the term of this Agreement for the design, construction, and operation of its infrastructure upstream from the Point of Connection. NSU will name the Town as an additional insured entity on its insurance policy. The Town will keep in force at its own expense during the entire period of design, construction, and operation and maintenance of the WW treatment plant, general liability insurance providing coverage per occurrence in an amount customary for a municipality. The Town will keep in full force and effect during the entire period of design and construction of the plant a builder’s risk policy, and the Town shall add NSU as an additional insured party within this insurance policy.

8. **Force Majeure:** Essentially this section advises that an “act of God” shall not constitute default of this Agreement.

9. **Arbitration:** This section indicates both parties agree to encourage the amicable resolution of disputes arising out this Agreement without the financial costs of litigation. Both Parties agree to give up any rights they possess to have the dispute litigated in a court by a jury trial, including discovery and appeal. Essentially, arbitration is the final ruling regarding the matter. Both parties agreed this option is a more cost-effective, fair decision rather than leaving it up to a court or jury trial.

10. **Notices:** Indicates personal representatives for both parties.

11. **Term and Termination:** The term of this Agreement is for a period of five (5) years and will automatically renew for subsequent two (2) years for a maximum of three (3) renewal periods unless terminated by either party. At the end of the third (3rd) renewal period, the Parties shall enter into good faith discussions to renegotiate this Agreement and to further extend the term of this Agreement.

Leon Kjellren expressed concern that an option exists for either party to get out of the agreement at five (5) years. Ms. Koeckertiz advised at the last review of the Agreement someone from the Town expressed the ability to renegotiate at five (5) years. Kathy Ellsworth advised this Agreement is mainly about building the WWTP which should be completed within five (5) years and the future Franchise Agreement should cover more in-depth issues such as the monthly user fees, and other issues governing the future of NSU and its involvement with the TOA. Ms. Koeckertiz advised the agreement cannot go indefinitely and must have a termination date. All parties agreed to change the term of the agreement from 5 years to 10 years. Additionally, it was agreed upon this agreement can be terminated at any time upon the mutual agreement of both parties.

12. **Miscellaneous:** This section covers amendments, severability, waivers, attorney’s fees, communication and partnering, etc. Meetings between the parties will occur at least quarterly and can occur more often if necessary.

Overall, the mayor and council agreed with the revisions made to the agreement. **Don Jorgensen motioned to accept the revised “Wastewater Treatment Facilities Construction and Use Agreement between the Town of Alpine and North Star Utility” and upon accepting it giving Dave the authority to sign it. D.R. Hutchinson seconded. Mayor Lloyd called for further discussion. Donn Wooden asked that the final changes/ revisions discussed tonight be added. Don Jorgensen indicated he included the revisions. Mayor asked for further discussion. VOTE: 5-Yes; 0- No; 0- Abstain; 0- Absent**

