

In response to several similar inquiries regarding the legal and financial impact on the City of Omaha if the streetcar project is terminated, the City has prepared the following information and analysis. This information and the associated opinion is based on a review of the existing streetcar related contracts and relevant redevelopment agreements.

1. City Council Actions

At the onset, it is worth noting that the streetcar project is a concept pursued by the City of Omaha. The City Council has approved many agreements that have led to the formation, funding and construction of the streetcar project. The streetcar project is not solely an initiative of the executive branch. The Council has enacted many agreements that have led to this project and its funding. These actions include:

1. The Urban Core Housing & Mobility Redevelopment Plan
2. The Interlocal Agreement with Metro Area Transit to create the Omaha Streetcar Authority (OSA)
3. Redevelopment Agreement with the Omaha Streetcar Authority
4. Mutual of Omaha's Redevelopment Agreement
5. Fifteen (15) Redevelopment Agreements for projects in the District
6. Agreement with Municipal
7. Issuing bonds to pay for the streetcar

The streetcar will be a City-owned asset and, therefore, the City, including the City Council have played a significant and equal role in its formation and progress.

2. Legal Liability

The City has entered into contracts with numerous entities for the streetcar. The costs of these contracts are being paid with the bond proceeds. If the streetcar was cancelled, the City would be in breach of contract and subject to damages. The contracts primarily cover the construction and design of the streetcar, including road work. These contractual financial commitments cannot be dismissed simply because the streetcar is cancelled. The City would still be obligated to pay the remaining balance of the contract and other damages for this breach.

Certainly, the Law Department would endeavor to negotiate settlements with the parties, but that presents a difficulty. The City's negotiating position is not strong. If the City cancels the streetcar, there is little room for negotiation since the City is clearly in breach and cannot legally justify the decision to obtain a settlement that does not result in the total amount owed. For example, if the City suffered a catastrophe, such as a devastating weather event, and could not meet its obligations, then our ability to negotiate would be strong. However, a change in the elected makeup and will of the City Council or the Mayor to proceed with the streetcar is not a strong position. The contractors could, and likely would, file lawsuits against the City, which only increases the possibility for damages since attorney fees and other costs would become an issue. Furthermore, the bondholders will have grounds to sue the City.

The City Council authorized the Finance Department to issue bonds to cover the costs for the streetcar. The City intends to spend \$389 million. The City has issued and sold \$70,850,000 in bonds. Currently, the City has paid \$42,947,667.09 in contractual obligations from these bond proceeds. That leaves a balance of \$27,902,332.90 available in bond proceeds which can be used to pay the contractors in case of a breach. The City will owe an additional \$69,834,070.50 on the existing contracts.

The City has contracts with the following entities for the streetcar, including the remaining balances that will be owed:

1. Hawkins Construction - \$18,444,292.00
2. Sadler Electric - \$1,305,914.95
3. Sampson Construction - \$26,680,000.00
4. Special Track Work - \$5,862,470.90
5. Benesch - \$872,632.00
6. Felsburg, Holt & Ullevig - \$50,725.00
7. HDR - \$4,414,359.32
8. HGM - \$1,079,303.00
9. Jacobs Engineering - \$2,335,112.01
10. Kiewit - \$244,823.21
11. OPPD - \$146,546.93
12. Rick Gustafson - \$34,788.81
13. Project Control - \$621,823.75
14. Thiele Geotech - \$206,366.00
15. Valuation Services - \$8,900.00
16. JAT Ventures - \$100,000.00
17. CAD/ADL - \$1,648,575
18. CAF - \$32,641,265.50
19. MUD - \$1,038,505.00

This is the current state of the City's financial obligations to the streetcar. If the streetcar is cancelled, these contracts still have to be honored and the City would be liable for the breach. Additionally, even if the streetcar is cancelled, the City would still have to pay off the bonds that were sold.

3. Financial Implications

In addition to the legal liability for cancelling the streetcar, there are serious financial impacts. As previously stated, the City is obligated to pay \$69,834,070.50 in outstanding contract costs. Also, the City will continue to have to pay the \$70,850,000 and interest on the bonds. These expenses will have to be paid and the only source of money to pay these debts is the general fund.

Such a large amount will have to include cuts to departments, personnel, salaries, and City services. Even a complete depletion of the City's cash reserves will still not bridge the gap between our liabilities and available funds.

This financial impact will eliminate future capital projects in the CIP and other development for many years. There will be no ability to build a new fire station in northwest Omaha, a southwest Omaha library, street improvements, a downtown police precinct or a new joint police and fire headquarters. It will not be feasible to have police and fire recruit classes.

The only realistic avenue to pay these liabilities is to raise taxes. The levy will have to be increased and the voter-approved levy for street improvements from 2020 will have to be utilized. The property tax levy lid passed by the legislature last summer will affect the City's ability to raise the levy as well. Essentially, raising taxes will become an inevitability rather than a possibility.

The City's elected officials have a fiduciary responsibility and cancelling the streetcar will have a major impact on the City's finances for many years.

4. Redevelopment Agreements

Connected to the streetcar are a number of redevelopment agreements. These agreements can also subject the City to litigation and liability if the streetcar is cancelled. These are approved agreements for projects in the District, all of which require a portion of TIF proceeds to be allocated to payment of debt service associated with streetcar bonds. Failure to construct the streetcar automatically triggers a provision in the agreements that terminates the City's allocation of TIF proceeds from these projects. No allocations of TIF proceeds from future projects can be required if the streetcar project is terminated. These contributions represent 83% of the projected revenues that will pay for the streetcar. Not only will the City cease to receive any TIF revenue from existing projects, but it will be exposed to claims for damages for expenses incurred by developers in reliance on the City constructing the streetcar. For example, several projects have been designed or constructed with reduced parking ratios that are contingent upon availability of the streetcar. Developers have acquired properties in the core based on the construction of the streetcar, properties or projects they might not have pursued but for the City's construction of the streetcar.

5. Bond Rating

If the streetcar is cancelled, our bond rating (credit score) will suffer. The City is dependent on its bond rating. This rating affects our ability to sell bonds and receive favorable interest rates. The financial harm from cancelling the streetcar, as mentioned previously, will have a negative effect on the City's favorable bond rating. The City relies on this bond rating to fund major projects including, but not limited to, public safety facilities, road work and parks. Future bonds and future projects will be harmed by cancelling the streetcar.

When the bond raters determine the City's bond rating, they look at a number of factors, just like a person's credit score. The bond raters look at revenue, debts, and savings. If the streetcar is cancelled the City's savings would be destroyed and our revenue would also be diverted to paying off the debts. The City would have to issue a "material event" notice to bondholders to inform them of the failure to complete the project and associated impact on its fiscal position. Such a notice and action by the City may be considered evidence of weak management by the ratings agencies. Additionally, a looming debt obligation with no source of repayment would be detrimental to the City's bond rating, similar to previous issues with unfunded pension obligations. As previously stated, cancelling the streetcar does not eliminate the bills; they still have to be paid whether or not there is a streetcar.

Not only would cancelling the streetcar have a negative impact on the City's bond rating, but also the City's payment obligations on the bonds issued. Bondholders could exercise the bonds' call feature, requiring the outstanding payments to be accelerated. Failure to complete the project could also render the bonds taxable, which would increase the amount the City is obligated to pay the bondholders.

It is a domino effect. Cancelling the streetcar will create a financial crisis, which will impact our bond rating and make it extremely difficult to secure favorable rates. It would also make our bonds less than desirable in the market. The City has a very good bond rating and cancelling the streetcar will undo all of the work that has been done to secure such a rating.

6. Conclusion

If the streetcar is cancelled, at a minimum, the City is in breach of contract and would still owe approximately \$141 million (\$140,684,070.50). This number is the existing amount of contractual obligations plus the bond issuance. This does not include possible other damages related to a breach of contract or interest due on the bonds.

The harm is not just limited to \$141 million dollars owed. The City would be subject to litigation from breaching our redevelopment agreements. In addition, the City's bond rating would be negatively impacted.

The financial model used to fund the streetcar does not require taxpayer money. The model, which has been reviewed by Municap, allows the streetcar to fund itself. Cancellation of the streetcar would be a triggering event that would require taxpayer funds to pay for the consequences. Such a decision and the costs associated it with it would damage City's finances for an extended period of time. Taxes would need to be raised to fund the losses and maintain City services. Future capital projects could not move forward.

The information provided herein is an analysis of the real and potential consequences of cancelling the streetcar, in general. Additional and more detailed analysis of all matters outlined above would be necessary to further and more specifically quantify the impact.

