



City Council Memorandum

To: Mayor Fasbender & City Councilmembers
From: Alex Menke, Economic Development Coordinator
Date: October 7, 2024
Item: Authorize Signature: Agreement for MCES SAC & City WAC\SAC Deferral Property Tax Assessment – 214 2nd St E

Council Action Requested:

- 1) Authorize signature of the attached agreement between the City and Marathon Properties of Hastings, LLC to defer payment, by means of property tax assessment, of the City's portion of water access charges and sewer access charges (WAC\SAC) over a ten-year period.

Approval requires a simple majority of the City Council.

- 2) Authorize signature of the attached agreement between the City and Marathon Properties of Hastings, LLC to defer payment, by means of property tax assessment, of the Metropolitan Council's portion of sewer access charges (SAC) over a ten-year periods.

Approval requires a simple majority of the City Council.

Background Information:

At the August 19th City Council meeting, Council authorized the signature of a SAC/WAC deferral agreement between the City and Marathon Properties of Hastings, LLC. An additional two agreements are needed for the two deferred costs to be assessed to the property.

Marathon Properties of Hastings, LLC owns the property located at 214 2nd Street East. Their newest tenant, Collateral Coffee dba Awful Gato, is in the process of building out a coffee shop and café at the site. The construction results in the payment of Metropolitan Council SAC fees totaling \$9,940, and City WAC\SAC fees totaling \$15,608 prior to receipt of a building permit. Upfront payment of WAC\SAC fees prior to operation of the facility has created a burden for the business owner.

The City of Hastings has established a policy to defer City WAC\SAC fees in order to minimize the impact of these fees. Please see the attached policy document for further information. The

Hastings program requires a 20% down payment (\$3,121.60) due at the time of building permit issuance, which has been paid.

Additionally, Marathon Properties of Hastings, LLC plans to enter into the Metropolitan Council's SAC Deferral Program. The Metropolitan Council's program requires a 20% down payment (\$1988) due at time of building permit issuance, which has been paid. This program is regulated by a Master SAC Deferral Agreement executed by the City of Hastings and Metropolitan Council (attached).

Both deferred amounts will be assessed to the property and collected through semi-annual property tax payments for a period of up to ten years.

Financial Impact:

The City and Metropolitan Council would not receive full payment of the deferred amounts for up to ten years. Repayment would include an interest charge of 2.06% annually on the unpaid balance and a \$50 administrative fee. The deferment would allow Collateral Coffee dba Awful Gato to begin construction to add further value to the property and increase the tax base.

Advisory Commission Discussion:

N\A

Council Committee Discussion:

N\A

Attachments:

- City Assessment Appeal Waiver Agreement
- MCES Assessment Appeal Waiver Agreement
- SAC/WAC Deferral Agreement
- City SAC/WAC Policy
- MetCouncil Master SAC Deferral Agreement

**CITY OF HASTINGS
ASSESSMENT APPEAL WAIVER AGREEMENT FOR
214 2ND STREET EAST, HASTINGS, MN 55033
FOR WATER AREA CHARGES**

THIS AGREEMENT FOR AN ASSESSMENT APPEAL WAIVER (“Agreement”) is entered into and effective as of the ____ day of _____, 2024 (“Agreement Date”), by and between the City of Hastings, a Minnesota municipal corporation (“City”), and Marathon Properties of Hastings, LLC, a Minnesota limited liability company (“Owners”).

WITNESSETH:

WHEREAS, the Owners are the fee simple owners of property legally described as Mid 1/3 of Lot 2, Block 14, TOWN OF HASTINGS, Dakota County, Minnesota (“Property”) that will be benefited by certain WAC; and

WHEREAS, the City has a program (“Program”) to assess Hastings Water Area Charges (“WAC”) for qualifying applicants; and

WHEREAS, the Owners have qualified for the Program and have agreed to the repayment terms and conditions therein; and

WHEREAS, the City is authorized to assess WAC charges against the Property.

NOW, THEREFORE, in consideration of the mutual promises and covenants of each to the other contained in this Agreement and other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto do covenant and agree as follows:

ARTICLE I
THE AGREEMENT

Section 1.01 Purpose. The purpose of this Agreement is to memorialize the covenants and agreements between the Owners and the City with regard to the Property and the assessment of WAC including the Owners' waiver of assessment appeal rights up to the Assessment Waiver Amount which constitutes an estimated benefit pursuant to Minnesota Statutes, Chapter 429 in the manner authorized by Minnesota Statutes § 462.3531 in return for the City's efforts to facilitate the funding for the WAC.

Section 1.02 Term. The term of this Agreement shall commence on the Agreement Date and shall terminate upon the expiration of the Assessment Term (or upon prepayment of the levied assessment).

ARTICLE II
DEFINITIONS

Section 2.01 Definitions. The following are terms used in this Agreement. Their meanings as used in this Agreement shall be expressly indicated below, unless the context of this Agreement requires otherwise:

- (a) Agreement: This agreement to memorialize the covenants and agreements between the Owners and the City with regard to the Property and the WAC including the assessment appeal waiver provided herein pursuant to Minnesota Statutes, Chapter 429 in the manner authorized by Minnesota Statutes § 462.3531.
- (b) Agreement Date: The date written in the first paragraph of the Agreement.
- (c) Assessment Interest Rate: The special assessment levied against the Property shall accrue interest at a rate of 2.06% per year for the Assessment Term. Interest accrual shall begin on November 15, 2024.
- (d) Assessment Term: The term of the special assessment levied against the Property shall be 10 years.
- (e) WAC Assessment Waiver Amount: The charge imposed by the City for the WAC in the amount of Twelve Thousand Four Hundred Eighty-six dollars and 40/100ths (\$12,486.40) is to be assessed by the City against the Property. The Assessment Amount is commensurate with the estimated special benefit of the WAC to the Property.
- (f) City: The City of Hastings, a Minnesota municipal corporation.
- (g) Owners: Marathon Properties of Hastings, LLC, a Minnesota limited liability company.

(h) Property: Mid 1/3 of Lot 2, Block 14, TOWN OF HASTINGS, Dakota County, Minnesota.

ARTICLE III
COVENANTS AND AGREEMENTS

Section 3.01 Covenants and Agreements of the Owner. The Owners covenant and agree with the City that:

- (a) Assessment Appeal Waiver: Owner hereby authorizes the City to certify to the Dakota County Auditor/Property Tax Assessor a special assessment against the Property up to the Assessment Waiver Amount for the WAC.

The Owners hereby waive all rights to assessment notices, hearings and appeals, and all other rights pursuant to Minn. Stat. § 429.061, § 429.071 and § 429.081 for the special assessment against the Property up to the Assessment Waiver Amount. The Owners hereby waive any and all procedural and substantive objections to the special assessment up to the Assessment Waiver Amount against the Property, including, but not limited to, notice and hearing requirements and any claim that any or all of the Assessment Waiver Amount against the Property exceeds the benefit to the Property for the WAC. The Owners acknowledge and agree that the benefit of the WAC to the Property does in fact equal or exceed the Assessment Waiver Amount. The Owners also acknowledge and agree that the Property receives a special benefit equal to or exceeding the Assessment Waiver Amount.

The City and the Owners acknowledge and agree that the Owners' waiver of assessment appeal rights pursuant to Minnesota Statutes, Chapter 429, is capped at the Assessment Waiver Amount by operation of Minn. Stat. § 462.3531. The City and the Owners acknowledge and agree that the Owners may appeal any special assessment above the Assessment Waiver Amount.

- (b) Owners' Covenant Not to Sue the City: Owners hereby covenant with the City not to appeal or sue the City for a court to set aside, reduce, repeal, or invalidate the levied assessment, or for other relief from the payment of the City's levy of a special assessment up to the Assessment Waiver Amount against the Property.
- (c) Owners' Covenant that Owners are the Property Fee Owners: Owners hereby covenant and warrant with the City that Owners are seized in fee of the Property and have good right to enter into this Agreement with the City.

Section 3.02 Covenants and Agreements of the City. The City covenants and agrees with the Owners that:

- (a) Assessment Waiver Amount: The City agrees that the City will certify/levy a special assessment against the Property only up to the Assessment Waiver Amount for the WAC pursuant to this Agreement.

- (b) City Recording of this Agreement: The City will record this Agreement against the Property. Owners will pay for the cost of recording.
- (c) Prepayment of Assessment: The City agrees that the Owners may prepay some or all of the City's assessment levy against the Property for the WAC with no penalty and only with interest accrual pursuant to Minn. Stat. § 429.061.

ARTICLE IV
DEFAULT

Section 4.01 Default. If a party to this Agreement materially defaults in the due and timely performance of any of its covenants, or agreements hereunder, the other party(s) may give notice of default of this Agreement. The notice shall specify with particularity the default or defaults on which the notice is based. The notice shall specify a ten (10) day cure period within which the specified default or defaults must be cured. If the specified defaults are not cured within the cure period, the other party(s) may pursue all remedies and sanctions available at law and in equity, including specific performance.

Section 4.02 Attorneys' Fees, Costs and Expenses. The Owners agree to pay the City the amount of the City's assessment levy up to the Assessment Waiver Amount with accrued interest together with the City's attorneys' fees, costs and expenses to defend the special assessment levy by the City pursuant to this Agreement. The Owners acknowledge and agree that the Owners would be unjustly enriched if the City's assessment levy pursuant to this Agreement was set aside, reduced, repealed or invalidated by a court with jurisdiction over the Property since the Owners requested the WAC and this assessment financing for the WAC. The Owners agree that the court with jurisdiction over the Property shall award the City the assessment levy up to the Assessment Waiver Amount with accrued interest together with the City's attorneys' fees, costs and expenses for breach of the Owners' covenant not to appeal or sue the City pursuant to Article III, Section 3.01(b).

ARTICLE V
GENERAL PROVISIONS

Section 5.01 Notices. All notices, requests, demands or other communications required or permitted by this Agreement shall be in writing and delivery shall be deemed to be sufficient if delivered personally or by registered or certified mail, return receipt accepted, postage prepaid, addressed as follows:

If to the City:

City of Hastings
ATTN: City Administrator
101 4th Street East
Hastings, MN 55033

If to the Owners:

Marathon Properties of Hastings, LLC
ATTN: Vicki Jung
1241 West 15th Street
Hastings, MN 55033

Section 5.02 Non-Assignability. Neither the City nor the Owners shall assign any interest in this Agreement nor shall either party transfer any interest in the same without the prior written consent of the other party.

Section 5.03 Binding Effect. This Agreement and the terms, conditions and covenants contained herein and the transaction contemplated hereunder shall be binding upon and inure to the benefit of the parties hereto and their respective successors, heirs, personal representatives, and permitted assigns. This Agreement shall further be binding on subsequent purchasers of the Property and shall run with the Property herein described.

Section 5.04 Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 5.05 Amendments, Changes and Modifications. This Agreement may be amended or any of its terms modified or changed only by a written amendment authorized and executed by the City and the Owners.

Section 5.06 Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 5.07 Entire Agreement. This Agreement shall constitute the entire agreement between the parties and shall supersede all prior oral or written negotiations.

Section 5.08 Notice To Buyers. The Owners agree to notify and provide any buyer of the Property with an executed copy of this Agreement if the Owners sell any interest in the Property following the execution of this Agreement by both the Owners and the City, but before the recording of this Agreement with Dakota County Recorder and/or Registrar of Titles.

IN WITNESS WHEREOF, the City and the Owners have caused this Agreement to be executed by their duly authorized representatives.

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**CITY OF HASTINGS
ASSESSMENT APPEAL WAIVER AGREEMENT FOR
214 2ND STREET EAST, HASTINGS, MN 55033
FOR SEWER ACCESSIBILITY CHARGES**

THIS AGREEMENT FOR AN ASSESSMENT APPEAL WAIVER (“Agreement”) is entered into and effective as of the ____ day of _____, 2024 (“Agreement Date”), by and between the City of Hastings, a Minnesota municipal corporation (“City”), and Marathon Properties of Hastings, LLC, a Minnesota limited liability company (“Owners”).

WITNESSETH:

WHEREAS, the Owners are the fee simple owners of property legally described as Mid 1/3 of Lot 2, Block 14, TOWN OF HASTINGS, Dakota County, Minnesota (“Property”) that will be benefited by certain SAC; and

WHEREAS, the City has a program (“Program”) to assess Metropolitan Council Sewer Accessibility Charges (“SAC”) for qualifying applicants; and

WHEREAS, the Owners have qualified for the Program and have agreed to the repayment terms and conditions therein; and

WHEREAS, the City is authorized to assess SAC charges against the Property.

NOW, THEREFORE, in consideration of the mutual promises and covenants of each to the other contained in this Agreement and other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto do covenant and agree as follows:

ARTICLE I
THE AGREEMENT

Section 1.01 Purpose. The purpose of this Agreement is to memorialize the covenants and agreements between the Owners and the City with regard to the Property and the assessment of SAC including the Owners' waiver of assessment appeal rights up to the Assessment Waiver Amount which constitutes an estimated benefit pursuant to Minnesota Statutes, Chapter 429 in the manner authorized by Minnesota Statutes § 462.3531 in return for the City's efforts to facilitate the funding for the SAC.

Section 1.02 Term. The term of this Agreement shall commence on the Agreement Date and shall terminate upon the expiration of the Assessment Term (or upon prepayment of the levied assessment).

ARTICLE II
DEFINITIONS

Section 2.01 Definitions. The following are terms used in this Agreement. Their meanings as used in this Agreement shall be expressly indicated below, unless the context of this Agreement requires otherwise:

- (a) Agreement: This agreement to memorialize the covenants and agreements between the Owners and the City with regard to the Property and the SAC including the assessment appeal waiver provided herein pursuant to Minnesota Statutes, Chapter 429 in the manner authorized by Minnesota Statutes § 462.3531.
- (b) Agreement Date: The date written in the first paragraph of the Agreement.
- (c) Assessment Interest Rate: The special assessment levied against the Property shall accrue interest at a rate of 2.06% per year for the Assessment Term. Interest accrual shall begin on November 15, 2024.
- (d) Assessment Term: The term of the special assessment levied against the Property shall be 10 years.
- (e) SAC Assessment Waiver Amount: The charge imposed by the City for the SAC in the amount of Seven Thousand Nine Hundred Fifty-two dollars and 00/100s (\$7,952.00) is to be assessed by the City against the Property. The Assessment Amount is commensurate with the estimated special benefit of the SAC to the Property.
- (f) City: The City of Hastings, a Minnesota municipal corporation.
- (g) Owners: Marathon Properties of Hastings, LLC, a Minnesota limited liability company.

(h) Property: Mid 1/3 of Lot 2, Block 14, TOWN OF HASTINGS, Dakota County, Minnesota.

ARTICLE III
COVENANTS AND AGREEMENTS

Section 3.01 Covenants and Agreements of the Owner. The Owners covenant and agree with the City that:

- (a) Assessment Appeal Waiver: Owner hereby authorizes the City to certify to the Dakota County Auditor/Property Tax Assessor a special assessment against the Property up to the Assessment Waiver Amount for the SAC.

The Owners hereby waive all rights to assessment notices, hearings and appeals, and all other rights pursuant to Minn. Stat. § 429.061, § 429.071 and § 429.081 for the special assessment against the Property up to the Assessment Waiver Amount. The Owners hereby waive any and all procedural and substantive objections to the special assessment up to the Assessment Waiver Amount against the Property, including, but not limited to, notice and hearing requirements and any claim that any or all of the Assessment Waiver Amount against the Property exceeds the benefit to the Property for the SAC. The Owners acknowledge and agree that the benefit of the SAC to the Property does in fact equal or exceed the Assessment Waiver Amount. The Owners also acknowledge and agree that the Property receives a special benefit equal to or exceeding the Assessment Waiver Amount.

The City and the Owners acknowledge and agree that the Owners' waiver of assessment appeal rights pursuant to Minnesota Statutes, Chapter 429, is capped at the Assessment Waiver Amount by operation of Minn. Stat. § 462.3531. The City and the Owners acknowledge and agree that the Owners may appeal any special assessment above the Assessment Waiver Amount.

- (b) Owners' Covenant Not to Sue the City: Owners hereby covenant with the City not to appeal or sue the City for a court to set aside, reduce, repeal, or invalidate the levied assessment, or for other relief from the payment of the City's levy of a special assessment up to the Assessment Waiver Amount against the Property.
- (c) Owners' Covenant that Owners are the Property Fee Owners: Owners hereby covenant and warrant with the City that Owners are seized in fee of the Property and have good right to enter into this Agreement with the City.

Section 3.02 Covenants and Agreements of the City. The City covenants and agrees with the Owners that:

- (a) Assessment Waiver Amount: The City agrees that the City will certify/levy a special assessment against the Property only up to the Assessment Waiver Amount for the SAC pursuant to this Agreement.

1241 West 15th Street
Hastings, MN 55033

Section 5.02 Non-Assignability. Neither the City nor the Owners shall assign any interest in this Agreement nor shall either party transfer any interest in the same without the prior written consent of the other party.

Section 5.03 Binding Effect. This Agreement and the terms, conditions and covenants contained herein and the transaction contemplated hereunder shall be binding upon and inure to the benefit of the parties hereto and their respective successors, heirs, personal representatives, and permitted assigns. This Agreement shall further be binding on subsequent purchasers of the Property and shall run with the Property herein described.

Section 5.04 Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 5.05 Amendments, Changes and Modifications. This Agreement may be amended or any of its terms modified or changed only by a written amendment authorized and executed by the City and the Owners.

Section 5.06 Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 5.07 Entire Agreement. This Agreement shall constitute the entire agreement between the parties and shall supersede all prior oral or written negotiations.

Section 5.08 Notice To Buyers. The Owners agree to notify and provide any buyer of the Property with an executed copy of this Agreement if the Owners sell any interest in the Property following the execution of this Agreement by both the Owners and the City, but before the recording of this Agreement with Dakota County Recorder and/or Registrar of Titles.

IN WITNESS WHEREOF, the City and the Owners have caused this Agreement to be executed by their duly authorized representatives.

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**CITY OF HASTINGS
AGREEMENT FOR DEFERRED PAYMENT OF WAC/SAC**

THIS DEFERRED PAYMENT AGREEMENT ("Agreement") is made this 19th day of August, 20__ ("Effective Date"), between the City of Hastings, a Minnesota Municipal Corporation, having an address of 101 East 4th Street, Hastings, MN 55033, hereinafter referred to as "City" and **Marathon Properties of Hastings, LLC**, having an address of **214 2nd Street East, Hastings MN 55033**, the owner of property described below, hereinafter referred to as "Owner".

RECITALS

WHEREAS, Owner owns improved commercial real property located generally at **214 2nd Street East**, in the City of Hastings, Dakota County, Minnesota, and legally described as: **Mid 1/3 of Lot 2, Block 14, TOWN OF HASTINGS, Dakota County, Minnesota (the "Subject Property")**; and

WHEREAS, the Property Identification Number for the Subject Property is **193215014024**; and

WHEREAS, Owner intends to operate, or allow the operation of, **Collateral Coffee dba Awful Gato** ("Business") on the Subject Property; and

WHEREAS, Metropolitan Council Environmental Services ("MCES") is authorized by Minnesota Statute § 473.517, subdivision 3, to charge to the City sewer availability charges ("MCES SAC") upon redevelopment of real property for an expanded use; and

WHEREAS, Hastings City Code 51 .05(H) provides, in part, that at the time of expansions of existing sanitary sewer and water services that result in MCES SAC being levied, all water availability charges ("WAC"), MCES SAC, and City sewer availability charges ("Local SAC") shall be paid by the property owner and the number of WAC and Local SAC units charged shall be equal to the MCES SAC units charged; and

WHEREAS, MCES determined the net MCES SAC units to be charged as a result of the expansion on the Subject Property shall be **4.0** MCES SAC units. The resulting City charges will be **\$3,780.00** WAC and **\$11,828.00** Local SAC, totaling **\$15,608.00**; and

WHEREAS, Owner has requested that the City defer the resulting WAC and Local SAC (MECS SAC will be deferred according to the Master SAC Deferral Agreement executed by the City of Hastings and Metropolitan Council), pursuant to City policy, by assessing the charges against the Subject Property and with the assessed amount, plus interest and processing charges, paid by Owner in installments along with the real estate tax installments due for the Subject Property over a period of ten (10) years; and

WHEREAS, pursuant to the rules and regulations of the Metropolitan Council and applicable law, the City is authorized to defer payment on the City's SAC obligations for business properties within the City's jurisdiction in an amount not to exceed eighty percent (80%) of the Local SAC due for the Subject Property; and

WHEREAS, the City is willing to defer the WAC and Local SAC, in return for Owner's agreement to have the costs assessed against the Subject Property as provided in this Agreement.

NOW, THEREFORE, IN CONSIDERATION of the City's willingness to defer the WAC and Local SAC, the City and Owner agree as follows:

1. The foregoing Recitals are incorporated herein to the same extent as if they were repeated here.
2. Owner, for itself, its successors and assigns, agrees to have the Subject Property assessed for eighty

percent (80%) of the total amount of the WAC and Local SAC owed in the amount of **\$12,486.40** ("Base Assessment Amount"). An initial payment of **\$3,121.60** representing twenty percent (20%) of the total amount of WAC and Local SAC owed shall be due at the time of the issuance of the Building Permit from the City

3. Owner, for itself, its successors and assigns, agrees that the Base Assessment Amount assessed against the Subject Property shall be paid by Owner over a term of ten (10) years, with interest accruing at a rate of **2.06%** per year on the unpaid balance. Owner further agrees that the City shall assess an additional **\$50.00** against the Subject Property which represents **\$5.00** per year for the term of the assessment to offset the fees imposed by Dakota County for this assessment, plus the City's administrative fee.
4. Owner agrees the City shall certify this assessment against the Subject Property to Dakota County for collection with the real estate taxes payable in the year following the Effective Date and each year thereafter, without the necessity of the City complying with any of the procedural or notice requirements outlined in Minnesota Statutes, Chapter 429 or elsewhere.
5. In further consideration of the City's agreement to defer the WAC and Local SAC, Owner, for itself, its successors and assigns, also hereby waives any and all right to appeal the amount assessed against the Subject Property for the WAC and Local SAC, whether the basis for the appeal is that the assessment exceeds the benefits to the Subject Property; on any procedural basis; or on any other basis whatsoever.
6. Owner understands and agrees that nothing contained herein shall be construed as a deferral of the MCES SAC, as MCES SAC is being deferred through a separate agreement (the Master SAC Deferral Agreement) between the City of Hastings and Metropolitan Council. Owner shall pay the costs of recording this Agreement upon the public records of Dakota County.
7. If the Business ceases operations or moves from the Subject Property, the Owner is responsible for making the deferral payments required by this Agreement up until the time that the Owner informs the City in writing that the business has ceased operations or has moved from the Subject Property. The Owner must continue to make payments under this Agreement until MCES determines that the City is not required to pay MCES sewer availability charges related to the operation of the Subject Property.
8. The Owner shall be deemed in default of this Agreement for failure to make payments pursuant to the terms herein or any other breach of this Agreement and failure to cure the default within ten (10) days of the mailing of written notice by the City to Owner.
9. Upon default, the Owner must alert the City's Economic Development Director. At this time, the City will notify MCES about the closure and cease assessing the Subject Property for unpaid fees. If MCES requires the City to pay the sewer availability charge, any balance remaining due under this Agreement shall be due immediately and payable by the Owner without demand or notice by the City.
10. To the extent permitted by law, Owner agrees to pay all costs of collection, including reasonable attorneys' fees and legal expenses, incurred by the City in collection of any amounts due herein.
11. Notices to be given under this Agreement shall be given by enclosing the same in a sealed envelope, postage prepaid and deposited in the U.S. Postal Service, addressed to the parties as listed above.
12. None of the parties shall assign this Agreement, nor any interest arising herein, without the written consent of the other party.
13. The covenants, waivers and agreements contained in this Agreement shall run with the Subject Property and

shall bind future owners of the Property and their heirs, successors and assigns. Owner agrees to provide a copy of this Agreement to any buyer of the Subject Property before Owner signs a purchase agreement to sell the Subject Property.

14. The laws of the State of Minnesota shall govern this Agreement.
15. The provisions of this Agreement are severable. If any portion of this Agreement is, for any reason, held by a court of competent jurisdiction to be contrary to law, such decision shall not affect the remaining portions of this Agreement.
16. The entire Agreement of the parties is contained herein. This Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof as well as any previous agreements presently in effect between the parties relating to the subject matter hereof. Any alterations, amendments, deletions, or waivers of the provisions of this Agreement shall be valid only when expressed in writing and duly signed by the parties, unless otherwise provided herein.
17. This Agreement may be executed in multiple counterparts, each of which shall be considered an original.
18. Owner signs this Agreement and waiver with full understanding of its legal rights and acknowledges it has had sufficient opportunity to discuss this matter with an attorney of its choosing.

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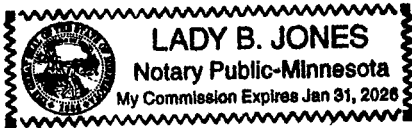
OWNER
[Signature]
 By: Vicki Jung
[Signature]
 Its: Owner
 8-22-2024
 Date

ACKNOWLEDGMENT

STATE OF MINNESOTA)
) ss.
 COUNTY OF DAKOTA)

The forgoing instrument was acknowledged before me this 22 day of August, 2024, by Vicki Jung, the landlord of Marathon prop of Hastings LLC on behalf of the company.

[Signature]
 Notary Public





SAC & WAC Payment Deferral

City of Hastings & Metropolitan Council

PROGRAM INFORMATION, GUIDELINES AND APPLICATION INSTRUCTIONS

City of Hastings
101 4th Street East, Hastings, MN 55033-1955
T: 651-480-2350 F: 651-437-7082
www.hastingsmn.gov

CITY OF HASTINGS

SAC & WAC PAYMENT DEFERRAL

PROGRAM INFORMATION, GUIDELINES AND APPLICATION INSTRUCTIONS

In order to minimize the impact of the Sewer Availability Charge (SAC) and Water Availability Charge (WAC) to businesses within the City of Hastings, the City can provide a deferral option to pay SAC and WAC fees over time, instead of an upfront payment due at the time of building permit issuance.

This program is in addition to the Metropolitan Council's SAC Deferral Program, adopted in April 2017. The MetCouncil SAC Deferral Program, which is targeted to small businesses (under 25 SAC units), is a means of assistance in paying Metropolitan Council SAC charges and allows a portion, up to 80%, of SAC to be paid over a period not to exceed ten years.

Under the updated program, the City of Hastings will enter into an agreement with eligible businesses and/or property owners to spread SAC and/or WAC payments over a ten year term. Property owners will be billed annually, on their property tax statement, for a period of ten years. If eligible, businesses and/or property owners have the option to utilize the Metropolitan Council SAC Deferral Program, the City of Hastings SAC & WAC Deferral Program, or both.

Metropolitan Council SAC Deferral Program: 10 year term; low interest rate*; 20% down, plus the first monthly payment; secured by the Deferred Payment Agreement; eligible to businesses with SAC unit determination of 25 units or less. This program is established and regulated by a Master SAC Deferral Agreement executed between the City of Hastings and Metropolitan Council.

City of Hastings SAC & WAC Deferral Program: 10 year term; low interest rate**; secured by the Deferred Payment Agreement; eligible to businesses with a SAC & WAC unit determination of 25 units or less. This program is established by City Ordinance and is intended to parallel the Metropolitan Council Program guidelines.

Participants in the program are allowed to defer a maximum of 25 SAC and/or 25 WAC units. Businesses with SAC and WAC determinations exceeding the program limits will be considered on a case by case basis. The business owner and/or property owner must agree to participate and fill out an application form with the requested information, in addition to executing the Deferred Payment Agreement.

If you have any questions or would like to submit an application for the City of Hastings SAC & WAC Deferral Program and/or the Metropolitan Council SAC Deferral Program, please contact John Hinzman, Community Development Director, at jhinzman@hastingsmn.gov or 651-480-2378.

**Metropolitan Council SAC Deferral Program: principal on the deferred amount will be amortized monthly at a fixed interest rate based on MCES' average cost of debt (per statute). MCES' average cost of debt, computed on December 31 each year, will be used as the interest rate for all new deferrals entered into the following calendar year.*

***City of Hastings SAC & WAC Deferral Program: principal on the deferred amount will be amortized monthly at a fixed interest rate based on the 10 year Treasury Rate, locked in after application approval, at time of closing/document signing.*

**CITY OF HASTINGS
SAC & WAC PAYMENT DEFERRAL APPLICATION**

SECTION 1: BUSINESS INFORMATION

Business Name: _____

Business Address: _____

Business Contact/Title: _____

Telephone: _____

Email: _____

SECTION 2: PROPERTY OWNER INFORMATION

Property Owner Name: _____

Address: _____

Property ID Number: _____

Telephone: _____

Email: _____

SECTION 3: SAC UNIT DETERMINATION (Please attach SAC Determination Letter)

Address on SAC Determination Letter: _____

Date on SAC Determination Letter: _____

Reference # on SAC Determination Letter: _____

SAC Units (must be less than 25 units): _____

SAC Credits: _____

Net SAC Units: _____

WAC Units (must be less than 25 units): _____

WAC Credits: _____

Net WAC Units: _____

SECTION 4: ELIGIBILITY

Please confirm by initialing the following to determine eligibility:

- _____ The property is located in the City of Hastings, MN.
- _____ The SAC Determination for the property is 25 units or less, prior to SAC credits.
- _____ The WAC Determination for the property is 25 units or less, prior to WAC credits.
- _____ I understand that the deferral term is not to exceed 10 years.
- _____ I understand that the maximum deferment amount is 80% and a down payment, equal to 20% of the total SAC and WAC fees is due at time of application approval.
- _____ I understand that the property owner will be billed monthly on their regular utility bill.
- _____ I understand that SAC and WAC credits are tied to the property and may not generally be transferred to another location.
- _____ I understand that in the event of a default, any outstanding payments will be assessed to the property and the property owners waives the right to contest the assessment.
- _____ I understand that, in the case of a business closure, the business or property owner must notify the City’s Economic Development Coordinator. They City will verify the closure and future payment obligations will be waived. The site will not be credited with the portion of SAC & WAC not paid, but will receive credit for actual SAC & WAC paid.

I hereby certify that the above information and/or statements are true and correct to the best of my knowledge. I understand that any false statements may disqualify me, the property, or this business from the program.

Business Signature: _____ **Date:** _____

Property Owner Signature: _____ **Date:** _____

Community Development Staff Approval: _____ **Date:** _____

For Staff to Complete:

Permit Number: _____

Permit Issue Date: _____

Deferral Start Date: _____
(1st day of month after MCES report due)

Percentage to be financed: _____
(maximum of 80%)

SAC Deferral Amount: _____ X (% Financed) = _____ X _____ = _____
(e.g. 5 SAC x 80% = 4) (# total SAC units) Deferred Units Current SAC Rate Deferral Amount in \$

WAC Deferral Amount: _____ X (% Financed) = _____ X _____ = _____
(e.g. 5 SAC x 80% = 4) (# of total WAC units) Deferred Units Current WAC Rate Deferral Amount in \$

Total Down Payment: SAC _____ = _____
Down payment in units Down Payment Amount in \$

(+)

WAC _____ = _____
Down payment in units Down Payment Amount in \$

(+)

First Monthly Payment = _____

Total Down Payment: \$ _____

Eligibility Conditions:

_____ The fee owner's property taxes are in good standing.

_____ The business is in good standing with the State of Minnesota and is not in violation of Hastings City Code.

_____ The property is located within the City of Hastings.

_____ The business meets the definition of eligible commercial properties as stated in the City of Hastings SAC & WAC Deferral Program and/or the Metropolitan Council's SAC Deferral Program.

Community Development Staff: _____ **Date:** _____

SAC Deferral Program

Description and Application

To promote business development, Metropolitan Council Environmental Services (MCES) provides communities the option to participate in the SAC Deferral Program to defer some SAC payment obligations. This option allows deferral of up to 80% of SAC due for the wastewater demand created by businesses (communities are required to pass on the benefits of deferred SAC payments to the participating businesses). Businesses allowed to participate are those with a total SAC determination of 25 or fewer SAC units (before credits). To obtain these deferrals, communities must first complete and submit to MCES a signed master SAC Deferral Agreement (Agreement). This Agreement will be sent to interested communities for signature after the information in the following table is completed and returned to MCES.

1. Community: City of Hastings
2. Community Address: 101 4th Street East, Hastings MN 55033
3. Contact (Finance Director or CFO): Melanie Lammers, Finance Manager
4. Community-Wide Maximum Percent of SAC that can be Deferred: 80% (80% maximum)
5. Community-Wide SAC Deferment Period (years): 10 years
6. Payment Month(s): June & December

For 4, 5 and 6 above, each participating community has additional implementation options that will apply to all its deferrals:

4. For qualifying SAC liabilities (businesses with total determinations of 25 units or fewer), MCES allows the community to defer up to 80% of SAC due; however, a community can set a maximum that is lower than this (fill in this percentage above). Once this community maximum is set, the percentage deferred for each individual site deferral can be lower than this maximum but cannot be higher (e.g., a community chooses a 75% maximum, but a business chooses to pay 50% up front). For each individual deferral, this site-specific percentage must be noted on the MCES SAC-E Form, available at: <http://www.metrocouncil.org/Wastewater-Water/Funding-Finance/Rates-Charges/Sewer-Availability-Charge/SAC-Forms.aspx#Activity>
5. Deferment period (term): Choose any whole number up to a maximum of 10 years. This term will apply to all deferrals from the community. However, note that the Agreement allows prepayment of the remaining principal (and interest up to the payoff date) at any time.
6. Timing of payments: MCES prefers annual payments due each year on the anniversary the Agreement was signed, but Communities may request a different payment schedule. Semi-annual payments are also allowed, on any month-end during the year (e.g., a schedule may be preferred that corresponds with local SAC collections, assessments, or other payments from businesses).

Communities are strongly encouraged to:

- Consider which staff will be responsible for authorizing SAC deferrals and what the process will be to implement site specific deferral arrangements as are allowed under the Agreement with MCEs;
- Consider the need for policies or ordinances around your agreements or arrangements with business and property owners (In some cases they may have different interests);
- Consider in advance how to react if a business fails to pay, which will not relieve the community of its deferral payment obligation to MCEs, unless the business closes as described below; and
- Review the Agreement with involved community staff and legal advisors before signing. Please note that this program is offered only as described in the Agreement; MCEs does not anticipate changing it.

Once the Agreement is executed, SAC reporting staff in your community must also attach the MCEs SAC-E form with their monthly SAC reporting for each qualified business for which the community is allowing the deferred SAC payment. Each deferral liability will be effective the first day of the subsequent month (e.g., for an April building permit that is due and typically reported in May, interest will begin accruing June 1).

Principal on the deferred amount will be amortized monthly at a fixed interest rate based on MCEs' average cost of debt per statute. MCEs' average cost of debt, computed on December 31 each year, will be used as the interest rate for all new deferrals entered into the following calendar year. For example, the average rate was 2.26% on 12/31/13, so all deferrals originating in 2014 will use this rate, and the rate will be fixed for the duration of each individual deferral. Near the end of January each year, MCEs will provide the new interest rate (for deferrals started in the new calendar year) to participating communities.

If a participating business closes, the community has an option to discontinue making deferral payments to MCEs. If this option is chosen, it requires a notification to MCEs and a certification of the business closing. In this situation, the site will not be credited with the unpaid wastewater capacity (for future SAC determinations), but will get credit for each SAC unit paid. No payments will be refunded and no net credits will be transferrable off the site (unless and until a redevelopment requires less wastewater capacity). Alternatively, for each such business closure, the community has the option of simply finishing the payments to MCEs, which will result in full SAC credit for the next use of the site.

Late payments on deferrals will incur an additional administrative charge of 2% per month plus interest, or higher as allowed by law.

SAC Deferral Example #1:

1. Community signs SAC Deferral Agreement in October 2013, establishing basic deferral terms including maximum amount deferred (e.g., 80%), standard community deferral length (e.g., 5 years), and the payment timing requested (e.g., billing only on anniversary of Agreement).
2. An 8-SAC unit business is permitted February 2014. On the SAC Activity Report for February, the community chooses a deferral and:
 - a) Pays 20% of the SAC for the site = $8 \times 20\% = 1.60 \times \$2485/\text{unit [2014 SAC rate]} = \3976

- b) Attaches SAC-E form that details the information for this individual deferral:
 - i. Property Address = 123 45th Street, City of XYZ
 - ii. Business Name = Acme Genetics, Ltd.
 - iii. Permit Issued Date = 2/15/14
 - iv. Start of Loan Date = 4/1/14 (1st day of month after SAC report is due)
 - v. Deferred amount= 8 SAC units X 80% = 6.40 X \$2485/unit = \$15,904
3. MCES sends an invoice detailing the amount due on the SAC deferral(s) in October 2014. In this single deferral example:
 - a) \$15,904 is spread over 5 years with monthly amortization at 2.26% interest (the 2014 interest rate) = \$280.57/month.
 - b) Payment on this loan = \$280.57 X 7 months (April through October) = \$1,963.99
 - c) Invoice is sent out annually (aggregating all community deferrals).
 - d) Payment is due in 30 days.

In this example, unless the deferral is prepaid, the community will pay for 12 months in 2015, 2016, 2017 and 2018, and only 5 months on the last year's invoice (2019). At that point the full 8 SAC is paid and creditable to future use.

SAC Deferral Example #2:

Same circumstances as above but the business closes in 2016 after community made 2 payments (for 7 months in 2014 and 12 months in 2015).

In June 2016, community notifies MCES that the business closed. Community has two options:

1. Continue remitting the remainder of the SAC deferral payments as scheduled. The full 8 SAC units will be credited to future use on the site as all units are paid for. Of course, if the new use is different, a new SAC determination must be made, and the community will owe SAC for any incremental capacity demand.
2. Discontinue accruing liability. The community still needs to pay for the 5 months that wastewater demand was needed in 2016, but has no obligation for the rest of the scheduled payments. Only what was paid is creditable for future use (24 months of 60 is paid = 40% X 6.4 SAC units = 2.56 credits available for the site, in addition to 1.60 units from the original down payment).

If you wish to participate in the deferral program and are ready for the master SAC Deferral Agreement, fill out the boxes at the top of this application and return it to Dan Schueller, MCES, 390 North Robert Street, St. Paul, MN 55101 or dan.schueller@metc.state.mn.us. If you have additional question you can call him at 651.602.1624. For questions about the SAC program in general, please call Jessica Nye at 651.602.1378. For SAC determinations, please call Karon Cappaert at 651.602.1118.

COMMUNITY: City of Hastings	No.17M131-3
COMMUNITY ADDRESS: 101 4 th Street East, Hastings MN 55033	
CONTACT PERSON: Melanie Lammers, Finance Manager	
COMMUNITY-WIDE SAC DEFERRED AMOUNT: 80%	
COMMUNITY-WIDE SAC DEFERMENT PERIOD/TERM: 10 years	
PAYMENT MONTH(S): June & December	

MASTER SAC DEFERRAL AGREEMENT

THIS MASTER SAC DEFERRAL AGREEMENT (“Agreement”) is entered into by and between the Metropolitan Council, a public corporation and political subdivision of the State of Minnesota, with business offices at 390 Robert Street North, Saint Paul, Minnesota 55101 (“Council”), and the local government unit identified above as the “Community.”

Recitals

1. The Council owns and operates the metropolitan disposal system. Under Minnesota Statutes section 473.517, subdivision 3, the costs of acquisition, betterment and debt service associated with the “reserve capacity” of the system must be allocated among and paid by the respective local government units in the metropolitan area through a sewer availability charge (“SAC”) for each new connection or increase in capacity demand to the metropolitan disposal system within each local government unit.
2. Individual property or business owners whose properties are either newly connected or increase capacity demand to the metropolitan disposal system do not pay SAC to the Council. However, local government units that pay SAC to the Council for new connections or increased capacity demands typically pass on those costs to property and business owners by assessing property and business owners a “Local SAC” which sometimes includes local add-on charges.
3. Minnesota Statutes section 473.517, subdivision 6 authorizes the Council to provide for the deferment of payment of all or part of the allocated costs which are allocated by the Council to a local government unit in any year pursuant to section 473.517, subdivision 3. The deferments are repayable at such time or times as the Council shall specify, with interest.
4. At its November 28, 2012 meeting, the Council adopted changes to its SAC program including a small business SAC deferral program. The changes became effective January 1, 2013. At its January 22, 2014 meeting, the Council adopted changes to the SAC deferral program that became effective immediately upon adoption.
5. The Council wants to encourage and help communities promote business development by deferring community SAC payment obligations pursuant to Minnesota Statutes section 473.517, subdivision 6, so participating communities may pass through to businesses the benefits of deferred SAC payments by the communities. The Council’s *Sewer Availability Charge Procedure Manual*

(January 2014) states that communities that want to participate in a SAC deferral program must execute a standard master SAC deferral agreement with the Council.

6. To obtain a deferment of a SAC payment obligation and provide assistance to businesses, communities will submit to the Council a signed master SAC deferral agreement. For the term of the master agreement, communities will have the option to note on their monthly SAC reporting, on forms as provided by the Council, the eligible SAC liabilities for which the communities are requesting a SAC payment deferment from the Council. For each such subject SAC liability the deferment will be effective as of the first day of the subsequent month (e.g., for an April building permit that is reported for SAC in May, the deferment will be effective as of June 1).

7. In order to define the rights and obligations of the Community and the Council and the relevant SAC deferral arrangements, the Community and the Council agree as follows:

Article 1 - Definitions

1.1 Definition of Terms. Unless otherwise provided or indicated by the context, the terms defined in this article have the meanings given them in this article. Capitalized terms or phrases used in this Agreement have the meanings given them in the most recent version of the Council's *Sewer Availability Charge Procedure Manual* (the "*SAC Procedure Manual*").

- (a) **Community.** "Community" means a "Community" or "Customer Community" as those terms are defined in the *SAC Procedure Manual*.
- (b) **Determination.** "Determination" has the meaning ascribed to that term in the *SAC Procedure Manual*.
- (c) **Regional Portion of Local SAC.** The "Regional Portion of Local SAC" means that portion of the Community's SAC payment obligations to the Council that the Community passed on to properties within the Community's jurisdiction and does not include any local add-on charges.
- (d) **SAC Deferred Amount.** "SAC Deferred Amount" means the amount of the Community's SAC obligation under Minnesota Statutes section 473.517, subdivision 3 that has been deferred pursuant to Minnesota Statutes section 473.517, subdivision 6 and the terms and conditions of this Agreement.
- (e) **Business.** "Business" means a property or business for which the aggregate SAC Determination results in a liability of twenty-five (25) SAC units or less, before application of any Credits available on the Site. Business does not include *any type* of "Residential Property" or "Publicly Assisted Housing" as those terms are defined in the *SAC Procedure Manual*; nor does it include motels, hotels, camps, nursing homes, senior housing or prisons. Business includes "Commercial Properties," as that term is defined in the *SAC Procedure Manual*, but only when the aggregate SAC Determination for a Commercial Property is twenty-five (25) SAC units or less, before any applicable Credits.

Article 2 – SAC Deferred Amount; Interest; Payments

2.1 SAC Deferred Amount. Subject to the terms and conditions of this Agreement and applicable law, the Council will allow the Community to defer payment on the Community's SAC obligations for Business properties within the Community's jurisdiction in an amount not to exceed eighty percent (80%) of the SAC due for the properties that are either newly connected or increase capacity demand to the metropolitan disposal system. The percentage by which the Community elects to defer payment on the Community's SAC obligations must be applied on a community-wide basis to all participating Businesses within the Community's jurisdiction. The "Community-Wide SAC Deferred Amount" is stated as a percentage on Page 1 of this Agreement. The deferment is available only to properties for which the aggregate Determination is twenty-five (25) SAC units or less. In each instance in which the Community exercises this deferment option, the SAC amount that is not deferred is due and payable at the time the SAC liability is incurred by the Community. Payments on the non-deferred amounts are due with the regular SAC reporting to the Council, pursuant to the *SAC Procedure Manual*. The deferred SAC liability begins accruing interest on the first day following the regular SAC reporting.

2.2 Interest. Annually at each calendar year-end, the Council will determine the average rate on its wastewater bonds, pursuant to Minnesota Statutes section 473.517, subdivision 6. All new SAC deferments during the following calendar year will be subject to that interest rate, but that interest rate will be fixed for the duration of the deferment period for each deferral originated in that calendar year. Interest on unpaid SAC Deferred Amount balances will be computed in whole months, however, payments to the Council can be annual.

2.3 Payments. When the Council invoices the Community for payments on its SAC Deferred Amount, the Council will provide the Community with a payment schedule that amortizes the SAC Deferred Amount and interest on that deferred amount over the term of the deferment period. The Community's payment schedule will list the Business properties for which the Community elected to defer payments on the Community's SAC obligations to the Council. The Community will make payments to the Council at least annually. The Community may elect to make payments semi-annually or more frequently to correspond with the Community's Local SAC collections, assessments or other payments from Businesses, but the same payment schedule must apply to all Community SAC Deferred Amounts. The month(s) the Community elected to make its SAC payments to the Council under the payment schedule are identified on Page 1 of this Agreement as the "Payment Month(s)." The Community may repay or prepay the Council the unpaid balance of a SAC Deferred Amount at any time prior to the end of the deferment period. Any repayment or prepayment made by the Community shall be without penalty to the Community. The Community's payment schedule will be recalculated during the term of the deferment period to reflect: (a) repayments or prepayments by the Community; (b) the Community's election (if any) to discontinue making payments on its SAC Deferral Amount for a Site pursuant to Section 4.2(b); (c) any Community payments to the Council pursuant to Section 4.1(b); or (d) the addition of new Business properties for which the Community elects to defer payment on the Community's SAC obligations to the Council.

2.4 Local SAC Payments from Businesses. Subject to the limitation stated in Sections 3.2 and 4.1, the Community may enter into a payment or other agreement with each Business for payment of Local SAC to the Community on terms and conditions agreed to by the Community and the Business. Except as described in Section 4.2, failure of a Business to make its Local SAC payments to the Community or the Community's failure (or choice) not to assess or collect Local SAC from a Business shall not relieve the Community of its obligation to pay the Council any unpaid SAC

Deferred Amount, plus interest, or otherwise meet its SAC payment obligations under Minnesota Statutes section 473.517, subdivision 6 or other law.

Article 3 - Term of Deferments

3.1 Term of Agreement. Unless otherwise terminated pursuant to this Agreement, this Agreement shall remain in force and effect until the term of the last deferment period expires for Business properties listed on the Community's payment schedule. The Council reserves the right to cancel, suspend or modify its SAC deferral program at any time and for any reason upon thirty (30) calendar days written notice to the Community. If the Council cancels, suspends or modifies its SAC deferral program it will honor all existing SAC deferrals which the Community elected to make under this Agreement prior to the cancellation, suspension or modification. The Community is responsible for giving timely notice to the Community's participating Businesses or prospective participant Businesses of any cancellation, suspension or modification of the Council's SAC deferral program that may affect the Community's local SAC deferral program.

3.2 Term of Deferment. The Community elects the term of the SAC deferments between the Council and the Community, but the maximum term of a Community's SAC deferment shall not exceed ten (10) years. The Community may have only one SAC deferment period and must have the same SAC deferment period for all Business properties covered by this Agreement. The Community's "Community-Wide SAC Deferment Period" is identified on Page 1 of this Agreement.

Article 4 – Local SAC Deferrals

4.1 Local Terms and Conditions. The Community will be responsible for identifying property and business owners that qualify for the Community's SAC deferral program pursuant to any Community terms or conditions. The Council will disapprove a Community deferment request only if a property or business owner does not qualify as a Business as defined in this Agreement. Because the Council's SAC deferral program is intended to benefit Businesses, the Community must administer its local SAC deferral program in a revenue-neutral manner. The Community agrees its SAC payments to the Council will not be less than the Regional Portion of Local SAC payments the Community receives from participating Businesses.

- (a) **Local Deferment Period.** The Community agrees it will not allow a Business a less generous deferment period (*i.e.*, a shorter deferment period) for payment of the Regional Portion of Local SAC than the term of the Community's Community-Wide Deferment Period. This Agreement is not intended to govern the payment or deferment of any local add-on charges by the Community (if any) for Business properties.
- (b) **Local Deferred Amount.** The Regional Portion of Local SAC deferred by the Community for a Business's benefit shall not be less than the Community's SAC Deferred Amount. If a Business elects to prepay the Community some or all of the Regional Portion of Local SAC deferred by the Community, the Community must make a like payment to the Council to cover the Community's SAC obligations to the Council for the Business property. If a Business elects to prepay some of the Regional Portion of Local SAC deferred by the Community the Council will recalculate the Community's payment schedule.

4.2 Unpaid Local SAC. If a Business ceases operations or moves from the Site and does not require the incremental wastewater capacity represented by the SAC deferral, the Community may exercise one of the following two options:

- (a) **Continue SAC Payments.** The Community may continue to make its payments to the Council under the payment schedule. If the Community elects this option it will accrue SAC Credits for the Site in accordance with the SAC Credit provisions of the *SAC Procedure Manual*.
- (b) **Discontinue SAC Payments.** The Community may discontinue making its payments to the Council on the Community's SAC Deferral Amount for the Site. The Community must notify the Council if the Community elects this option and it must certify to the Council that the incremental capacity no longer is needed at the Site. The Community is responsible for making all SAC payments on the SAC Deferral Amount that were due prior to the notice. The Site will not be credited with the portion of the wastewater capacity not paid (for future SAC Determinations), but will receive Credit for actual SAC paid (including partial units). No Community SAC deferral payments to the Council will be refunded. Net Credits will be available to the Community for Community-Wide Credits only if a new SAC Determination establishes a permanent reduction of capacity demand.

4.3 Late Community Payments. If the Community makes a late SAC deferral payment to the Council, an additional administrative charge of two percent (2%) of the unpaid balance of the SAC Deferred Amount per month (or such higher interest rate allowable under law) will be applied.

Article 5 - Notices

5.1 Written Notices. Any notice, request, demand and other correspondence required by or made in accordance with this Agreement shall be in writing and delivered:

To the Council: Metropolitan Council
Attn: MCES Finance Director
390 Robert Street North
Saint Paul, Minnesota 55101-1806

To the Community: The Community's "Contract Person" identified on Page 1
At the "Community Address" identified on Page 1

5.2 Notice Delivery. Any notices or other correspondence shall be deemed to have been received: (a) three (3) calendar days after the date on the notice if the notice is sent by U.S. Mail; or (b) the next business day from the date on the notice if the notice is sent by facsimile or by e-mail.

Article 6 - Defaulting Liabilities

6.1 Liability. To the extent permitted or authorized by law, the Community will hold the Council harmless and indemnify the Council against any actions, charges, claims, costs, damages, demands, expenses, liabilities, losses and proceedings which the Council may suffer or be subject to as a result of any default by a Business or the Community of the Community's SAC payment obligations under this Agreement or under applicable law. A Business's failure to pay Local SAC shall not relieve the Community of its obligation to pay the Community's SAC obligations to the Council. Nothing in this Agreement shall be interpreted as a waiver of any liability limitations or immunities granted to

the Council and the Community by Minnesota Statutes chapter 466 or by other applicable state or federal law.

6.2 Survival of Terms. Notwithstanding any other provision of this Agreement, the validity of this Article and the Community's obligation to pay its SAC obligations shall survive the expiration or termination of this Agreement.

Article 7 - Miscellaneous

7.1 Dispute Resolution. Any dispute arising under this Agreement shall be settled through consultations between the Council's and the Community's representatives. If an agreement regarding a dispute cannot be reached within thirty (30) days upon notice of a dispute from the Council or the Community, either party is then entitled to bring such dispute before the courts of this state or take such action as otherwise allowed by law.

7.2 Exercise of Rights. Any rights, powers and remedies granted to the Council and the Community by this Agreement shall not preclude or limit any other rights, powers and remedies available to the Council or the Community in accordance with law and other provisions of this Agreement. The exercise of any rights, powers and remedies by the Council or the Community shall not preclude the Council or the Community from exercising any other rights, powers and remedies available to the Council or the Community. No failure or delay by the Council or the Community to exercise any of their respective rights, powers and remedies under this Agreement or in accordance with applicable laws shall be construed as a waiver of such rights, powers, and remedies. The waiver of any right, power or remedy, in whole or in part, shall not preclude the Council or the Community from exercising any of their other respective rights, powers or remedies.

7.3 Severability of Provisions. Each provision in this Agreement shall be severable from and independent of the other provisions. If one or more provisions are held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of this Agreement shall not be affected and shall remain in force and effect.

7.4 Amendments and modifications. Any amendments or modifications to this Agreement shall be in writing and shall become effective only upon execution of the amendment by the Council's and the Community's authorized representatives.

7.5 Assignment. The Community shall not assign any of its rights or obligations under this Agreement to any third party, even if the Site which was the subject of the SAC liability is removed from the jurisdiction of the Community. The Community may not barter, trade, sell or otherwise treat any SAC payment obligation deferments or SAC Credits as a commodity and the Council will not honor any agreements between the Community and any third parties that purport to barter, trade, sell or otherwise treat any SAC payment obligation deferments or SAC Credits as a commodity.

7.6 Successors. This Agreement shall be binding on the legal successors of the Council and the Community, whether by operation of law or otherwise.

7.7 Warranty of Legal Capacity. The individuals signing this Agreement on behalf of the Community and the Council represent and warrant on the Community's and the Council's behalf respectively that the individuals are duly authorized to execute this Agreement on the Community's

and the Council's behalf respectively and that this Agreement constitutes the Community's and the Council's valid, binding and enforceable agreement.

IN WITNESS WHEREOF, the Community and the Council have caused this Agreement to be executed by their duly authorized representatives. This Agreement is effective on the date of final execution by the Council.

COMMUNITY

By: Paul J. Hicks

Print Name: Paul J. Hicks

Title: MAYOR

Date: 4/17/2017

By: June Farias

Print Name: June Farias

Title: City Clerk

Date: 4/17/2017

METROPOLITAN COUNCIL

By: Ned S. Smith

Print Name: Ned S. Smith

Title: Director, MCFE Finance & Revenue

Date: 4/26/17