



STAFF REPORT

DATE: April 4, 2017

CONSENT

ITEM #: 3

AGENDA ITEM: Met Council SAC Deferral Programs

SUBMITTED BY: Kristina Handt, City Administrator

BACKGROUND:

Last September Council discussed and approved some changes relating to finance matters in the downtown projects. One of those items referenced was the Met Council SAC deferral programs.

ISSUE BEFORE COUNCIL:

Should the City Council approve agreements to allow the deferral of Met Council SAC fees for businesses and residents?

PROPOSAL:

Met Council has a SAC deferral program for businesses with 25 or fewer RECs. They allow 80% of the charge to be assessed over a 10-year period.

Last May staff asked Met Council about a similar program for residential properties. They did not have one in place at the time but created one at our urging. The residential deferral program allows residential properties with an assessed value of \$250,000 or less to defer 80% of the charge over 5 years.

The city had begun implementing these options with Phase 1 and 2 of the Old Village Project after Council approved the concept last fall. Property owners wishing to assess the fees (along with city SAC and connection fees) completed a form at the time they pay the 20% of the fee and the plumbing permit fee. Met Council will not allow the city to use the deferral program until these agreements are signed and approved. Staff will be able to accommodate those already signed up for the deferral through an internal tracking program.

FISCAL IMPACT:

None to the City. The 80% will be assessed to the property to mitigate any risk to the city. If a business property were to cease operations or move from the site and does not require the incremental wastewater capacity represented by the SAC deferral, the City may exercise one of two options: continue to pay the SAC and receive a credit or discontinue payments.

OPTIONS:

- 1) Approve the Met Council SAC Deferral Agreements for Businesses and Residential Properties.

- 2) Approve the Met Council SAC Deferral Agreement for either Businesses or Residential Properties
- 3) Do not approve the Met Council SAC Deferral Agreements for Businesses and Residential Properties.

RECOMMENDATION:

If removed from the consent agenda:

“Move to approve the Met Council SAC Deferral Agreements for Businesses and Residential Properties.”

ATTACHMENTS:

- Master SAC Residential Deferral Agreement
- Master SAC Business Deferral Agreement

AGREEMENT NUMBER: 16M131-2

COMMUNITY: CITY OF LAKE ELMO

COMMUNITY ADDRESS: 3800 LAVERNE AVE N, LAKE ELMO, MN 55042

CONTACT PERSON: CATHY BENDEL, FINANCE DIRECTOR

ASSESSED VALUE ELIGIBILITY CAP: \$250,000

COMMUNITY-WIDE SAC DEFERRED AMOUNT (MAXIMUM 80%): 80%

COMMUNITY-WIDE SAC DEFERMENT PERIOD (MAXIMUM 5 YEARS): **5 YEARS**

PAYMENT MONTH(S): APRIL

BUNDLE MONTH(S): NOVEMBER

MASTER SAC RESIDENTIAL DEFERRAL AGREEMENT

THIS MASTER SAC RESIDENTIAL 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 owners whose properties are either newly connected or increase capacity demand to the Metropolitan Disposal System do not pay SAC directly 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 owners by assessing property 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 that 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 June 22, 2016 meeting, the Council adopted changes to its SAC program including a residential SAC deferral program. The changes became effective immediately upon adoption.
5. The Council wants to work with communities to help homeowners convert from on-site private sewage systems to the Metropolitan Disposal System by deferring community SAC payment obligations pursuant to Minnesota Statutes section 473.517, subdivision 6, so

participating communities may pass through to homeowners the benefits of deferred SAC payments by the communities.

6. To obtain a deferment of a SAC payment obligation and provide assistance to homeowners, communities must execute a standard master SAC deferral agreement with the Council. For the term of the master agreement, communities will have the option to note on their monthly SAC reporting forms as provided by the Council, the eligible SAC liabilities for which the communities are requesting a SAC payment deferment from the Council.

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) Homeowner.

"Homeowner" means the owner of an existing Residential Property as defined below that will be connected to the Metropolitan Disposal System but currently uses an on-site private sewage treatment system. The eligibility of the property for residential SAC deferral will be determined by an assessed value maximum as negotiated between the Council and the Community.

(d) 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 passes on to properties within the Community's jurisdiction and does not include any local add-on charges.

(e) Residential Property.

Of the Residential properties defined in the SAC Procedure Manual, only single family dwellings, attached or detached townhomes, cooperative housing, and manufactured homes qualify for the SAC Residential Deferral Program.

(f) 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.

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 eligible Residential Properties within the Community's jurisdiction in an amount not to exceed eighty percent (80%) of the SAC due for the properties using existing on-site private sewage systems that will be newly connected 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 Residential Properties 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 existing properties that are on existing private on-site sewage systems and meet the assessed property value cap as negotiated between the Council and the Community. 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. Communities must bundle their eligible residential deferrals and not submit more than two (2) bundles per year. 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 Residential 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 to correspond with the Community's Local SAC collections, assessments, or other payments from Homeowners. 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 prepay the entire deferred amount due without penalty or additional interest.

2.4 Local SAC Payments from Homeowners.

Subject to the limitation stated in Sections 3.2 and 4.1, the Community may enter into a payment or other agreement with each Homeowner for payment of Local SAC to the Community on terms and conditions agreed to by the Community and the Homeowner. Failure of a Homeowner 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 Homeowner 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. If

Homeowners prepay the Community, those prepayments will not change the amount due to the Council.

Article 3 - Term of Deferments

3.1 Term of Agreement.

Unless otherwise terminated pursuant to this Agreement, this Agreement shall remain in full force and effect until the term of the last deferment period expires for Residential 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 Homeowners or prospective participant Homeowners 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 five (5) years. The Community may have only one SAC residential deferment period and must have the same SAC deferment period for all Residential Properties covered by this Agreement. The Community's "Community-Wide SAC Deferment Period" is identified on Page 1 of this Agreement.

3.3 Deferral Bundles.

Communities must bundle their deferrals. A Community may not submit more than two bundles per year.

Article 4 – Local SAC Deferrals

4.1 Local Terms and Conditions.

The Community will be responsible for identifying Residential Properties and homeowners 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 does not qualify as an eligible Residential Property or a homeowner does not qualify as a Homeowner as defined in this Agreement. Because the Council's SAC deferral program is intended to benefit existing Homeowners, 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 Homeowners.

(a) Local Deferment Period.

The Community agrees it will not allow a Homeowner 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 Residential Properties.

(b) Local Deferred Amount.

The Regional Portion of Local SAC deferred by the Community for a Homeowner's benefit shall not be less than the Community's SAC Deferred Amount. If a Homeowner elects to prepay the Community some or all of the Regional Portion of Local SAC deferred by the Community, this will not change the amount due to the Council (the original payment schedule cannot be changed).

4.2 Unpaid Local SAC.

If a Homeowner ceases to pay or moves from the eligible Residential Property, the Community must continue to make its payments to the Council under the payment schedule.

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 "Contact 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 Homeowner or the Community of the Community's SAC payment obligations under this Agreement or under applicable law. A Homeowner'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 full 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 a Residential Property 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: _____

Print Name: _____

Title: _____

Date: _____

METROPOLITAN COUNCIL

By: _____

Print Name: _____

Title: _____

Date: _____

MASTER SAC RESIDENTIAL DEFERRAL 12/09/2016

COMMUNITY: City of Lake Elmo	No. 17M131-1
COMMUNITY ADDRESS: 3800 Laverne Ave N	
CONTACT PERSON: Kristina Handt, City Administrator	
COMMUNITY-WIDE SAC DEFERRED AMOUNT: 80%	
COMMUNITY-WIDE SAC DEFERMENT PERIOD/TERM: 10 years	
PAYMENT MONTH(S): April	

MASTER SAC DEFERRAL AGREEMENT

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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: _____

Print Name: _____

Title: _____

Date: _____

By: _____

Print Name: _____

Title: _____

Date: _____

METROPOLITAN COUNCIL

By: _____

Print Name: _____

Title: _____

Date: _____