



Council Committee Memorandum

TO: Joint Council Committee
THROUGH: Tim Murray, City Administrator
FROM: Mark DuChene, City Engineer
MEETING DATE: February 5, 2019
SUBJECT: Wolf Creek Motor Sports Subordinate Sanitary Sewer District – Draft Agreement

Background:

At the January 15, 2019 Joint Committee meeting, representatives of Wolf Creek Motor Sports (the Developer) made a presentation to the Council on the development of a motorsports country club on land adjacent to Bagley Avenue (CSAH 46), I-35 and Millersburg Boulevard (CSAH 1). Following that meeting, Council directed staff to move forward with drafting a subordinate sanitary sewer service district agreement.

Attached is a first draft of the proposed subordinate sanitary sewer service district agreement. The agreement is modeled after the Roberds Lake subordinate sanitary sewer agreement completed in 2012. Similar to the Roberds Lake agreement, this agreement would be between the City and Rice County, and the County and the Developer would work out the financing of the improvements, the operation and maintenance of the system, billing for sewer service, etc. In regards to the subordinate sewer service district agreement itself, Staff is seeking Council feedback on the following items:

- Section 2.3 Limitations on System – At the 1/15/2019 Joint Committee meeting the Developer requested an allowance for an average daily flow of 110,000 gallons per day of wastewater flow. Based on the development proposed and covered under the Developers EAW and utilizing the City's 2019 SAC determination tables, this equates to a maximum number of SAC units of 642 (a copy of the spreadsheet calculating the number of SAC units is attached). Due to some uncertainty of how the proposed development will ultimately unfold, and wanting to provide as much flexibility for the development while protecting the City's wastewater treatment plants capacity, Staff recommends that the agreement allow for the development to build out until it reaches the maximum number of SAC units (642) or average daily flows of 110,000 gpd, whichever occurs first.

- Section 10.2 SAC Connection Fee – The Council has the discretion to determine what the SAC connection fees should be, ie. standard vs non-standard, or another amount (presumably somewhere in between these two). The adopted 2019 standard SAC fee is \$1,500/unit and the non-standard is \$5,865/unit.
- Section 10.3 Sewer Service Charges – Per the agreement the County will enter into a significant industrial user (SIU) contract with the City. This contract allows for the City to consider what rates/fees to charge for the sanitary sewer service.
- Section 10.4 City Administrative Fee – As was included in the Roberds Lake agreement a 5% administrative fee is proposed on top of the monthly sewer service charges fee to cover the City's costs of administering the agreement.
- Section 15.3 County Payment of City Costs – Similar to the Roberds Lake agreement, the proposed agreement requires the County to make an up-front payment to the City as reimbursement for preparing, reviewing and executing the agreement and other work associated with the formation of the district and the design and construction of the sanitary sewer system. This amount will be established once all costs have been determined.

Recommendation:

City Staff seeks Council direction on the bullet points above as well as any other feedback the Council has on the draft agreement.

Attachments:

- Draft Agreement for Wolf Creek Motor Sports Sanitary Sewer Subordinate Service District
- SAC determination table
- Wolf Creek Motor Sports Concept Plan

**SANITARY SEWER SYSTEM INTERCONNECTION AGREEMENT
 BY AND BETWEEN
 THE CITY OF FARIBAULT AND THE COUNTY OF RICE
 FOR THE WOLF CREEK MOTORSPORTS SUBORDINATE SANITARY SEWER
 SERVICE DISTRICT**

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THIS AGREEMENT, made and entered into this ___ day of __, 2019, by and between the City of Faribault, a municipal corporation in Rice County, Minnesota (“City”) and the County of Rice, a body politic and corporate, of the State of Minnesota (“County”).

RECITALS

1. The City owns and operates a wastewater treatment works that includes a wastewater treatment plant and wastewater collection system to provide wastewater services to properties within the City.
2. The County has determined the property known as Wolf Creek Motorsports Development, as shown in Exhibit A is in need of centralized wastewater collection and treatment services.
3. The County has exercised its authority under Minnesota Statutes, Chapter 375B to establish a subordinate service district encompassing the Wolf Creek Motorsports properties for the purposes of addressing wastewater needs within the district.
4. The County has determined the best method for providing wastewater collection and treatment services is for the County to install a wastewater collection system within the district and to connect its collection system to the City’s collection system to convey the wastewater to the City’s wastewater treatment plant for treatment.
5. The County desires to discharge wastewater it collects from the Wolf Creek Motorsports system it intends to construct to the City wastewater treatment works for treatment and the City agrees to receive and treat the County’s wastewater from the Wolf Creek Motorsports system under the terms and conditions of this Agreement.

Commented [A1]: Exhibit to be attached once final area determined.

AGREEMENT

In consideration of the mutual covenants and conditions contained herein, the parties hereto agree as follows:

**ARTICLE I
GENERAL PROVISIONS**

- 1.1. **Purpose of Agreement.** The purpose of this Agreement is to set out the terms and conditions under which the City agrees to permit the interconnection of the Wolf Creek Motorsports System, which the County is to construct as part of the Subordinate Service District it established, to the City’s Collection System and to provide for the treatment of wastewater from the Wolf Creek Motorsports System in the City Water Reclamation Facility.
- 1.2. **Definitions of Terms.** For the purposes of this Agreement, the following terms shall have the meaning given them in this Section.
 - 1.2.1. **Agreement.** Agreement means this contract for the interconnection of sanitary sewer systems between the City and the County, acting for the Wolf Creek Motorsports Subordinate Service District, and to provide for the treatment of the

wastewater from the Wolf Creek Motorsports System in the City Water Reclamation Facility.

- 1.2.2. Carbonaceous Biochemical Oxygen Demand (CBOD). The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at twenty (20) degrees Centigrade, expressed in terms of weight and concentration (milligrams per liter, mg/l).
- 1.2.3. Certified Wastewater System Operator. A firm or individual(s) trained and experienced in the operation and maintenance of sanitary sewer collection systems, including individual grinder pump station/low pressure force main systems, and having a current Class S-D (or higher) certification from the Minnesota Pollution Control Agency.
- 1.2.4. City. City of Faribault, Minnesota.
- 1.2.5. City Collection System. The system of sewers, force mains, lift stations and appurtenances, constructed, owned, operated and maintained by the City which are intended to carry only liquid and water-carried wastes from residences and other uses to the City Water Reclamation Facility for treatment.
- 1.2.6. City Significant Industrial User (SIU). An industrial user of the city treatment works that:
 - (1) Has a wastewater flow of twenty-five thousand (25,000) gallons or more per average workday; or
 - (2) Contributes a load of greater than five (5) percent or more of the capacity of the POTW; or
 - (3) Has in its wastewater a toxic pollutant in toxic amounts as defined in standards issued under section 307(a) of PL-92-500; or
 - (4) Is designated as significant by the City or the MPCA and is found by the permit issuance authority, in connection with the issuance of an NPDES permit to the City's treatment works receiving the wastewater, to have significant impact, either singly or in combination with other contributing industries, on the City's treatment works or upon the quality of effluent or residuals from the City's treatment works.

A user identified by the City as an SIU is required to enter into an annual contract with the City to discharge its waste as outlined in Sec. 28-170 of the City Code of Ordinances.

- 1.2.7. City Water Reclamation Facility (WRF). The wastewater treatment plant constructed, owned, operated, and maintained by the City.
- 1.2.8. City Wastewater System. The comprehensive collection and treatment of wastewater by the City including, but not limited to, the City Collection System and the City Water Reclamation Facility.

- 1.2.9. County. County of Rice, Minnesota.
- 1.2.10. County Capacity Allocation. The maximum amount of wastewater the County may discharge into the City Collection System from the Wolf Creek Motorsports System through the Connecting Sewer Line as established in this Agreement.
- 1.2.11. Connecting Sewer Line. The sewer line running from the Wolf Creek Motorsports System within the Subordinate Service District to the Connection Point with the City Collection System.
- 1.2.12. Connection Point. The point of interconnection with the City Collection System from the Wolf Creek Motorsports System.
- 1.2.13. Design Capacity. Capacity of the City Wastewater System to collect and treat wastewater consistent with all requirements of the Federal Water Pollution Control Act as amended, the City's National Pollution Discharge Elimination System (NPDES) permit, and all other requirements established by the City without incurring unreasonable operating expense or causing damage to the City Wastewater System.
- 1.2.14. Infiltration. Water entering the sewage system (including building drains and pipes) from the ground through sources such as, but not limited to, defective pipes, pipe joints, connections and manhole walls.
- 1.2.15. Inflow. Water, other than wastewater, that enters a sewer system (including building drains) from sources such as, but not limited to, roof leaders, cellar drains, yard and area drains, foundation drains, drains from springs and swampy areas, manhole covers, cross-connections from storm sewers, catch basins, surface runoff, street wash waters or drainage.
- 1.2.16. Infiltration/Inflow (I/I). The total quantity of water from both infiltration and inflow.
- 1.2.17. Maximum Annual Daily Average. The maximum annual daily average is the maximum daily average measured level of a characteristic averaged over a one year period
- 1.2.18. Maximum Daily Limit. The maximum daily limit is the maximum measured level of a characteristic measured over a single day.
- 1.2.19. Maximum Monthly Average. The maximum monthly average limit is the maximum daily average measured level of a characteristic averaged over a one month period.
- 1.2.20. MPCA. Minnesota Pollution Control Agency.

- 1.2.21. Monitoring Station. A building or other suitable structure installed at or between the ends of the Wolf Creek Motorsports System where it exits the Subordinate Service District and the Connection Point, containing flow metering and sampling equipment and other apparatus to accurately monitor the strength and volume of wastewater being discharged from the Wolf Creek Motorsports System to the City Wastewater System.
- 1.2.22. Normal Domestic Strength Waste. Wastewater that is primarily introduced by residential users with a CBOD concentration not greater than two hundred twenty (220) mg/l and a total suspended solids (TSS) concentration not greater than two hundred forty (240) mg/l.
- 1.2.23. Peak Instantaneous Limit. The peak instantaneous limit is the maximum measured level of a characteristic allowed.
- 1.2.24. Person. Any natural individual, or any public or private firm, trust, partnership, association or corporation.
- 1.2.25. Wolf Creek Motorsports System. The system of sewers, force mains, lift stations, monitoring station and appurtenances, constructed, owned, operated, and maintained by the County which are intended to carry only liquid and water-carried wastes from residences and other approved uses located within the Wolf Creek Motorsports Subordinate Service District established by the County and shown on the map attached hereto as Exhibit A. This term includes the Connecting Sewer Line running from the Subordinate Service District to the point of connection with the City Collection System, including the Monitoring Station, unless the context in which it is used clearly indicates otherwise, and regardless of the fact the Connecting Sewer Line may be referenced in conjunction with the Wolf Creek Motorsports System in some locations and not in others.
- 1.2.26. Service Connection. The physical connection of a sanitary sewer service line from an individual property to the Wolf Creek Motorsports System. Each service connection may represent one or more SAC Units as defined below, but not less than one.
- 1.2.27. Sewer Availability Charge (SAC). A development impact fee assessed for reserve capacity, sewage treatment, and connection rights to the City sanitary sewer system as defined under Article V, Chapter 28 of the City Code of Ordinances.
- 1.2.28. SAC Units. A number of units that is defined in the City's utility fee schedule, adopted by ordinance, using various parameters for different types of facilities or uses. Under this agreement, a limit of XXX SAC units will be allowed for the Wolf Creek Motorsports System, generally assigned to areas of the property located wholly within the Wolf Creek Motorsports Subordinate Sanitary Sewer District as given in Exhibit B. As subdivision of the property occurs, the SAC

units will be allocated to the newly created parcels in accordance with the uses intended for those parcels.

1.2.29. Sewer Service Charges. The amount the County shall be required to pay the City for receiving and treating wastewater from the Wolf Creek Motorsports System.

1.2.30. State. State of Minnesota.

1.2.31. Subordinate Service District. A Subordinate Service District of Rice County established for the Wolf Creek Motorsports area by Rice County Board of Commissioners Resolution #XX-XXX in accordance with the procedures outlined in Minnesota Statutes, Section 375B. The boundaries of the district are as shown in Exhibit A. In case of a discrepancy between the map adopted as part of County Resolution #XX-XXX and the map included with this Agreement as Exhibit A, the map included with this Agreement as Exhibit A, included amendments thereto which may be made subsequent to the execution of this Agreement as given under Article XII, shall govern.

1.2.32. Total Suspended Solids (TSS). The total suspended matter that floats on the surface of, or is suspended in, water, wastewater or other liquids and which is removable by a standard glass fiber filter.

1.2.33. USEPA. United States Environmental Protection Agency.

1.2.34. User. Any person who discharges wastewater, or causes or permits the discharge or placement of wastewater, into the Wolf Creek Motorsports System or the City Wastewater System.

1.2.35. User Charge System (UCS). The system of user and sewer service charge established and adopted by the City, and codified in the Faribault City Code, Chapter 28, which levies charges on users of the City Wastewater System for the user's proportionate share of the costs, associated with the City Wastewater System. The UCS includes user and sewer service charges, which generate revenue for billing administration, infiltration/inflow, operation, maintenance (including replacement), and a debt service charge, which generates revenue for the repayment of capital-related costs of the City Wastewater System. Specific rates and charges are adopted annually by ordinance, identified as the Utility Fee Schedule.

1.2.36. Wastewater. All liquid or water-carried waste products from whatever source derived, together with such groundwater infiltration and surface water inflow as may be present.

1.3. Easements. The County is responsible for acquiring, at its own expense, all easements or other permissions required to construct the Wolf Creek Motorsports System, the Connecting Sewer Line, the interconnection Monitoring Station, and as may otherwise be

needed in order to carry out its obligations under this Agreement. The County is responsible for all cost, at its own expense, for all easements or other permissions required to the Connection Point. The County shall apply and pay for such permits from the City as may be required to perform any work within the City's streets, right-of-ways, or easement areas. The County shall be responsible for maintaining the grounds and any associated facilities around the Monitoring Station. Should the Connection Point be required to be relocated in the future, the County shall be responsible for the removal of the previous Monitoring Station and the restoration of the grounds.

- 1.4. **Compliance with Applicable Laws.** Each party shall be responsible for complying with all applicable federal, state, and local laws, rules, regulations, and ordinances in carrying out their respective obligations under this Agreement and for obtaining all permits or permissions that may be required.
- 1.5. **Cooperation with Agencies.** The County and the City shall cooperate and participate in providing all data requested by any State or Federal agency relative to regulatory policies or funding requests related to activities contemplated by this Agreement.
- 1.6. **Term of Agreement.** Unless terminated earlier as provided herein, the County shall have the right, for as long as the City operates the City Wastewater System, to convey wastewater from Wolf Creek Motorsports System to the City Collection System for treatment in the WRF, provided the County acts in compliance with provisions of this Agreement.
- 1.7. **Review of Agreement.** The County and the City shall cooperate and participate in a review of this Agreement at least every five (5) years from the date of execution of this Agreement, or at such the time that the renewal of the NPDES permit for the WRF occurs, whichever occurs sooner.
- 1.8. **Termination.** Either party may terminate this Agreement for cause arising from an event of default as provided in this Section.
 - 1.8.1. **Termination for Cause.** Notwithstanding anything else to the contrary in this Agreement, either party may terminate this Agreement for cause arising from an event of default. If an event of default occurs, and if the non-defaulting party desires to terminate this Agreement, it shall provide the other party written notice describing the event of default and what must be done in order to cure the default. If the defaulting party fails to reasonably cure the default within 90 days of its receipt of the notice of default, the non-defaulting party may terminate this Agreement by providing the other party a written notice of termination. For the purposes of this section, the failure to adequately perform any of the following obligations under this Agreement shall constitute an "event of default" allowing a termination for cause: (1) repeated non-payment of any non-disputed amounts; (2) failure of the County to put in place or enforce restrictions regarding the volume or quality of wastewater within the Subordinate Service District; (3) failure or refusal to conduct testing or provide the results of such testing; (4)

repeated non-compliance with discharge limitations; (5) failure to construct the Wolf Creek Motorsports System or Connecting Sewer Line; (6) failure to adequately maintain the parties' respective wastewater systems; or (7) failure to comply with any other material term of this Agreement.

1.8.2. **Effect of Termination.** Upon termination, the respective rights and obligations of the parties under this Agreement shall cease, except that the City shall be entitled to any past due payments and for continuing payments until the City Wastewater System is no longer receiving wastewater from the Wolf Creek Motorsports System. Recognizing the fact this Agreement provides for the connection of two wastewater systems, and that the County must provide an alternative means for treating wastewater before it can reasonably disconnect from the City Wastewater System, the parties agree to work in good faith to identify and resolve the issues associated with separating the systems and dissolving the cooperative arrangement established between the parties by this Agreement.

1.9. **Title to Wastewater Systems.** It is agreed and understood by the parties hereto that the title to, and all incidents of ownership in, the City Wastewater System, any subsequent replacement or upgrades, improvements or expansions thereof, and all the grounds upon which the same is located shall remain in the City and shall be the absolute property of said City. It is further agreed and understood that the operation of the City Wastewater System and employment of personnel therefore shall be in the full charge of the City. It is further agreed and understood that the title to, and all incidents of ownership in, the Wolf Creek Motorsports System, the Connecting Sewer Line, including any subsequent replacement or improvements, and the Monitoring Station, shall be the property of and owned by the County exclusively. Those County employees and those that may be contracted by the County to construct, operate, maintain, or improve the Wolf Creek Motorsports System, the Connecting Sewer Line, or the Monitoring Station shall not be the responsibility of the City.

1.10. **City Significant Industrial User Contract.** In addition to this Agreement, the County, being a user identified by the City as an SIU and acting for the Wolf Creek Motorsports Subordinate Service District, is required to enter into a separate "Special Contract" on an annual basis with the City to discharge its waste as provided for in the City's Code of Ordinances, as presently existing or as amended from time to time. This contract shall be similar in scope and content to SIU contracts currently utilized by the City and is more specifically discussed in paragraph 10.3 of this Agreement.

ARTICLE II WOLF CREEK MOTORSPORTS SYSTEM

2.1. **Construction and Operation.** The County is solely responsible for, at its own cost, designing, constructing, maintaining, operating, repairing, and improving as needed the Wolf Creek Motorsports System, including the Connecting Sewer Line and Monitoring Station, and completing all work to connect the system to the City Collection System.

The City shall have no financial or other obligation to the Wolf Creek Motorsports System other than to receive and treat its wastewater as provided in this Agreement.

2.2. **Plan Review.** The County shall be responsible for preparing all plans and specifications needed for the construction of the Wolf Creek Motorsports System. The County shall submit all such plans and specifications to the City for review and approval at least 60 days prior to the County advertising for bids for its construction. The materials and specifications to construct the Wolf Creek Motorsports System must be at least of the same quality used by the City and must otherwise be acceptable to the City. The County shall be responsible for reimbursing the City any costs it incurs related to project including, but not limited to, reviewing the plans for the Wolf Creek Motorsports System, the Connecting Sewer Line and the Monitoring Station.

2.3. **Limitations on System.** With the exception of the Connecting Sewer Line and potentially the Monitoring Station, the Wolf Creek Motorsports System shall be constructed entirely within, and is limited to, the current boundaries of the Subordinate Service District as shown in Exhibit A. The parties understand and agree the Wolf Creek Motorsports System will be designed to serve up to a total of **XXX SAC** units within the Subordinate Service District with the total number of SAC units for the Wolf Creek Motorsports System being as set forth in Exhibit B. The total number allowable SAC Units available to the Wolf Creek Motorsports System shall be generally assigned to areas of the property located within the Wolf Creek Motorsports Subordinate Sanitary Sewer District as shown in Exhibit B. As subdivision of the property occurs to facilitate development, the SAC units will be allocated to newly created parcels in accordance with the uses (and resulting assignment of SAC units) intended for those parcels. With each reassignment/reallocation of SAC units, the City and County agree to revise Exhibit B accordingly.

Other than as specifically set forth in Exhibit B, the County shall not make or allow any additional Service Connections/SAC Units to the Wolf Creek Motorsports System, or to the Connecting Sewer Line, without the prior written agreement of the City to the County's request for expansion as provided herein. Violation of this paragraph shall result in a penalty being imposed on the County in the amount of \$1,000.00 plus two times the applicable SAC fees for internal, unapproved service connections/SAC unit increases to the Wolf Creek Motorsports System and \$10,000.00 plus two times the applicable SAC fees for external, unapproved service connections (e.g., connections from outside the Subordinate Service District) to the Wolf Creek Motorsports System, which the County shall immediately pay to the City in accordance with paragraph 10.6. of this Agreement.

2.4. **User Charges.** The County may maintain a user charge system which assesses a user charge to each Service Connection proportionate to that Service Connection's wastewater contribution to the Wolf Creek Motorsports System. If the County does impose a user charge system, the County shall notify the City at the time of adoption of such user charge system.

- 2.5. **User Regulations.** The County shall enact, adopt, and strictly enforce all such resolutions, ordinances, or regulations as may be necessary to impose limitations on users of the Wolf Creek Motorsports System that are at least as strict as those applicable to uses within the City and as may be needed to give full effect to the stipulations contained in this Agreement.
- 2.6. **Penalties.** The County shall be responsible for paying any penalties or violation fees imposed on the City from the MPCA, or other similar agency, if such penalties or violation fees are the result of the County's action or inaction related to the Wolf Creek Motorsports System.

ARTICLE III INTERCONNECTION

- 3.1. **Authority for Connection.** In consideration of the terms and conditions of this Agreement, the City hereby grants the County permission and authority to connect the Wolf Creek Motorsports System to the City Collection System at the Connection Point identified herein to provide for the treatment of the wastewater from the Wolf Creek Motorsports System in the City's WRF.
- 3.2. **Connection Point.** The Connection Point of the Wolf Creek Motorsports System with the City Collection System shall be at a point near the intersection of [REDACTED] near the current northern boundary of the City. There shall be no other points of connection between the systems unless expressly agreed to in writing by the City in response to a County Request for Expansion as provided herein.
- 3.3. **Construction of Interconnection.** The County shall be responsible for all work and costs associated with the connection of the Wolf Creek Motorsports System to the City Collection System. This shall include the extension of the existing City Collection System, constructed to City standards and specifications, to place the Connection Point at the location deemed most suitable by the City.
- 3.4. **Monitoring Station.** [See Article V]
- 3.5. **Future Discharge Interconnection.** The City may determine, in conjunction with a review by an independent third party engineer, that it is in the best interests of the City that the location of the Connection Point of the Wolf Creek Motorsports System with the City Collection System needs to be modified and/or changed. The City in its sole discretion may exercise the option to determine that the location of the Connection Point of the Wolf Creek Motorsports System with the City Collection System needs to be modified and/or changed only one time in the future. The County shall be responsible for all work and costs associated with the modification or location change of the Connection Point of the Wolf Creek Motorsports System to the City Collection System. In addition, the County may be required to pay the City an additional access charge related to future discharge interconnection. As an alternative to relocating the

Commented [A2]: Actual connection point to be determined based on engineering study provided by developer.

Connection Point, the City may consider making improvements to the City Collection System that would allow the Connection Point for the Wolf Creek Motorsports System to remain in place. However, under this alternative, the County agrees to pay for their proportionate share of the cost of the improvements to the City Collection System.

**ARTICLE IV
DISCHARGE LIMITATIONS**

- 4.1. **Maximum Limits.** The parties recognize that the capacity of the City Collection System and WRF are limited. In order to avoid overburdening the City’s system, or precluding use by properties within the City, the amount of wastewater discharge from the Wolf Creek Motorsports System and the Connecting Sewer Line to the City Collection System shall strictly conform to the following parameters and limits, which shall constitute the County Capacity Allocation:

County Capacity Allocation and Monitoring Requirements					Monitoring Requirements	
Effluent Characteristic	Maximum Daily Limit	Maximum Monthly Average	Maximum Annual Daily Average	Peak Instantaneous Limit	Minimum Measurement frequency	Sample type
Flow	gpd	gpd	gpd	gpm	Continuous	Recorded
CBOD	lbs/day	lbs/day	lbs/day	NA	Monthly	Composite
TSS	lbs/day	lbs/day	lbs/day	NA	Monthly	Composite
Phosphorous	lbs/day	lbs/day	lbs/day	NA	Monthly	Composite

Commented [A3]: Table to be updated following final calculations.

- 4.2. **County Obligation to Limit Flow.** The County shall not, under any circumstances, allow, and shall take such affirmative actions as may be necessary to prohibit, the Wolf Creek Motorsports System from conveying to the City Collection System wastewater discharges in excess of the County Capacity Allocation established by this Agreement. County agrees to voluntarily, or at the request of the City, take such actions as are necessary to prevent or correct the County Capacity Allocation from being exceeded including, but not limited to, suspension, restriction, or termination of sewer service.

**ARTICLE V
MONITORING AND MEASUREMENT OF WASTEWATER**

- 5.1. **Monitoring Required.** All wastewater discharged into the City Collection System from the Wolf Creek Motorsports System shall be accurately monitored for strength and volume by acceptable metering and sampling equipment (automatic) installed in a building or structure at or adjacent to the boundaries of the Subordinate Service District,

the interconnection point, or at such other site as may be mutually agreed upon. The County shall, at its own cost, be responsible for constructing the Monitoring Station and purchasing and installing the equipment. The type and location of the metering and sampling equipment, any future improvement or replacement thereof, and all plans, specifications and details pertinent thereto shall be subject to prior review and approval by the City. At a minimum, the metering device shall be equipped with automatic registering and recording mechanisms for continuous recording of the rate of flow, which measures and provides a cumulative total of the volume of discharge. The County shall provide the City unfettered access to the Monitoring Station at all times determined by the City in its sole discretion. The County shall be responsible for all costs related the Monitoring Station, including but not limited to, construction, land acquisition, maintenance and insurance.

5.1.1. City Monitoring Station. The City, in its judgment and at its expense, may install, operate, and maintain similar monitoring stations and may install, operate and maintain rate of flow restriction equipment or devices within or adjacent to the corporate limits the City at or near the Connection Point.

5.2. Operation and Maintenance. The City shall operate and maintain the monitoring equipment and monitoring station. The cost for all such services shall be the responsibility of the County. All required flow metering and sampling equipment shall be operational on a continuous basis and wastewater flow shall be measured on a continuous basis, with volumes totaled and recorded continuously. The reading and recording of results and collection and analysis of wastewater samples from the Wolf Creek Motorsports System metering and sampling equipment shall be completed by the City. Wastewater samples shall be analyzed for CBOD, TSS and any other pollutants twice a week for the first six months of this Agreement, once a week for the next six months of this Agreement, and thereafter monitoring and sampling will be performed in accordance with the annual SIU Special Contract. A report shall be submitted by the City to the County monthly. Analysis of pollutants may be conducted by the City at any time in a laboratory certified for such analyses by the State of Minnesota.

5.3. Calibrations. The flow meter in the monitoring station shall be calibrated as provided in this Section.

5.3.1. Regular Calibrations. The City, at the County's expense, shall calibrate, with certified calibration procedures, its flow meter on a quarterly basis for the first year of this Agreement, and thereafter on an annual basis. A calibration report shall be prepared and filed with the County within twenty (20) days of completion of the calibration procedures.

5.3.2. Annual Calibrations. On a yearly basis, the City shall, at the County's expense, contract with a qualified flow metering calibration firm to have all metering devices used in billing calculations involving this Agreement calibrated. The cost of calibration services shall be distributed on a number of meters basis.

5.3.3. Disagreement as to Calibration. If the City and the County are unable to agree on the calibration of the metering device or related equipment, an impartial registered professional engineer, mutually satisfactory to the parties, shall be selected to supervise any repairs and calibration of the metering device or other related equipment. If the parties hereto cannot agree on the selection of a registered professional engineer to act as a neutral, a District Court judge for Rice County shall select the qualified professional engineer. The findings of the selected engineer shall be final and binding on the parties. The services of the engineer shall be paid one-half by each party hereto. Any decision of the engineer shall be in accordance with the terms, covenants, conditions and provisions of this Agreement.

5.4. Events of Failure. If the required flow metering or sampling equipment fails, the City shall estimate the wastewater volume and pollutant loadings for the period of equipment failure using the most comparable recent historical data. Said estimates shall continue until such time as the equipment is repaired or replacement equipment is installed as required by this Agreement.

ARTICLE VI QUALITY OF EFFLUENT AND PROHIBITED MATERIALS

6.1. Quality. The quality of raw wastewater to be delivered to the City Collection System from the Wolf Creek Motorsports System shall be aerobic in character and the odor shall not be stronger than that associated with municipal raw wastewater. If additional aeration or injection of chemicals is required in the judgment of the MPCA or the City in order to prevent damage to the City Collection System, WRF, or to eliminate nuisance odor conditions from the Wolf Creek Motorsports System, all costs associated with such mitigation or corrective measures shall be borne by the County.

6.2. Prohibited Materials or Discharges.

6.2.1. Prohibitions. The County shall not discharge, or allow any user to discharge, either directly or indirectly, into the Wolf Creek Motorsports System, any flows or materials prohibited by the City Code of Ordinances and the City's WRF NPDES Permit, along with any of the following:

- A. All waste of any type generated from any source outside the Subordinate Service District;
- B. All waste generated from septic tank contents, privy vault contents, sewage holding tanks or similar sources from within the limits of the designated sewer service area;
- C. Any wastes which may directly or indirectly impair the proper functioning of the City Wastewater System;

- D. Any wastes the strength or pollutional effects of which are not effectively altered by ordinary treatment processes, or the presence of which in the receiving stream would violate State and Federal water quality standards;
- E. Any liquids, solids, or gases which by reason of their nature or quantity are, or may be, sufficient either alone or by interaction with other substances to cause fire or explosion or be injurious in any other way to the City Wastewater System or to the operation of the system. Prohibited materials include, but are not limited to, gasoline, kerosene, naphtha, benzene, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromates, carbides, hydrides, sulfides, and any wastes with a closed cup flash point of less than 140 degrees Fahrenheit (60 degrees Centigrade);
- F. Solid or viscous substances which will or may cause obstruction to the flow in a sewer or other interference with the operation of the City Wastewater System such as, but not limited to, grease, garbage with particles greater than one-half inch (1/2 in.) in any dimension, animal guts or tissues, paunch manure, bones, hair, hides or fleshing, entrails, whole blood, feathers, ashes, cinders, sand, spent lime, stone or marble dust, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, waste paper, wood, plastic, gas, tar asphalt residues, residues from refining or processing of fuel or lubricating oil, mud or glass grinding or polishing wastes;
- G. Any wastewater having a pH less than 6.0 or more than 10.0 or having any other corrosive property capable of causing damage or hazard to structures, equipment and personnel of the City Wastewater System;
- H. Any wastewater containing toxic pollutants in sufficient quantity, either singly or by interaction with other pollutants, to inhibit or disrupt any wastewater treatment process, constitute a hazard to humans or animals, or create a toxic effect in the receiving waters of the wastewater treatment system. A toxic pollutant shall include, but not be limited to, any pollutant identified pursuant to Section 307 (a) of the Federal Water Pollution Control Act as amended;
- I. Any noxious or malodorous liquids, gases, or solids which either singly or by interaction with other wastes are capable of creating a public nuisance, hazard to life, or are sufficient to prevent entry into the sewers for their maintenance and repair;
- J. Any wastewater with objectionable color not removed in the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions;

- K. Any wastewater which creates conditions at or near the City Wastewater System which violate any statute or any rule, regulation or ordinance of any public agency or State or Federal regulatory body;
- L. Any wastewater with CBOD in excess of two hundred twenty (220) mg/l and TSS in excess of two hundred forty (240) mg/l;
- M. Any wastewater containing total phosphorus in excess of 1 kg/day unless such a discharge is allowed by a permit and written agreement between the City and the discharger;
- N. Any wastewater having a temperature greater than 150 degrees Fahrenheit (65.6 degrees Centigrade), or causing, individually or in combination with other wastewater, the influent at the WRF to have a temperature exceeding 104 degrees Fahrenheit (40 degrees Centigrade) or having heat in amounts which will inhibit biological activity in the WRF resulting in interference;
- O. Any slug load, which shall mean any pollutant, including oxygen demand pollutants (CBOD, COD, TKN and TP, etc.), released in a discharge of such volume or strength as to cause inhibition or disruption in the City Wastewater System;
- P. Non-contact cooling water or unpolluted storm or groundwater;
- Q. Any wastewater containing fats, wax, grease or oils, whether emulsified or not, in excess of fifty (50) mg/l or containing substances which may solidify or become viscous at temperatures between 32 degrees Fahrenheit (0 degrees Centigrade) and 150 degrees Fahrenheit (65.6 degrees Centigrade); and any wastewater containing oil and grease concentrations of mineral or animal origin of greater than fifty (50) mg/l whether or not emulsified;
- R. Wastewater containing inert suspended solids (such as, but not limited to, Fuller's earth, lime slurries and lime residues) or of dissolved solids (such as, but not limited to, sodium chloride and sodium sulfate) in such quantities that they would cause disruption with the City Wastewater System;
- S. Radioactive wastes or isotopes of such a half-life or concentration that they are in non-compliance with standards issued by the appropriate authority having control over their use and which will or are likely to cause damage or hazards to the City Wastewater System or the personnel operating it; or
- T. Wastewater containing the following substances in excess of the limits shown herein:

Toxic Pollutant	Discharge Limitation
Cadmium (Cd)	1.03 mg/l
Chromium total (Cr)	5.23 mg/l
Copper (Cu)	2.86 mg/l
Cyanide (Cn)	1.09 mg/l
Lead (Pb)	1.05 mg/l
Mercury (Hg)	0.01 mg/l
Molybdenum	0.10 mg/l
Nickel (Ni)	3.65 mg/l
Silver (Ag)	2.14 mg/l
Zinc (Zn)	8.10 mg/l

6.3. **Response to Prohibited Materials or Discharges.**

6.3.1. **City Responses.** If any waters or wastes are discharged, or are proposed to be discharged, from the Wolf Creek Motorsports System to the City Wastewater System which contain substances or possess the characteristics prohibited by this Agreement, and which, in the judgment of the City, may have a deleterious effect upon, any part of the City Wastewater System, processes, or equipment, the receiving waters, soil, vegetation or groundwater, or which otherwise create a hazard to life or constitute a public nuisance, the City may take any one or all of the following actions:

- A. Reject the wastes prior to or during their discharge to the City Collection System or the WRF;
- B. Require pretreatment to an acceptable condition for discharge to the public sewers, pursuant to Section 307 (b) of the Federal Water Pollution Control Act as amended;
- C. Require such remedial steps, as are in the judgment of the City, necessary to abate any further impairment, either direct or indirect, of the proper functioning of the City Wastewater System;
- D. Require control over the quantities and rates of discharge which may include the restriction, limitation, or suspension thereof;
- E. Require payment from the County to cover the added costs of handling, treating and disposing of wastes not covered by existing user or sewer service charges. This includes, but is not limited to, reimbursement for any fines or penalties levied against the City for a violation of its NPDES permit or which otherwise have resulted from a discharge from the Wolf Creek Motorsports System; or

F. Require a wastewater discharge permit from a user of the Wolf Creek Motorsports System as provided in this Agreement as contemplated in Paragraph C of this Article.

6.3.2. County Response. The County agrees to require any user of the Wolf Creek Motorsports System contemplating to discharge waters, wastes, or loadings in excess of the limits established herein to apply and receive a written wastewater discharge permit between the user and the City. No discharges or loadings exceeding the established limits shall be permitted until the user obtains a wastewater discharge permit from the City and then only in compliance with the terms and conditions of the permit. The wastewater discharge permit shall at a minimum provide that:

- A. The user will pay all costs incurred by the City arising out of the discharge including any fines and penalties;
- B. The user shall under no circumstances exceed the County Capacity Allocation;
- C. Provisions be made for constant monitoring of discharge as may be necessary in the judgment of the City;
- D. The City or the County may restrict, limit, suspend, or shut-off the discharge before it enters the WRF;
- E. The wastewater discharge permit may be revoked or modified where necessary as the needs of the WRF dictate, in the judgment of the City, in connection with the demands placed on the facility, its capabilities, and emergencies affecting its operation in compliance with the applicable requirements for its operation by the City;
- F. The County and the user shall hold the City harmless for such discharge;
- G. Such other terms as may be deemed appropriate to ensure the safe and verifiable granting of permission to place such excess discharges or loadings in the sanitary sewer system, including but not limited to, those permit requirements established by the City, that now exist or may from time to time be amended by the City Council. No wastewater discharge permit shall be granted hereunder where such discharge would violate applicable Federal or State laws or regulations or adversely impact upon the City's ability to comply with applicable terms of its NPDES permit or applicable regulations governing the WRF.

**ARTICLE VII
INFILTRATION AND INFLOW**

- 7.1. **Excluding.** The parties hereto agree that remediation of infiltration and inflow (I/I) is a priority for the serviced communities. Therefore, the purposes of controlling and remedying I/I, the County agrees to effectively exclude extraneous I/I to the Wolf Creek Motorsports System including, but not limited to, storm water runoff from roofs, eaves, rainspouts, yards, lawns, foundation drains, parking lots, streets, alleys, and the like.
- 7.2. **Other Substances.** The County shall exercise due care to preclude gravel, sand, dirt, grit, or heavy substances of any kind from being washed or dumped into its Wolf Creek Motorsports Sewer System. When expenses are incurred in cleaning the City Collection System of any such substance being carried into them from the Wolf Creek Motorsports System, all such expenses attributable to the Wolf Creek Motorsports System shall be paid for by the County within thirty (30) days of receipt of an invoice from the City. The City shall provide an itemized accounting of the cleaning expenses incurred with the invoice provided to the County.
- 7.3. **County Infiltration and Inflow (I/I) Plan.** The County shall develop and adopt a plan to prevent I/I to the Wolf Creek Motorsports System including, but not limited to, storm water runoff from roofs, eaves, rainspouts, yards, lawns, foundation drains, parking lots, streets, alleys, and the like, and to preclude gravel, sand, dirt, grit, or heavy substances of any kind from being washed or dumped into the Wolf Creek Motorsports Sewer System. The County I/I plan shall be submitted to the City for approval prior to being adopted and implemented by the County prior to the execution of this Agreement.

**ARTICLE VIII
RESTRICTION AND SUSPENSION OF SERVICE**

- 8.1. **Notification.** The County shall immediately notify the City of any potential, proposed or actual substantial change in the volume or strength characteristics of the wastewater effluent discharged at the Connection Point with the City Collection System which the County knows or has reason to believe will or is likely to have, either singly or by interaction with other wastes, a negative impact on the City Collection System, or the WRF, or which will exceed the wastewater parameters established herein or contain prohibited materials.
- 8.2. **Restriction of Flow.** The City may restrict or limit the rate of flow of wastewater discharges at the Connection Point from the Wolf Creek Motorsports System should the City, in its judgment, determine that such restriction or limitation is necessary in order to prevent, or limit the impact of, an actual or threatened discharge that may: (1) present an imminent or substantial endangerment to human health or welfare; (2) endanger the environment; (3) interfere with the operation of the City Treatment Works; (4) exceed the County Capacity Allocation; (5) exceed any wastewater parameters established in this

Agreement; (6) contain prohibited materials; (7) cause the City to violate any condition of its NPDES permit; or (8) otherwise cause damage to the City Treatment Works. The City shall not be liable to the County, a user, or to any other person for having restricted or limited the rate of flow as provided in this Agreement. In implementing a restriction or limitation on the rate of flow of wastewater discharges at the Connection Point from the Wolf Creek Motorsports System, the City shall treat the County and the Wolf Creek Motorsports System similar to other SIU contract parties existing in the City.

- 8.3. **County Response to Restriction.** The County, when notified of a restriction or limitation on wastewater service by the City, shall act as soon as practicable after notification to cease or reduce such discharges or to take such actions as are necessary to cause those responsible users of the Wolf Creek Motorsports System to cease or reduce such discharges. In the event or failure of a user of the Wolf Creek Motorsports System to comply voluntarily with a restriction or limitation, the County shall take such actions as are necessary including, but not limited to, immediate suspension of sewer service or severance of the sewer connection, in order to ensure full compliance with all terms of this Agreement.
- 8.4. **Removal of Restriction.** The City may keep its restriction in place until the County is able to demonstrate, to the City's satisfaction, it has sufficiently addressed the matter to avoid an on-going or future violation. The City may, at the County's expense, conduct such inspections as may be needed to verify that the County's corrective actions are sufficient to allow the City to lift its restriction.

ARTICLE IX INSPECTIONS

- 9.1. **City Inspections.** The City, or its designated representative, upon reasonable notice first given to the County, shall be permitted to audit and inspect the materials, construction, and subsequent operation and maintenance of the Wolf Creek Motorsports System in order to confirm that the same is being constructed, operated and maintained according to applicable City specifications and standards, all applicable federal, state, and local laws, rules, regulations, and ordinances, and to verify the County is fully complying with terms of this Agreement. The City, or its designated representative, upon reasonable notice first given to the County, shall be permitted to audit and inspect all billings for the Wolf Creek Motorsports System to verify Service Connections made to the Wolf Creek Motorsports System. The County shall be responsible for reimbursing the City for its costs related to inspecting the materials and construction of the Wolf Creek Motorsports System, inspecting potential or actual violation of a provision of this Agreement, and inspecting any corrective actions. Any inspections conducted by the City do not replace or otherwise diminish the County's obligation to inspect the Wolf Creek Motorsports System or to comply with the requirements of this Agreement. The County may be present during all such inspections.

9.2. **County Inspections.** The County, upon reasonable notice first given to the City, shall be permitted, at the expense of the County, to inspect the condition and operation of the monitoring station, City Collection System, and WRF in order to confirm the City is fully complying with the terms of this Agreement. The County, upon reasonable notice first given to the City, shall have the right of access to the monitoring station, metering device, automatic sampler and any other recording instruments and may make any accuracy test or other inspections that it may deem necessary or desirable. The City may be present during all County testing or inspections.

**ARTICLE X
FEES, PAYMENTS AND ADDITIONAL COSTS**

10.1. **Consideration.** In consideration of the use of the City Treatment Works by the County for its Wolf Creek Motorsports System, the County shall pay the City the fees and charges provided for in this Article as well as any other amounts required by this Agreement.

10.2. **SAC Connection Fee.** The County shall pay to the City a SAC connection fee in the amount of the City's currently adopted rate for SAC fees for each and every Service Connection (and the corresponding number of SAC Units, to be calculated by the City utilizing user information provided by the County) to the Wolf Creek Motorsports System. The County shall immediately inform the City of any Service Connection made to the Wolf Creek Motorsports System, with payment to be made by the County to the City for such Service Connection within 30 days of the Service Connection.

Commented [A4]: Discussion about standard vs non standard SAC fees

10.3. **Sewer Service Charges.** The County shall enter into a separate "Special Contract" with the City on an annual basis for the discharge of the wastewater from the Wolf Creek Motorsports System, as provided for under the City's Code of Ordinances, as presently existing or as amended from time to time. This contract shall be similar in scope and content to SIU contracts currently utilized by the City. The contract shall specify the amount the County shall be required to pay the City for receiving and treating wastewater from the Wolf Creek Motorsports System ("Sewer Service Charges"). The parties agree that the Faribault SIU may be subject to adjustment from time to time during the term of this Agreement by the City and that County shall be required to pay any resulting increases to the Sewer Service Charge upon written notice of such increase. The parties agree that the Sewer Service Charge shall include a user charge, a sewer service charge, and a debt service charge for the costs attributable to treatment, as determined annually by the City. Charges shall be proportionate to use in accordance with the Faribault SIU. The City may amend the Faribault SIU from time to time to provide for additional charges or surcharges which in the judgment of the City are necessary or desirable. The County agrees to enter into an SIU agreement with the City in conjunction with this Agreement.

Commented [A5]: Discussion about any type of rate multiplier.

- 10.4. **City Administrative Fee.** The City shall impose a surcharge of five (5) percent as an administrative fee on the County for all services provided to the County pursuant to this Agreement. The five (5) percent surcharge shall be applied to the total monthly invoice provided to the County pursuant to this Agreement for Sewer Service Charges, but not including SAC charges.
- 10.5. **Billing Invoice for Services.** The City shall read on a monthly basis the meter at the Monitoring Station and bill the County for all amounts the County is required to pay or reimburse the City for under this Agreement. The County is required to pay all such billed amounts in full within 30 days of the invoice date.
- 10.6. **Other Costs.** The City shall include any connection fees incurred in a month on its monthly invoice to the County for the Sewer Service Charge. The City shall bill the County on a separate invoice for all other amounts the County is required to pay or reimburse the City for under this Agreement. The County is required to pay all such billed amounts in full within 30 days of the invoice date.

Commented [A6]: Discussion of if this is still adequate.

**ARTICLE XI
ADDITIONAL COSTS AND SURCHARGES**

- 11.1. **Non-Payment.** Failure on the part of the County to pay all amounts due to the City within 30 days of the invoice date shall render such unpaid amount delinquent. If the delinquent amount is not paid in full within 14 days of notice of delinquency, such delinquent amount shall bear interest at an annual rate of twelve percent (12%). The City shall have and hereby reserves the right to enforce payment against the County by appropriate proceedings at law or in equity in any court of competent jurisdiction. All costs incurred by the City in connection with collecting such delinquent accounts, including reasonable attorney fees, shall be paid by the County.
- 11.2. **Surcharges for Exceeding Allowable Flow and/or Strength Limits for Wastewater.** In accordance with the terms of the Special Contract outlined in Section 10.3 of this Agreement, the County shall be required to pay surcharges (penalties) for exceeding allowable wastewater flows and/or strength parameters. The amounts for the surcharges will be established annually, but the amounts for the County shall not be greater than the amounts included in other SIU contracts. The various parameters and corresponding surcharges to be included in the agreement (showing 2012 amounts) are as follows:

Flow – Maximum Day	\$ 200.00/day
Flow – Maximum Month	\$1,000.00/month
CBOD – Maximum Day	\$ 300.00/day
CBOD – Maximum Month	\$ 1,000.00/month
TSS – Maximum Day	\$ 200.00/day
TSS – Maximum Month	\$1,000.00/month
pH Violation – Minimum	\$ 100.00/day

pH Violation – Maximum	\$ 100.00/day
Chronic Violation	\$5,000.00/month/parameter
Technical Review Violation	\$5,000.00/month/parameter
MPCA Imposed Fine	Actual Fine Amount + 10%

- 11.3. **Responsibility for Damages.** In addition to any other amounts required to be paid by this Agreement, the County shall be liable for any damages caused to the City Wastewater System by such wastewater flows or loadings in excess of its allotted limits or strengths and will hold, save and defend the City harmless from claims by third parties made as a result of the excess discharge and shall reimburse the City for any and all additional costs over and above the surcharge for treating or otherwise disposing of the excess discharges.

**ARTICLE XII
REQUEST FOR EXPANSION**

- 12.1. **Procedure.** Any request the County may wish to make to the City to expand the amount of wastewater flowing into the City Collection System, whether through an increase in the County Capacity Allocation, increasing the number of hookups, the number of properties served, allowing a connection with the Wolf Creek Motorsports System, expanding the Subordinate Service District boundaries, or any other request that may result in exceeding any of the limits established in this Agreement (collectively, a “Request for Expansion”), shall comply with the provision of this Article. A Request for Expansion may only be submitted by the County.
- 12.2. **Request for Expansion.** A Request for Expansion made by the County must be in writing and contain a detailed explanation type of expansion being requested and the anticipated need for the expansion. The City may require the County to provide additional information as needed to allow the City to fully evaluate the request. The County is responsible for all costs related to preparing and submitting a Request for Expansion.
- 12.3. **Request for City Connection.** Should it be deemed feasible and desirable for a property within the City limits to be served by the Wolf Creek Motorsports System, the City shall submit a request to the County to consider allowing the connection of such a property. The County will establish the connection fee to be paid to the County by the affected property, and the terms of their use of the system. The connection will not be counted toward the maximum allowable number of Service Connections/SAC Units given in this Agreement.
- 12.4. **Review of Request.** The City shall afford the County a reasonable opportunity to present information regarding its Request for Expansion. The County shall be responsible for reimbursing the City any costs the City reasonably incurs to review and act on the County’s expansion request. The City is under no obligation to approve any Request for

an Expansion and may, in the City's sole discretion, approve, deny, or modify and approve any such request. The City may place whatever conditions or limitations on its approval as it determines is appropriate. No expansion is allowed unless it is in the form of a written amendment to this Agreement, is approved by the governing bodies of the County and the City, and complies with all terms and conditions imposed by the City on such expansion.

12.5. **Expansion of City Wastewater System.** Expansion or improvement of the City Wastewater System in response to a Request for Expansion from the County, or initiated by the City to provide for the adequate collection and treatment of wastewater, shall be subject to this Section.

12.5.1. **County Request.** If the City determines, in its sole discretion, a Request for Expansion received from the County cannot be reasonably accommodated without expanding or modifying some portion of the City Wastewater System, the City will provide notice of such limitation to the County. If, upon such notice, the County desires to propose the City agree to the needed expansion or modification of the City Wastewater System, it shall proceed as follows:

- A. Provide the City a written notice of its request to pursue the required expansion or modification to the City Wastewater System. The notice must contain the name of the consulting engineer the County intends to hire, at its own expense, to review and design the improvements or modifications to the City Wastewater System as needed to accommodate the County's Request for Expansion.
- B. Upon completion of plans and specifications for the proposed expansion or modification, the County shall submit the same to the City for review and approval by the City. The City may require, at the County's expense, additional engineering analysis should such analysis be deemed, in the judgment of the City necessary or desirable. The proposed plans and specifications shall conform to all standards and specifications required by the City, applicable City ordinances, and any applicable State and Federal laws and regulations. The City as a condition of approval of the proposed plans and specifications may require use of the same design, materials, and construction as has been applied by the City in designing and constructing the City Wastewater System.
- C. Upon reaching an agreement between the County and the design engineer, and upon approval of the plans and specifications by the City and payment to the City for the estimated construction cost for the capital improvement, the City shall initiate construction within two years of said date, at which time the County will be billed or refunded any difference between estimated and actual cost. The County shall not allow any additional discharges beyond those provided for in this Agreement until a new

County Capacity Allocation is agreed to by the City and the proposed improvements to the City Wastewater System are completed and online.

- 12.5.2. **City Project.** If the City undertakes a project to expand or replace its WRF, construct a new WRF, or to improve the portion of the City Collection System that receives wastewater from the Wolf Creek Motorsports System or that conveys it to the WRF, the County shall be responsible for paying its proportionate share of such project, with such proportionate share to be determined consistent with the same rationale utilized to determine applicable costs for properties within the City. The County's proportionate share of the project costs shall be equal to the ratio of the County Capacity Allocation to the total capacity of the improved WRF. If the project is limited to improving the City Collection System, the County's proportionate share shall be equal to the ratio of the County Capacity Allocation to the total volume of wastewater received in the portion of the City Collection System serving the Wolf Creek Motorsports System as determined by the City.

ARTICLE XIII INDEMNIFICATION AND LIABILITY

- 13.1. **County Indemnification of City.** The County shall defend, indemnify, and hold harmless the City, its officers, employees, and agents against any claim brought, action filed, or penalty imposed by reason of any act or omission of the County, its officers, employees, and agents against any and all liability, loss, costs, damages, expenses, fines, penalties, claims, or actions, including attorney fees, which the City, its officers, employees, or agents may hereafter sustain, incur, or be required to pay, arising out of or by reason of the construction, operation, maintenance, or improvement of the Wolf Creek Motorsports System, the Connecting Sewer Line, or the Subordinate Service District. This indemnification obligation includes the County defending, indemnifying, and holding the City harmless against any claims or actions arising from or related to any actions taken by the City or County to enforce the limits or prohibitions established in this Agreement related to the amount, quality or strength of the wastewater received from the Wolf Creek Motorsports System including, but not limited to, restricting flow, suspending service, or imposing additional costs on users. The County is not responsible for indemnifying the City against actions arising solely from the claimed negligence of the City, its officers, employees, or agents. The indemnification obligation contained in this Section is in addition to any other County indemnification obligations contained in this Agreement.
- 13.2. **City Indemnification of County.** The City shall indemnify, save and hold harmless the County from any and all loss or damage to any property incurred by the County by reason of any act or omission on the part of the City, its agents or employees, in connection with the construction or operation and maintenance of the City Wastewater System, unless the same shall be due to the negligence of the County, its agents or employees.

- 13.3. **Circumstances Beyond Control.** The City shall not be responsible if the City Wastewater System is prevented from receiving or treating wastewater from the Wolf Creek Motorsports System in accordance with the terms of this Agreement by any cause not reasonably within the control of the City including, but not limited to, acts of God (fire, explosion, flood, earthquake, tornado), strike, war, unavoidable accident, ruptured pipe resulting from temperature change or ground disturbances, or Federal or State interference (governmental exercise of authority, court orders). The City agrees (except in the case of total destruction or near total destruction of its properties) to diligently put its works in condition again, as soon as practicable, to dispose of sewage in the manner provided for in this Agreement. The County shall hold, save, and defend the City harmless for any damage or loss resulting from such impossibility, frustration, interruption, or suspension of performance of the terms of this Agreement.
- 13.4. **Liability Caps and Exemptions.** To the extent a court considers this Agreement to constitute a joint venture or joint enterprise between the City and the County, any liability arising from or related to the activities contemplated by this Agreement shall be considered as against a single entity and shall not exceed the limit for a single entity as provided in Minnesota Statutes, Section 471.59, Subdivision 1a. Nothing herein shall constitute a waiver by any party of the limitations on or exclusions from liability available to either under Minnesota Statutes, Chapter 466 or as otherwise provided in law.

**ARTICLE XIV
CHOICE OF LAW AND VENUE; DISPUTES**

- 14.1. **Choice of Law and Venue; Disputes.** This Agreement shall be governed by and construed in accordance with the laws of the state of Minnesota. Any disputes, controversies, or claims arising out of this Agreement shall be heard in the state or federal courts of Minnesota, and all parties to this Agreement waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

**ARTICLE XV
MISCELLANEOUS PROVISIONS**

- 15.1. **Entire Agreement.** The terms, covenants, conditions, and provisions of this Agreement, including present and all future attachments or exhibits shall constitute the entire agreement between the parties hereto superseding all prior agreements and negotiations. This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the City of Faribault and the County of Rice.
- 15.2. **Amendments.** This Agreement may be amended or modified only by mutual, written agreement duly executed by both of the parties hereto. Such written agreement shall be executed by a resolution duly adopted by the Board of the Rice County Commissioners and the City Council of the City of Faribault.

15.3. **County Payment of City Costs.** The County agrees to make a payment of \$ [redacted] to the City for reimbursement for preparing and administering this Agreement and all other documents, permits, and applications related thereto. The payment is intended to cover costs incurred by the City for items including, but not be limited to, attorneys fees, engineering fees, inspection fees, and the costs and fees of other technical and professional assistance incurred or expended by the City on activities arising out of this Agreement, and other undertakings related thereto.

Commented [A7]: Need to determine fee.

15.4. **Governing Law.** This Agreement is made pursuant to, and shall be construed in accordance with the laws of the State of Minnesota.

15.5. **No Third Party Rights.** No party to this Agreement shall by virtue of this Agreement have any responsibility with respect to services provided or contractual obligations assumed by any other party, and nothing in this Agreement shall be deemed to constitute or to create any fiduciary or agency relationship among the parties or any other party.

15.6. **Recitals and Attachments.** The recitals contained herein, together with all Attachments or Exhibits referred to in this Agreement, are hereby made a part hereof and incorporated herein by reference as fully and as completely as if set forth herein verbatim.

15.7. **Waiver.** The waiver by either party of an event of default of any term of this Agreement by the non-defaulting party shall not operate, or be construed to operate, as a waiver of any subsequent claim of default or any other claim available under this Agreement or available at law or in equity. The making or the acceptance of a payment by either party with knowledge of the existence of a default shall not operate, or be construed to operate, as a waiver of any subsequent claim of default or any other claim available under this Agreement or available at law or in equity.

15.8. **Severability.** In the event that any provision of this Agreement is determined to be invalid, illegal, or unenforceable by any court of competent jurisdiction, by reason of any existing or subsequently enacted legislation, or by the application of existing or subsequently adopted rules and regulations of any State or Federal agency, the other provisions of this Agreement shall remain in full force and effect, and the parties hereto shall negotiate in good faith and agree to such amendments or modifications of or to this Agreement or other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement, and give effect to the intentions of the parties hereto.

15.9. **Notice.** Any notices required under the provisions of this Agreement shall be in writing and sufficiently given if delivered in person or sent by first class mail, postage prepaid, as follows to the City Administrator if to the City, or to the County Administrator if to the County.

15.10. **County Wastewater System Operator.** The County shall provide for the hiring of or the contracting with a Certified Wastewater System Operator to operate the Wolf Creek Motorsports System. The County shall annually provide evidence to the City of a County staff person or contractor hired as the Certified Wastewater System Operator.

IN WITNESS WHEREOF, the City of Faribault has caused this Agreement to be signed in duplicate by its Mayor and City Administrator, and its corporate seal to be hereunto affixed pursuant to a resolution of the City Council of the City of Faribault, a certified copy of which is hereto attached; and the County of Rice has caused this Agreement to be executed by its chairperson, attested to by its County Administrator pursuant to a resolution duly adopted by the Board of the Commissioners of Rice County, a certified copy of which is hereto attached.

CITY OF FARIBAULT

Approved on the ___ day of _____, 2019.

BY THE CITY COUNCIL

Mayor

ATTEST:

City Administrator

COUNTY OF RICE

Approved by on the ____ day of ____, 2019.

BY THE COUNTY BOARD

Chairperson

ATTEST:

County Administrator

EXHIBIT A
Map of Subordinate Service District

(attached hereto)

EXHIBIT B
Parcel Listing / Number of Allowable SAC Units per Property
(attached hereto)

Calculated Wastewater Flow										Notes
	Number	SAC Units	Occupancy	Daily Flow Per Person Gallons	Utilization Winter	Utilization Summer	Average Daily Flow Gal/day Winter	Average Daily Flow Gal/day Summer	SAC Units Calculated as	
Garage Villas	300	300	3	75	25%	50%	16,875	33,750	1 SAC/Unit	
Future Garage Villas	100	100	3	75	25%	50%	5,625	11,250	1 SAC/Unit	
Gas Station	1	26					7000	7000	1SAC/274 gal	Each car wash bay is 3 SAC units, balance after that is 1,950 sf/unit
RV Park	100	10	3	30	0	30%	0	2700	1SAC/274 gal	Recommend every 10 sites = 1 SAC Unit
Clubhouse/Restaurant	1	66	300	100	30%	60%	9,000	18,000	1 SAC/274 gal	Equivalent to a 26,400 sf restaurant (1SAC/300 sf)
	1	22	100	100	30%	60%	3,000	6,000	1 SAC/274 gal	
	Acres			Daily Flow Per Acre						
Commercial	23	68		800	75%	100%	13,800	18,400	1 SAC/274 gal	Commercial varies from 1/2,650 sf for office to 1/300 sf for food and drink
Future Commercial	17	50		800	75%	100%	10,200	13,600	1 SAC/274 gal	
		642								
Total Average Daily Flow							65,500	110,700		
BOD - lbs/day							137	231		
Total Annual Wastewater Flow			32,179,100							



Project #: 7113-01
 Drawn By: JRA
 Issue Date: MAY 2018
 Issue #: 3
 Sheet #:
 Sheet Title:

Date:	Description:
01/04/2018	CONCEPT LAYOUT
01/09/2018	CONCEPT LAYOUT
04/26/2018	CONCEPT LAYOUT

Issue #
 1
 2
 3

WOLF CREEK AUTOBAHN
 NW & SW CORNER HWY I-35 & MILLERSBURG BLVD
 Prepared For:
 WOLF CREEK MOTOR SPORTS LLC



Responsive partner. Exceptional outcomes.

NOT FOR CONSTRUCTION