

SANITARY SEWER SERVICE AGREEMENT AMONG THE CITY OF ROCHESTER
, THE CITY OF ROCHESTER HILLS
AND DIVERSION STREET & ASSOCIATES, LLC

This Agreement is made on _____, 20__, among the CITY OF ROCHESTER (“Rochester”), whose administrative office is located at 400 Sixth Street, Rochester, MI 48307, the CITY OF ROCHESTER HILLS (“Rochester Hills”), whose administrative office is located at 1000 Rochester Hills Drive, Rochester Hills, MI 48309, and Diversion Street & Associates, LLC (“Customer”), whose address is 13933 Plumbrook Road, Suite 300, Sterling Heights, MI 48314.

WHEREAS, Customer owns property (the "property") located in the City of Rochester, Oakland County, Michigan, more particularly described as:

Sidwell No. 15-15-284-001, Parcel 1, Part of the N.E. ¼ of Section 15, Town 3 North, Range 11 E., City of Rochester, Oakland County, Michigan described as commencing at the East ¼ corner of said Section 15; thence N. 01° 50’00” E. 285.86 feet along the East line of said Section 15; thence 88° 10’00” W. 60.0 feet (66.12 feet record) to the West right of way line of Rochester Road and the point of beginning; thence S. 87° 15’00” W. 92.91 feet; thence N. 42° 29’00” W. 42.54 feet (45.50 feet record) to the East right of way line of Diversion Street; thence along said East right of way line N. 02°15’04” E. 142.91 feet (N.03°15’54”E. 141.00 feet record); thence N. 70°32’42”E. 129.63 feet (136.00 feet record) to the West right of way line of Rochester Road; thence along said West line, S.01°41’44” W. 212.99 feet, (S. 03° 15’54” W. 215.35 feet record) to the point of beginning and containing 0.531 acres (23,147.05 square feet). Subject to all easements, restrictions, and rights of ways of record, if any.

WHEREAS, Customer resides on the above-described property and sanitary sewer service to the property is not yet available from the City of Rochester; and

WHEREAS, Rochester Hills does have a nearby sanitary sewer main directly across the street from the site available to service the property; and

WHEREAS, Rochester Hills is willing to enter into this Agreement with the City of Rochester and Customer to provide sanitary sewer service to the property until such time as the City of Rochester makes sanitary sewer service available;

NOW THEREFORE, the parties agree:

1. Customer may apply to the City of Rochester and for permits necessary under the City of Rochester's ordinances to connect to the sanitary sewer main of Rochester Hills. After providing the City of Rochester with all documentation, charges and fees required under the City of Rochester ordinance, Customer is authorized by the City of Rochester to apply to Rochester Hills for permits necessary under Rochester Hills' ordinance to connect to Rochester Hills' sanitary sewer system.
2. Rochester Hills shall, upon receiving all documentation, charges and fees required for issuance of permits under its ordinances, issue a permit to Customer allowing connection to the Rochester Hills sanitary sewer system to provide sanitary sewer service to the property. The charges to be paid by Customer to Rochester Hills shall include 150% of Rochester Hills' applicable capital charge, which Customer shall pay in cash, before connection.
3. Both the City of Rochester and Rochester Hills may supervise, inspect, test and approve the construction of any sanitary sewer lead connecting to Rochester Hills' sanitary sewer system. Rochester Hills shall directly bill Customer for Rochester Hills' cost of supervising, inspecting, testing and approval, and Customer shall pay such bill within thirty (30) days.
4. After final construction of any sanitary sewer lead connecting to Rochester Hills' system, the City of Rochester and Rochester Hills may inspect and test, any portion of the sanitary sewer lead, appurtenances or equipment as necessary. Rochester Hills shall directly bill its cost of inspecting and testing, to Customer, who shall pay such bill within thirty (30) days.
5. Customer shall respect and comply with all Rochester Hills' Ordinances, rules, regulations and

standards relative to cross-connections and the prevention of infiltration of foreign matter into the sanitary sewer system, and Rochester Hills may inspect the sanitary sewer connection at any reasonable time to verify compliance. Rochester Hills shall notify Customer regarding any non-compliance or need for corrective action or maintenance. If Customer does not undertake the necessary correction action or maintenance within a reasonable time, Rochester Hills may perform the corrective action or maintenance and charge the cost thereof to Customer. With respect to necessary emergency repairs or maintenance, Rochester Hills may, without advance notice to Customer, perform the same and charge the cost thereof to Customer.

6. Rochester Hills shall directly bill Customer for sanitary sewer service furnished to the property at the rate of 150% of the normal service and usage rate charged by Rochester Hills for sanitary sewer service, the rate being subject to change by Rochester Hills at any time, consistent with the rate charges applicable to similarly situated customers of Rochester Hills who are residents of the City of Rochester Hills.
7. Any charges billed, pursuant to this Agreement, by Rochester Hills to Customer, but not paid by Customer by the due date stated on the bill, shall be considered delinquent. Rochester Hills shall notify the City of Rochester of any charges which are delinquent for six (6) months or more, and the City of Rochester shall place such charges, plus any late payment charges required under Rochester Hills' City Ordinance applicable to all customers on the tax roll as provided by the City of Rochester's Ordinance as a lien on the property, to be collected and enforced in the same manner as general property taxes against the property are collected and the lien thereon enforced. Upon receipt of payment, either by the Customer or by the County if returned delinquent, the City of Rochester shall forward such payments to Rochester Hills. In addition to the foregoing, Rochester Hills may, after affording the customer notice and an opportunity to be heard, discontinue sanitary sewer service to the property if Customer's payment of charges is more than thirty (30) days

delinquent, and Rochester Hills shall not be required to re-establish sanitary sewer service until all delinquent charges, penalties, interest and turn-on charges have been paid, as required under Rochester Hills' ordinance, applicable to all customers.

8. In the event sanitary sewer service from the City of Rochester becomes available to service the property, Customer shall, within sixty (60) days of notice thereof, weather permitting, disconnect from Rochester Hills' sanitary sewer system, connect to the City of Rochester's system and pay the City of Rochester any additional charges that may be due pursuant to the City of Rochester ordinance provisions in effect at that time. Upon disconnection from Rochester Hills' sanitary sewer system, and the payment of all outstanding charges, fees and bills, this Agreement shall terminate. Furthermore, Rochester Hills reserves the right to discontinue sanitary sewer service to the property upon Customer's neglect or failure to disconnect as required under this paragraph.
9. Rochester Hills may discontinue sanitary sewer service to the property and terminate this Agreement after giving both the City of Rochester and Customer five (5) days notice, in writing, of its intention to do so and affording the Customer an opportunity to be heard, because of the failure of Customer to fulfill any obligations or conditions provided in this Agreement, including, but not limited to, the obligation to timely pay all charges, fees and bills. The discontinuance of sanitary sewer service for such cause shall not release Customer from any obligation to pay any and all bills due in accordance with this Agreement. In the event Rochester Hills discontinues sanitary sewer service pursuant to this paragraph or paragraph 8, above, Rochester Hills shall have no obligation to reimburse or pay Customer for costs or damages incurred by Customer as the result of the discontinuance.
10. In addition, either Rochester Hills or the City of Rochester may temporarily discontinue sanitary sewer service when necessary for repair, replacement or maintenance, and Customer waives any claim Customer may acquire for damages for such discontinuance against Rochester Hills or the

City of Rochester, or their respective officials, employees or agents, provided that whenever Rochester Hills or the City of Rochester anticipates a temporary discontinuance, as distinguished from an unforeseen or emergency discontinuance, Rochester Hills or the City of Rochester shall attempt to provide reasonable advance notice to Customer. Rochester Hills' temporary discontinuance of sanitary sewer service pursuant to this paragraph shall not release Customer from Customer's obligation to pay all amounts due under this Agreement.

11. Customer shall indemnify, hold harmless and defend the City of Rochester and Rochester Hills, their officers, employees and agents from any claims, liability, damages or expenses, including attorney fees, which may arise out of making, fulfilling or enforcing this Agreement and furnishing sanitary sewer service to the property, except that Customer shall not be obligated to indemnify, hold harmless or defend a party for any claim, liability, damages or expense resulting from that party's gross or sole negligence.
12. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement shall be taken and construed as cumulative, that is, in addition to every other remedy provided by law.
13. This Agreement shall be recorded at the Oakland County Register of Deeds, and the obligations stated herein shall bind the parties, their successors, grantees and assignees and shall run with the land.
14. This Agreement remains subject to cancellation in the event a court of competent jurisdiction restricts or limits Rochester Hills' right to obtain, sell, contract for or distribute sanitary sewer service.
15. This Agreement shall be construed under Michigan law, and if a court of competent jurisdiction determines any part, term or provision of this Agreement is illegal or in conflict with any law, the validity of the remaining parts, terms and provisions shall not be affected, and the parties' rights

and obligations shall be construed and enforced as though the Agreement did not contain the particular part, term or provision held to be invalid.

16. This Agreement shall remain in effect until terminated as herein provided, or terminated by mutual agreement of the parties.

17. This Agreement constitutes the full agreement of the parties and supersedes any prior agreements or understandings. Any amendments shall be made in writing executed by all of the parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date recited above.

DIVERSION STREET & ASSOCIATES, L.L.C.

By:

Its:

By:

Its:

CITY OF ROCHESTER HILLS:

By: Bryan K. Barnett

Mayor
Its:

By: Jane Leslie

Clerk
Its:

CITY OF ROCHESTER:

By: Kenneth A. Johnson

City Manager
Its:

Clerk

By: LeeAnn O'Connor

Its:

STATE OF MICHIGAN
COUNTY OF OAKLAND

The foregoing instrument was acknowledged before me this ____day of _____, 20__,
Diversion Street & Associates, L.L.C., Rochester MI 48307.

_____, Notary Public
Oakland County, Michigan
My Commission Expires:

STATE OF MICHIGAN
COUNTY OF OAKLAND

The foregoing instrument was acknowledged before me this ___day of _____, 20__, by Bryan K.
Barnett, Mayor, and Jane Leslie, Clerk, of the City of Rochester Hills, on behalf of the City.

_____, Notary Public
Oakland County, Michigan
My Commission Expires:

STATE OF MICHIGAN
COUNTY OF OAKLAND

The foregoing instrument was acknowledged before me this ___day of _____, __, by Kenneth Johnson,
City Manager, and LeeAnn O'Connor, Clerk, of the City of Rochester, on behalf of the City.

, Notary Public
Oakland County, Michigan
My Commission Expires:

Drafted by:

Kim Murphey, DPS/Engineering
City of Rochester Hills
1000 Rochester Hills Drive
Rochester Hills MI 48309

Upon recording return to:

Jane Leslie, Clerk
City of Rochester Hills
1000 Rochester Hills Drive
Rochester Hills, MI 48309

Reviewed by:

John Staran, City Attorney
Hafeli Staran Hallahan Christ & Dudek, P.C.
4190 Telegraph Road, Suite 3000
Bloomfield Hills, MI 48302