

09/9/11

SANITARY SEWER SERVICE AGREEMENT AMONG
THE CITY OF ROCHESTER, THE CITY OF ROCHESTER HILLS
AND CRITTENTON HOSPITAL FOR THE BED TOWER ADDITION

This Agreement is made on _____, 2011, 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 CRITTENTON HOSPITAL MEDICAL CENTER (“Customer”), whose address is 1101 W. University Drive, Rochester, MI 48307.

WHEREAS, Customer owns property (the "Property") located in the City of Rochester Hills, Oakland County, Michigan, Sidwell No. 15-15-101-003 and located in the City of Rochester, Oakland County, Michigan, Sidwell No. 15-15-131-001; more particularly described as follows:

Beginning at a point on the North Line of said Section 15, distant due East, 704.02 Ft. from the NW corner of said Section 15; thence continuing due East, along said line, 698.38 Ft.; thence due South 719.83 Ft.; thence S 88° 19’ 30” E, 179.71 Ft., thence S 02° 27’ W., along Westerly line of “Fairview”, a subdivision recorded in Liber 23 of Plats, Page 27, Oakland County Records, 920.00 Ft.; thence due West 904.99 Ft.; thence N 02° 18’ 20” E, 1645.57 Ft. to the point of beginning. Excepting therefrom the Northerly 60 feet, conveyed to Oakland County Road Commission for Highway Purposes.

WHEREAS, Customer is constructing an addition (referred to as the “South Tower”) to its medical facility on the above Property, and sanitary sewer service to the Property is not available from Rochester Hills;
and

WHEREAS, Rochester does have a nearby sanitary sewer main directly East of the site available to service the Property; and

WHEREAS, Rochester is willing to enter into this Agreement with Rochester Hills and Customer to provide sanitary sewer service to the Property for the South Tower until such time as Rochester Hills may make sanitary sewer service available;

NOW THEREFORE, the parties agree:

1. Customer shall, at its own cost, construct, operate and maintain a private sanitary sewer system on the Property to service the South Tower. Customer shall be responsible for the system to the point of connection to the Rochester sanitary sewer system, which is located along University Drive.
2. Customer may apply to Rochester Hills for permits necessary under Rochester Hill's ordinances to connect to the sanitary sewer main of Rochester. After providing Rochester Hills with all documentation, charges and fees required under Rochester Hills ordinance, Customer may apply to Rochester for permits necessary under Rochester's ordinances to connect to Rochester's sanitary sewer system. Customer shall bear or reimburse all costs incurred by the parties in administering this permit procedure.
3. Rochester shall, upon receiving all documentation, including charges and fees required for issuance of permits under its ordinances, issue a permit to Customer allowing connection to the Rochester sanitary sewer system to provide sanitary sewer service to the Property to service the South Tower. The charges to be paid by Customer to Rochester shall include Rochester's applicable capital charge, which Customer shall pay before connection.
4. Both Rochester and Rochester Hills may supervise, inspect, test and approve the construction of any sanitary sewer lead connecting to Rochester's sanitary sewer system. Rochester shall bill Rochester Hills for Rochester's cost of supervising, inspecting, testing and approval, which

Rochester Hills shall pay within thirty (30) days. Rochester Hills shall, in turn, bill Customer for those costs as well as any related costs incurred by Rochester Hills under this paragraph.

5. After final construction of any sanitary sewer lead connecting to Rochester's system, Rochester and Rochester Hills may inspect and test, any portion of the sanitary sewer lead, appurtenances or equipment as necessary. Rochester shall bill its cost of inspecting and testing to Rochester Hills, which Rochester Hills shall pay within thirty (30) days. Rochester Hills shall, in turn, bill Customer for those costs as well as any related costs incurred by Rochester Hills under this paragraph.
6. Customer shall not allow any foundation drains, sump discharge or storm water to drain into the sanitary sewer, and Customer shall respect and comply with all Rochester's ordinances, rules, regulations and standards relative to cross-connections and the prevention of infiltration of storm water and foreign matter other than ordinary sanitary sewage into the sanitary sewer system. Rochester may inspect the sanitary sewer connection at any reasonable time to verify compliance. Rochester shall notify Customer and Rochester Hills 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 under the circumstances, Rochester may perform the corrective action or maintenance and charge the cost thereof to Rochester Hills, which Rochester Hills shall pay within 30 days. Rochester Hills shall, in turn, bill Customer for those costs as well as any related costs incurred by Rochester Hills under this paragraph. With respect to necessary emergency repairs or maintenance, Rochester may, without advance notice to Customer, perform the same and charge the cost thereof to Rochester Hills who shall, in turn, bill Customer.
7. Rochester shall bill Rochester Hills for sanitary sewer service furnished to the Property at the normal service and usage rate charged by Rochester for outside the City sanitary sewer service, the rate being subject to change by Rochester at any time by resolution of the Rochester City

Council. As the sanitary sewer usage for the South Tower is to be calculated based on water service provided by Rochester Hills to the South Tower, Rochester Hills shall provide the South Tower water meter readings to Rochester to allow Rochester to invoice the appropriate sanitary sewer service. The South Tower water meter shall be the only feed into the South Tower sanitary sewer system. Rochester Hills shall pay such bill within thirty (30) days. Rochester Hills shall bill Customer for any and all charges from Rochester for sanitary sewer service provided to the Property, as well as any additional charges that Rochester Hills ordinances may require. Customer shall pay such bill within thirty (30) days.

8. Any charges billed, pursuant to this Agreement, by Rochester Hills to Customer, but not paid by (Customer within thirty (30) days) shall be considered delinquent. Rochester Hills may place such delinquent charges, plus any late payment charges, on the tax roll, and such charges shall be 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.
9. In the event sanitary sewer service from Rochester Hills becomes available to service the Property, Customer shall, within sixty (60) days of notice thereof, weather permitting, disconnect from Rochester's sanitary sewer system, connect to the Rochester Hills system and pay Rochester Hills any additional charges that may be due pursuant to the Rochester Hills' ordinance provisions in effect at that time. Upon disconnection from Rochester's sanitary sewer system, and the payment of all outstanding charges, fees and bills, this Agreement shall terminate. Under no circumstances shall Rochester be required to refund any monies to Rochester Hills or Customer previously paid to Rochester for any reason whatsoever. Furthermore, Rochester reserves the right to discontinue sanitary sewer service to the Property upon Customer's neglect or failure to disconnect as required under this paragraph.
10. Both Rochester and Rochester Hills may supervise, inspect, test and approve the disconnection of

any sanitary sewer lead from the Rochester's sanitary sewer system. Rochester shall bill Rochester Hills for Rochester's cost of supervising, inspecting, testing and approval, which Rochester Hills shall pay within thirty (30) days. Rochester Hills shall, in turn, bill Customer for those costs as well as any related costs incurred by Rochester Hills under this paragraph.

11. Rochester may discontinue sanitary sewer service to the Property and terminate this Agreement after giving both Rochester Hills 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 discontinues sanitary sewer service pursuant to this paragraph or paragraph 8, above, neither Rochester nor Rochester Hills will be obligated to reimburse or repay Customer for costs or damages incurred by Customer as the result of the discontinuance.
12. In addition, Rochester or Rochester Hills 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 or the City of Rochester Hills, or their respective officials, employees or agents, provided that whenever Rochester or Rochester Hills, as the case may be, anticipates a temporary discontinuance, as distinguished from an unforeseen or emergency discontinuance, then Rochester or Rochester Hills shall attempt to provide reasonable advance notice to Customer. The 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.
13. Customer shall indemnify, hold harmless and defend 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, performing 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.

14. 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.
15. This Agreement shall be recorded at the Oakland County Register of Deeds, and the benefits and obligations stated herein shall bind the parties, their successors, grantees and assignees and shall run with the land.
16. This Agreement remains subject to cancellation in the event a court of competent jurisdiction restricts or limits Rochester's right to obtain, sell, contract for or distribute sanitary sewer service.
17. 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.
18. This Agreement shall remain in effect until terminated as herein provided, or terminated by mutual agreement of the parties.
19. 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.

CRITTENTON HOSPITAL MEDICAL CENTER:

By:

CITY OF ROCHESTER HILLS:

By: Bryan K. Barnett, Mayor

By: Jane Leslie, Clerk

CITY OF ROCHESTER:

By: Jaymes A. Vettraino, City Manager

By: Lee Ann O'Connor, Clerk

STATE OF MICHIGAN
COUNTY OF OAKLAND

The foregoing instrument was acknowledged before me this ____ day of _____, 2011, by _____, the _____ of Crittenton Hospital Medical Center.

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

STATE OF MICHIGAN
COUNTY OF OAKLAND

The foregoing instrument was acknowledged before me this ____ day of _____, 2011, 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 _____, 2011, by Jaymes A. Vettrano, City Manager, and Lee Ann O'Connor, Clerk of the City of Rochester, on behalf of the City.

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

Drafted by:

Tracey Balint, DPS/Engineering
City of Rochester Hills
1000 Rochester Hills Drive
Rochester Hills MI 48309

Upon recording return to:

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