

08/30/2006

**SANITARY SEWER SERVICE AGREEMENT AMONG THE CITY OF
AUBURN HILLS, THE CITY OF ROCHESTER HILLS AND
EDWARD AND ANNETTE MORAWSKI AND VITO A. AND ANGELA D. PAMPALONA**

This Agreement is made on _____, 20__ among the CITY OF AUBURN HILLS ("Auburn Hills"), whose administrative office is located at 1827 North Squirrel, Auburn Hills, MI 48326, the CITY OF ROCHESTER HILLS ("Rochester Hills"), whose administrative office is located at 1000 Rochester Hills Drive, Rochester Hills, MI 48309, and Edward and Annette Morawski ; Vito A. and Angela D. Pampalona (collectively, the "Customer"), whose address is 1235 N. Main, Rochester, MI 48307.

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

T3N, R11E, Sec 30 part of W1/2 of SW ¼ beg at pt dist S 1117.71 Ft. from W ¼ cor, Th S 436.67 FT, Th N 86-03-00 E 397.22 FT, Th N 00-09-52 E 525.15 Ft, Th S 87-37-17 W 172.28 Ft, Th S 00-07-15 W 100.05 Ft, Th S 87-48-30 W 225 Ft to Beg 4.32A.
Sidwell No. 15-30-302-023

With the address of 2715 South Adams, Rochester Hills, MI 48309 and,

WHEREAS, in order to provide sanitary sewer service for future development, and in accordance with the Order for Settlement, entered on February 24, 2006, in Oakland County Circuit Court case no. 05-070139-CC, which provides for two (2) sanitary sewer leads to the Property; and

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WHEREAS, sanitary sewer service to the Property is not yet available from Rochester Hills;
and

WHEREAS, Auburn Hills does have a nearby sanitary sewer main available to service the
Property; and

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

NOW THEREFORE, the parties agree:

1. Rochester Hills shall, upon receiving from Customer all documentation required under Rochester Hills ordinance, apply to Auburn Hills for permits necessary under Auburn Hills ordinance to connect to Auburn Hills sanitary sewer system.
2. Auburn Hills shall, upon receiving all documentation, charges and fees required for issuance of permits under its ordinances, issue a permit to Rochester Hills allowing connection to the Auburn Hills sanitary sewer system to provide sanitary sewer service to the Property.
3. Auburn Hills and Rochester Hills may supervise, inspect, test and approve the construction of any sanitary sewer lead connecting to Auburn Hills' sanitary sewer system. Auburn Hills shall bill its cost of supervising, inspecting, testing and approval to Rochester Hills, which Rochester Hills shall pay within thirty (30) days.

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4. After final construction of any sanitary sewer lead connecting to Auburn Hill's system, Auburn Hills and Rochester Hills may inspect, test, repair or replace any portion of the sanitary sewer lead, appurtenances or equipment as necessary. Auburn Hills shall bill its cost of inspecting, testing, repairing or replacing to Rochester Hills, which Rochester Hills shall pay within thirty (30) days.

5. Neither Rochester Hills nor Customer shall allow any foundation drains, sump pumps for ground water or storm water to drain into the sanitary sewer, and Rochester Hills and Customer shall comply with Auburn Hills' ordinances, rules, regulations and standards regarding prevention of storm water and foreign matter infiltration, other than ordinary sanitary sewage, into the sanitary sewer, and Auburn Hills may inspect the sanitary sewer extension, leads and connection to ensure compliance. Auburn Hills shall report any non-compliance or need for corrective action or maintenance to Rochester Hills. If Rochester Hills and Customer fail to correct the non-compliance or perform the necessary corrective action or maintenance within a reasonable time under the circumstances, Auburn Hills may discontinue sanitary sewer service and terminate this Agreement in accordance with paragraph 9, or Auburn Hills may itself perform the necessary corrective action or maintenance and charge the cost thereof to Rochester Hills, which Rochester Hills shall pay within thirty (30) days. Rochester Hills shall in turn bill Customer for expenses incurred. Customer shall pay such bill within thirty (30) days, if the customer caused the non-compliance.

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6. The connection to the Auburn Hills sanitary sewer system shall be made in accordance with, and shall at all times remain in compliance with, all ordinances, rules, regulations and requirements of Auburn Hills. The customers' use of said sanitary sewer system, including any and all discharges of sewage therein, shall at all times be in compliance with all ordinances, rules, regulations and requirements of Auburn Hills.

7. Auburn Hills shall bill Rochester Hills for sanitary sewer service furnished to the Property (determined by actual water usage) at the usage rate charged by Auburn Hills for sanitary sewer service plus ten percent (10%), the rate being subject to change by Auburn Hills at any time providing that the surcharge rate shall not increase and the rate change shall be common to all its customers. Rochester Hills shall pay such bill within thirty (30) days. Rochester Hills shall bill Customer for any and all charges it receives from Auburn Hills for sanitary sewer service provided to the Property, as well as any additional charges, which the ordinances of Rochester Hills may require. Customer shall pay such bill within thirty (30) days. It is the intent of this agreement to not recoup the expenses of construction of the sewer leads from the Customer. In accordance with the aforesaid Order for Settlement, Rochester Hills shall be responsible for all costs associated with the design, construction and/or Auburn Hills' tap and lateral fees for the sewer leads, and no payment, contribution or reimbursement shall be requested of Customer.

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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 are collected and the lien thereon enforced.

9. Upon Rochester Hills' sanitary sewer becoming available to service the Property, Customer shall, within sixty (60) days of notice, weather permitting, disconnect from Auburn Hills' sanitary sewer system (per Auburn Hills' standards, requirements and inspection) and connect to Rochester Hills' system and this agreement shall terminate. Once Rochester Hills' customers have been disconnected from the Auburn Hills sewer, it shall then be the responsibility of Rochester Hills to abandon the portion of Auburn Hills' sanitary sewer that will no longer be utilized, per Auburn Hills standards, requirements and inspection. Rochester Hills shall bear all costs incurred by this disconnection and abandonment. Auburn Hills shall invoice its costs of inspection of the abandonment to Rochester Hills and Rochester Hills shall remit payment within 30 days. Auburn Hills reserves the right to require customer to disconnect from Auburn Hills' sanitary sewer if and when Rochester Hills makes sanitary sewer service available to the Property, and to discontinue sanitary sewer service to the Property upon customer's failure to disconnect pursuant to this paragraph. Auburn Hills shall invoice Rochester Hills for all costs related to the discontinuance of sanitary sewer service to the Property and Rochester Hills shall remit payment within 30 days.

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10. Auburn Hills reserves the right to discontinue sanitary sewer service to the Property and terminate this Agreement after giving both Rochester Hills and Customer thirty (30) days notice, in writing, of its intention to do so, because of the failure of either Rochester Hills or Customer to fulfill any obligations or conditions provided in this Agreement. The discontinuance of sanitary sewer service for such cause shall not release either Rochester Hills or Customer from any obligation to pay any and all bills due in accordance with this Agreement. In the event Auburn Hills does require Customer to disconnect from its sanitary sewer under this paragraph or paragraph 9, Auburn Hills will not be obligated to reimburse or repay either Rochester Hills or Customer for costs incurred by Rochester Hills or Customer as the result of disconnection from Auburn Hills sanitary sewer system or connection to Rochester Hills' system.

11. Auburn Hills shall use reasonable diligence to provide continuous, uninterrupted sanitary sewer service to Customer, but if the sewer service is interrupted due to maintenance, repair, replacement or changes to the sewer system; failure or defective condition of the sewer; or for any other reason that is unforeseen or beyond the reasonable control of Auburn Hills, neither Auburn Hills nor Rochester Hills shall be liable to Customer for any damages resulting from Auburn Hills' interruption or failure to provide sanitary sewer service, but all parties shall be subject to any order of a court of competent jurisdiction requiring specific performance.

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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 Property.

14. This Agreement remains subject to cancellation in the event a court of competent jurisdiction restricts or limits Auburn 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 portion or 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 indefinitely, until terminated as herein provided.

17. This Agreement constitutes the full agreement of the parties. 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.

CITY OF ROCHESTER HILLS

08/30/2006

By: _____
Edward Morawski

By: _____
Bryan K. Barnett, Mayor

By: _____
Annette Morawski

By: _____
Jane Leslie, Clerk

CITY OF AUBURN HILLS

By: _____
Vito A. Pampalona

By: _____
Mari Harvey-Edwards, Mayor

By: _____
Angela D. Pampalona

By: _____
Linda F. Shannon, Clerk

STATE OF MICHIGAN
COUNTY OF OAKLAND

The foregoing instrument was acknowledged before me this ___ day of _____,
20__ by Edward and Annette Morawski.

_____, 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 Vito A. and Angela D. Pampalona.

_____, Notary Public
Oakland County, Michigan

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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 _____, 20__, by Mari Harvey-Edwards, Mayor and Linda F. Shannon, Clerk, of the City of Auburn Hills, on behalf of the City.

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

Drafted by:

Upon recording return to:

John D. Staran, Esq.
4190 Telegraph Rd., Ste 3000
Bloomfield Hills, MI 48302-2082

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