

Sewer
H/11th
SEWER SERVICE AGREEMENT
(H/11th Street Sewer)

City of Fulton

and

Town of Granby

SS 2

*See SFC (atty)
letter 4/16/09
(last page)*

This sets forth the Sewer Service Agreement made as of December 18, 2007 by and between the City of Fulton, a New York municipal corporation with offices at 141 North First Street, Fulton, New York ("Fulton") and the Town of Granby, a New York municipal corporation, with offices at 820 County Route 8, Fulton, New York ("Granby").

RECITALS

WHEREAS, Fulton has entered into a sewer service contract with Granby, to provide sewage treatment for the Granby Sewer District H/11th Street Sewer as described in the records of the Town of Granby.

WHEREAS, the parties represent and warrant that each has the power and authority to bind itself to the provisions hereof, and has taken or will take all action required to authorize and perform its obligations under this Agreement including acquisition of lands, easements and rights of way, construction of facilities, compliance with the New York State Environmental Quality Review Act and approvals, certifications and permits required by all necessary Federal, State and Local agencies.

WHEREAS, Granby desires to connect to and receive sewer services from the Fulton sewer system upon the terms set forth herein.

WHEREAS, Fulton and Granby are each authorized to enter into this Agreement by resolutions dated Dec. 11, 2007 and Dec. 12, 2007 respectively, certified copies of which are attached as Exhibits "B" and "C".

AGREEMENT

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

ARTICLE I DEFINITIONS

Section 101. Defined Terms. As used or referred to in this agreement, unless a different meaning clearly appears from the context:

- (a) The term "Industrial Wastes" shall have the meaning given or ascribed to such term under the Federal Water Pollution Control Act, as amended;
- (b) The terms "Sewage", "Domestic Sewage" and "Normal Sewage" shall have the same definitions and meaning as provided in City of Fulton Charter and Code, Chapter 137, entitled: Sewers. (Exhibit "D")

ARTICLE II FULTON FACILITIES

Section 201. Facilities. Fulton will provide sewer service as follows:

- (a) Intentionally Omitted.
- (b) sufficient capacity to receive and treat sewage from the Town of Granby Sewer District H/11th Street Sewer, as described in the records of the Town of Granby.
- (c) sewer service meeting all applicable Federal and State standards presently in effect and as the same may be amended during the term of this Agreement.

Section 202. Point of Delivery. Fulton shall receive sewage from Granby via a dedicated sewer pipe at the location described in the records of the Town of Granby and as determined by the coordinated design of the parties' engineers.

Section 203. Metering. Fulton shall install a meter at each service, in accordance with the City of Fulton Charter and Code, Section 173-17 Entitled "Meters" exclusively to measure the volume of water delivered by Fulton. Fulton agrees to read and test said meters and provide copies of said readings to Granby upon request by Granby.

Section 204. Granby Facilities. The design and construction of all Granby facilities shall have been reviewed.

Section 205. Granby Service to Others. To insure adequate capacity to serve existing users, Granby shall not permit the use of its sewer system for service to other municipalities or sewer districts without the prior written consent of Fulton.

Section 206. Rules and Regulations. Granby shall comply with all local laws and ordinances in accordance with the City of Fulton Charter and Code, including schedules of charges, in effect or promulgated by Fulton with respect to the operation of this sewer service, including amendments made thereto from time to time.

Section 207. Upgrade of Fulton Facility. In the event it shall be necessary, in Fulton's sole discretion, to upgrade its sewer service facility in capacity, process or otherwise, based upon governmental order or regulation or upon current engineering practice, the annual debt service on the capital cost of such upgrade shall be included in the annual Fulton average unit rate per 1000 gallons. If such upgrade is necessitated by a major development in either Granby or Fulton, the cost of such upgrade shall, to the extent permitted by law, be charged to the developer.

Section 208. Sewer Use Legislation. Granby shall adopt appropriate legislation governing the use of sewers within Granby. This legislation shall incorporate the inspection, testing and pretreatment requirements set forth in the City of Fulton Charter and Code, Chapter 137. 77

Section 209. Hookup Approval. Subsequent to the commencement of service by Fulton to Granby under this Agreement, Granby shall submit to Fulton for approval, all future sewer hookup permit applications.

**ARTICLE III
OPERATION OF THE SYSTEM**

Section 301. Operation. Fulton shall own, operate and maintain all facilities required to obtain, receive and treat sewage from Granby's point of connection, as described in the records of the Town of Granby, Fulton shall use reasonable diligence to provide regular and uninterrupted sewer service.

Section 302. Limitation on Special Wastes. Granby shall be subject to the applicable and reasonable standards of quantity and quality established by the City of Fulton Charter and Code, Chapter 137.

**ARTICLE IV
TERM**

Section 401. Term. The term of this agreement shall be twenty-five (25) years from the date hereof.

**ARTICLE V
CHARGES AND PAYMENT**

Section 501. Annual Charge. Sewer rates shall be based upon water usage of each property served. The total water volume, as metered quarterly at the individual meter, or water provided to each property quarterly, shall be billed times the rate per 1000 gallons charged by the City of Fulton at the same rate charged to City of Fulton users. In addition to the quarterly usage, other charges associated with this service shall be billed quarterly by the City of Fulton, at the same rate charged to the City of Fulton users.

Section 502. Payment. Fulton shall read all meters in accordance with their meter-reading schedule for Billing Cycle District 1 to determine the volume of water delivered to Granby in the previous quarter and charge properties for sewer quarterly service computed in accordance with Section 301 above. All sewer bills are payable on or before the 20th day after

the original billing date to the City of Fulton Sewer Department at the Municipal Building.

Section 503. Adjustments. Granby shall be entitled to the proportionate benefits and share the proportionate burdens occasioned by adjustments made in charges by Fulton.

Section 504. Guarantee of Payment. Annually, in the month of December, the City of Fulton Sewer Department shall provide the Town of Granby with a list of names and addresses of the owners of all real property on which there is a bill for sewer charges which have remained due and unpaid, in whole or in part, for a period of 90 calendar days from the date of billing. Annually, on or before December 31, the Town of Granby will forward payment equal to that of all unpaid charges provide by the City as referenced above. Granby agrees, represents and warrants that it shall properly and lawfully levy user charges and/or assess real property and improvements within Granby and levy a tax thereon in sufficient amount in each year during the term of this Agreement so that sums to be paid hereunder shall be duly provided and paid within such years. The tax and unpaid user charges later taxed shall be collected by Granby in accordance with procedures under the New York Real Property Tax Law.

ARTICLE VI INSURANCE - LIABILITY

Section 601. Insurance.

- (a) Granby will self-insure or at all times maintain with responsible insurers insurance satisfactory to Fulton against loss or damage to Fulton and its facilities for public or other liability to the extent not less than that reasonably necessary to protect the interest of Fulton and will at all times maintain all insurance reasonably required to indemnify and save harmless Fulton against all liabilities, judgments, costs, damages, expenses and attorney's fees for loss, damage or injury to persons or property arising in any way from the operation of this Agreement. Evidence of such insurance coverage, satisfactory to Fulton, shall be provided to Fulton prior to the commencement of service hereunder and at any time thereafter upon request by Fulton.
- (b) Fulton will self-insure or at all times maintain with responsible insurers

insurance satisfactory to Granby against loss or damage to Granby and its facilities for public or other liability to the extent not less than that reasonably necessary to protect the interest of Granby and will at all times maintain all insurance reasonably required to indemnify and save harmless Granby against all liabilities, judgments, costs, damages, expenses and attorney's fees for loss, damage or injury to persons or property arising in any way from the operation of this Agreement. Evidence of such insurance coverage, satisfactory to Granby, shall be provided to Granby prior to the commencement of service hereunder and at any time thereafter upon request by Granby.

Section 602. Liability. Fulton shall use reasonable diligence to provide the regular uninterrupted delivery of sewer from Granby to Fulton, but shall not be liable to Granby for damages, breach of contract, or otherwise, for failure, suspension, diminution, or other variations of service occasioned by any cause beyond the control of Fulton. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, riots, civil disturbances, quarantine, restrictions, inability to obtain equipment or supplies, strikes, or failure or breakdown of facilities. Granby will accept and cooperate in such sewer measures as Fulton may, by reason of restricted ability to receive sewage, require, if also applicable to Fulton residents.

ARTICLE VII MAINTENANCE AND REPAIR

Section 701. Maintenance and Repair of Granby Sewer Lines. Upon completion of the sewer lines, the responsibility for the cost of the repair and maintenance of the Granby sewer lines, shall be the sole responsibility of the City of Fulton. Although Fulton shall be obligated to effect such repair or maintenance, Fulton shall have the right to enter upon property in Granby for the purpose of inspecting, replacing and/or repairing the sewer lines.

ARTICLE VIII MISCELLANEOUS

Section 801. Effect of Breach. Failure on the part of either party in any instance or

under any circumstances to enforce any obligation assumed by the other party or imposed upon it by this Agreement or by law shall not constitute a waiver thereof in such instance or in future such instances nor relieve the both parties from fully performing all obligations required of it under this Agreement.

Section 802. Certain Acts Not a Waiver. Acceptance by Fulton into its facility of sewage or other wastes in volume or at a rate or with characteristics exceeding or violating any limit or restriction provided for by or pursuant to this Agreement in one or more instances or under one or more circumstances shall not constitute a waiver of such limit or restriction or of any of the provisions of this Agreement and shall not in any way obligate Fulton thereafter to accept or make provision for sewage or wastes delivered into its facility in a volume or at a rate or with characteristics exceeding or violating any such limit or restriction in any other instance or under any other circumstances.

Section 803. Binding Effect of Agreement. This Agreement shall be in full force and effect and be legally binding upon the parties, their respective successors and assigns, agents, employees and representatives and contains the entire Agreement between the parties. It may be modified or amended only by the written agreement thereto, signed by the parties.

Section 804. Severability. Each provision of this Agreement is severable from the others, so that if any provision is held to be illegal or invalid for any reason whatsoever, such illegal or invalid provision shall be severed from this Agreement which shall otherwise remain in full force and effect.

Section 805. Execution in Counterparts. This Agreement may be executed in any number of counterparts each of which shall be executed by Fulton and Granby and all of which shall be regarded for all purposes as one original and shall constitute and be but one and the same.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year set forth below.

CITY OF FULTON
By *Daryl C. Hayden*
DARYL C. HAYDEN, Mayor

TOWN OF GRANBY
By *Kathy Duncan*
KATHY DUNCAN, Supervisor

STATE OF NEW YORK)
COUNTY OF OSWEGO) ss.:

On this 19th day of December, 2007, before me personally came Daryl C. Hayden, to me known, who being duly sworn, did depose and say that he is the Mayor of the City of Fulton, a New York municipal corporation described in and which executed the foregoing instrument, and that he signed his name thereto by order of the City of Fulton Council.

Joseph R. Tetrow
Notary Public

JOSEPH R. TETROW
NOTARY PUBLIC, State of New York
No. 01TE4344612
Qualified in Oswego County
Commission Expires 8/31/09

STATE OF NEW YORK)
COUNTY OF OSWEGO) ss.:

On this 17 day of December, 2007, before me personally came Kathy Duncan, to me known, who being duly sworn, did depose and say that she is the Town Supervisor of the Town of Granby, a New York municipal corporation described in and which executed the foregoing instrument, and that she signed his name thereto by order of the Town of Granby Town Board.

Ruth A. Sheldon
Notary Public

RUTH A. SHELTON
Notary Public, State of New York
No. 01SH5044221
Qualified in Oswego County
Commission Expires May 22, 2011