

Granby "Sewer"

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Granby (Fulton), NY
Store #3332-00
Exhibit D-2

SEWER SERVICE AGREEMENT

City of Fulton
and
Town of Granby

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

This sets forth the Sewer Service agreement (the "Agreement") made as of January 5, 2006⁷ by and between the City of Fulton, a New York municipal corporation with offices at 141 South First Street, Fulton, New York ("Fulton") and the Town of Granby, a New York municipal corporation with offices at 820 County Route 8, Granby, New York ("Granby") (collectively referred to herein as the "Parties").

RECITALS

WHEREAS, Fulton owns and operates a sewer service facility serving its residents through a collection system and a waste water treatment plant, under permit from the New York State Department of Environmental Conservation ("DEC"), with sufficient current capacity to accommodate the sewage disposal requirements of the sewer service facility to be constructed and operated by Granby as outlined in the Sewerage Connection Site Plan attached hereto as Exhibit "A".

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 discharge wastewater into the Fulton sewer service facility upon the terms set forth herein.

WHEREAS, Fulton and Granby are each authorized to enter into this Agreement by resolutions dated January 3, 2006 and Oct 11, 2006 respectively, certified copies of which are attached as Exhibits "B" and "C".

AGREEMENT

NOW THEREFORE, in consideration of the foregoing premises and 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 shall provide to Granby the following rights:

- (a) The right to construct a connection, between Fulton's sewer system and Granby's sewer system at the location as set forth on the Sewerage Connection Site Plan, attached hereto as Exhibit "A", as well as all ancillary and incidental rights thereto. The construction of the connection shall be paid for by Wal-Mart Corporation (a third-party developer) and supervised by Fulton.
- (b) With respect to that part of Fulton's sewer line as defined in the plans and specifications for the Town of Granby, Wastewater Collection Facilities - as approved by the New York State Department of Environmental

Conservation on _____, 2006, and as further described in Exhibit "A"; the right to:

- (i) Capacity, at the rate of not to exceed 18,000 gallons average daily flow, to receive and treat the domestic sewage flows from Granby possessing Normal Sewage characteristics as defined by Chapter 137 of the City of Fulton Charter and Code.
- (ii) A treatment process meeting all applicable Federal and State environmental quality, safety and discharge standards during the term of this Agreement.

Section 202. Point of Delivery. Granby's sewage shall be delivered to Fulton through the Granby sewer as described herein and as further set forth in Exhibit "A" and as determined by the coordinated design of the parties' engineers.

Section 203. Metering and Sampling. Volume of wastewater produced shall be determined by metered water consumption. However, wastewater sampling and analysis shall be the responsibility of Fulton. Fulton shall collect and analyze samples for five-day Biochemical Oxygen Demand and Totals Suspended Solids, once every two weeks for a period of six months following commencement of acceptance of Granby sewage by Fulton. At the end of this initial six-month period, the frequency of testing will be determined by Fulton. All laboratory analysis shall be performed by a New York State Department of Health Certified Testing Laboratory. Fulton shall submit copies of laboratory test results to Granby.

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

Section 205. Granby Service to Others. To insure adequate capacity to serve existing users, Granby shall not permit the use of its wastewater 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 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. Granby Operations. Granby shall operate and maintain its system in a manner which will not interfere with the normal operation and maintenance of the Fulton system.

Section 208. 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 209. Adjustment of Capacity. Fulton by this Agreement reserves for Granby 18,000 gallons average daily flow from the total capacity of the Fulton waste water treatment plant. This reservation may be increased or reduced based upon experience and current engineering practices, and as mutually agreed upon by both parties.

Section 210. 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 211. 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. 77

ARTICLE III OPERATION OF THE SYSTEM

Section 301. Operation. Fulton shall operate and maintain all facilities required to receive, transport and treat the sewage delivered hereunder at the point of delivery as outlined in

Exhibit "A". It shall use reasonable diligence to provide regular and uninterrupted sewage 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 GRANBY

Section 501. Charges and Payment. The total volume, as metered quarterly at the individual water meter, or wastewater discharged by each property quarterly shall be billed times the rate per 1000 gallons charged by the City of Fulton at the same rate charged to the City of Fulton users. In addition to the quarterly usage, other charges (including operation and maintenance charges) associated with this service shall be billed quarterly by the City of Fulton as outlined in Article 9, Chapter 137-53 of the City of Fulton Charter and Code, 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 wastewater discharged to Fulton in the previous quarter and charge properties for such quarterly service computed in accordance with Section 501 above. All sewer bills are payable on or before the 20th day after the original billing date to the City of Fulton Water Department at the Municipal Building.

Section 503. Guarantee of Payment. Annually, in the month of December, the City of Fulton Water Department shall provide the Town of Granby with a list of names and addresses

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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 provided 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 acceptance, transportation and treatment of sewage from Granby, 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 disturbance, quarantine restrictions, inability to obtain equipment or supplies, strikes, or failure or breakdown of facilities.

ARTICLE VII
MAINTENANCE AND REPAIR

Section 701. Maintenance and Repair of Granby Sewers. Upon completion of the sewer system, the responsibility for the cost of the repair and maintenance of the Granby sewer system, 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 system.

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

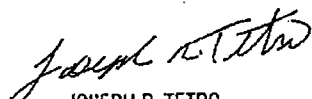
under one or more circumstances shall not constitute a waiver of such limit or restriction or of any of the provisions of this Agreement and shall not in any way obligate Fulton thereafter to accept or make provision for sewage or wastes delivered into its facility in a volume or at a rate or with characteristics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

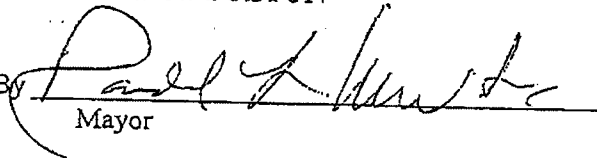
Section 803. Binding Effect of Agreement. This Agreement shall be in full force and effect and be legally binding upon the parties, their respective successors and assigns, agents, employees and representatives and contains the entire agreement between the parties. It may be modified or amended only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

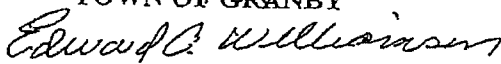
Section 804. Severability. Each provision of this Agreement is severable from the others, so that if any provision is held to be illegal or invalid for any reason whatsoever, such illegal or invalid provision shall be severed from this Agreement which shall otherwise remain in full force and effect.

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.


JOSEPH R. TETRO
NOTARY PUBLIC, State of New York
No. 01TE494612
Qualified in Oswego County
Commission Expires 8/31/09

CITY OF FULTON
By 
Mayor

TOWN OF GRANBY


October 11, 2006

Resolution #68-2006 was made by Councilor Nowyj, seconded by Councilor Richardson as follows:

WHEREAS, the Town of Granby has been involved in discussion with the City of Fulton, in anticipation of entering into inter-municipal agreements whereby the City of Fulton would provide water and sewer to a portion of the Town of Granby;

NOW, THEREFORE, BE IT RESOLVED THAT THE Town of Granby intends to form a water district and a sewer district to serve Hannibal Street and the areas adjacent to the intersection of New York State Route 3 and County Route 3; and

IT IS FURTHER RESOLVED THAT upon formation of said districts, the Town of Granby, on behalf of said districts, intends to enter into inter-municipal agreements with the City of Fulton to provide water and sewer services to the said respective districts; and

IT IS FURTHER RESOLVED THAT the above-stated resolutions are contingent upon the developers of the Wal-Mart project in the area of the intersection of New York State Route 3 and County Route 3 securing all necessary real estate rights for the project, and entering into all necessary construction agreements for the project.

Councilor Richardson	aye	Councilor Nowyj	aye
Councilor Edwards	aye	Supervisor Duncan	aye