

73-A-1

175 Fore River Parkway

IH to IH Contract Zone

Mercy Hospital

on spreadsheet

**GREATER PORTLAND DEVELOPMENT GROUP**

18 Carroll Street  
Falmouth, Maine 04105  
TEL: (207) 781-2071  
FAX: (207) 781-2729

OK 9-12-01  
[Signature]

**FAX**

TO: Jonathan Spence

FROM: Karen Walsh

FAX #: 756-8258

PAGES TO FOLLOW: 2

DATE: 8/27/01

RE: Cost Estimate of Improvements - Stroudwater

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COMMENTS: We have completed the Cost Estimate of Improvements form. Peoples Bank is prepared to issue a Letter of Credit in this amount when necessary. Please let me know if you require any additional information. Thanks.

Department of Planning and Urban Development  
SUBDIVISION/SITE DEVELOPMENT

COST ESTIMATE OF IMPROVEMENTS TO BE COVERED BY PERFORMANCE GUARANTEE

Date: 8/27/01

Name of Project: "River's Edge" subdivision

Address/Location: Congress Street, Portland

Developer: Strandwaters Farms Assoc. / Peter Kennedy

Form of Performance Guarantee: \_\_\_\_\_

Type of Development: Subdivision  Site Plan (Major/Minor) \_\_\_\_\_

TO BE FILLED OUT BY THE APPLICANT:

Item	PUBLIC			PRIVATE		
	Quantity	Unit Cost	Subtotal	Quantity	Unit Cost	Subtotal
1. STREET/SIDEWALK <i>including gravel and paving</i>						
Road	<u>3000'</u>	<u>38</u>	<u>\$ 114,000</u>			
Granite Curbing	<u>70</u>	<u>36</u>	<u>2,520</u>			
Sidewalks	<u>960 sq. yd.</u>	<u>18</u>	<u>17,280</u>			
Esplanades	<u>12,000 sq. ft.</u>	<u>1.80</u>	<u>21,600</u>			
Monuments						
Street Lighting	<u>2</u>	<u>600</u>	<u>1,200</u>			
Street Opening Repairs			<u>300</u>			
Other						
2. EARTH WORK						
Cut				<u>3000</u>	<u>5</u>	<u>15,000</u>
Fill				<u>1000</u>	<u>9.50</u>	<u>9,500</u>
3. SANITARY SEWER						
Manholes				<u>8</u>	<u>1950</u>	<u>15,600</u>
Piping				<u>2794 LF</u>	<u>21</u>	<u>58,674</u>
Connections				<u>2</u>	<u>7500</u>	<u>15,000</u>
Main Line Piping						
House Sewer Service Piping						
Pump Stations						
Other						
4. WATER MAINS				<u>3190 LF</u>	<u>21</u>	<u>66,990</u>
5. STORM DRAINAGE						
Manholes				<u>5</u>	<u>1950</u>	<u>9,750</u>
Catchbasins				<u>15</u>	<u>2050</u>	<u>30,750</u>
Piping				<u>1670 LF</u>	<u>29</u>	<u>48,430</u>
Detention Basin						
Stormwater Quality Units				<u>2</u>	<u>19,000</u>	<u>38,000</u>
Other <i>Underdrain</i>				<u>560</u>	<u>12</u>	<u>10,320</u>

6. SITE LIGHTING	_____	_____	_____	_____	_____	N/A
7. EROSION CONTROL	_____	_____	_____	_____	_____	_____
Silt Fence	_____	_____	_____	_____	_____	3,500
Check Dams	_____	_____	_____	_____	_____	1,500
Ripe Inlet/Outlet Protection	_____	_____	_____	290 sq. yds	28	8,120
Level Lip Spreader	_____	_____	_____	_____	_____	_____
Slope Stabilization	_____	_____	_____	500 sq. yds	3	1,500
Geotextile	_____	_____	_____	_____	_____	_____
Hay Bale Barriers	_____	_____	_____	500	2	1,000
Catch Basin Inlet Protection	_____	_____	_____	_____	_____	_____
8. RECREATION AND OPEN SPACE AMENITIES	_____	_____	_____	_____	_____	_____
9. LANDSCAPING (Attach breakdown of plant materials, quantities, and unit costs)	_____	_____	_____	8' white pines	9	3,000
10. MISCELLANEOUS	_____	_____	_____	_____	_____	_____
TOTAL:	_____	_____	_____	_____	_____	\$ 493,534.00
GRAND TOTAL:	_____	_____	_____	_____	_____	\$ 493,534.00

INSPECTION FEE (to be filled out by the City)

	<u>PUBLIC</u>	<u>PRIVATE</u>	<u>TOTAL</u>
A: 2.0% of totals:	_____	_____	9870.68
<u>or</u>			
B: Alternative Assessment:	_____	_____	_____
Assessed by:	_____	_____	_____
	(name)	(name)	

TPA ASSOCIATES  
940 CONGRESS ST  
PORTLAND, ME 04102

TRAN MONICA R & DON V JTS  
481 WESTBROOK ST # 101G  
SOUTH PORTLAND, ME 04106

TREAT C STEPHEN  
217 VAUGHAN ST  
PORTLAND, ME 04102

TUNDRA ASSOCIATES  
15 LOWELL ST  
PORTLAND, ME 04102

TUNDRA ASSOCIATES  
% MAINE EYE CENTER  
15 LOWELL ST  
PORTLAND, ME 04102

TUNDRA ASSOCIATES  
C/O MAINE EYE CENTER  
15 LOWELL ST  
PORTLAND, ME 04102

UNION STATION LMT PARTNERSHIP  
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SCARBOROUGH, ME 04074

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WILLIAMS HOWARD G JR &  
ELLEN D WILLIAMS  
23 OAK LEDGE HILLS RD  
RAYMOND, ME 04071

WOODHEAD MARK A  
1043 CONGRESS ST  
PORTLAND, ME 04102

WORMALEE SAENGTONG  
921 CONGRESS ST  
PORTLAND, ME 04102

YANKOWSKY OSCAR M KW VET  
1021 CONGRESS ST  
PORTLAND, ME 04102

## NOTICE OF PUBLIC INFORMATIONAL/NEIGHBORHOOD MEETING

Please take notice that Mercy Hospital (through its affiliate Mercy Health System of Maine, Inc., 144 State Street, Portland, ME 04101, Tel.: 879-3000) intends to file an application with the Maine Department of Environmental Protection for Site Location of Development Act (38 M.R.S.A. §§ 481-490; DEP Regulations Chapters 371-377) and Natural Resources Protection Act (38 M.R.S.A. §§ 480-A to 480-Z; DEP Regulations Chapters 305-359) permits for a proposed project in Portland, Maine.

**Description:** The proposed project will be constructed on approximately 42 acres of land located along the Fore River, west of St. John Street. The Fore River Site is bounded by the river and railroad tracks. The Cumberland County Jail is located northeast of the site. The Merrill Marine Terminal is located south of the site, and a number of St. John Street businesses are located to the east of the site.

The Hospital intends to initially construct a medical office building and an ambulatory care center on the site, to be followed by construction of an adjoining hospital facility. Later phases may include additional supporting amenities such as a day care center, physical fitness facilities, a teaching center, and additional medical office buildings, all in a campus setting. The project will result in the construction of parking facilities, access drives, utilities, and other site amenities. Access to the site will be primarily from a new connector roadway to be constructed by the Maine Department of Transportation between the I-295 Exit 5 interchange and the Veterans Memorial Bridge.

In addition to the DEP applications, Mercy has filed an Application for Zoning Amendment with the City of Portland, with the intention of entering into a contract zone agreement with the City.

Mercy will conduct a **PUBLIC INFORMATIONAL MEETING** at 7 p.m. on September 6, 2001 at the Board Room of the Portland Metro at 114 Valley Street in Portland. Representatives for the Hospital will explain the project and will provide an opportunity for public questions and comments. You are invited to attend the meeting.

Written comments or inquiries concerning this project are encouraged and can be directed to:

Larry Plotkin  
The Plotkin Company LLC  
32 Buttonwood Lane  
Portland, ME 04102  
(207) 775-3656

# PIERCE ATWOOD

January 11, 2002

MATTHEW D.  
MANAHAN

DIRECT  
207.791.1189

E-MAIL  
MManahan@  
PierceAtwood.com

Penny A. Littell, Esq.  
City of Portland  
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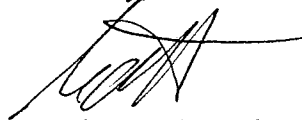
RE: Mercy Hospital

Dear Penny:

Enclosed please find an original of the Contract Zone Agreement between the City of Portland and Mercy Hospital, executed by Howard Buckley on behalf of Mercy.

Penny, thanks very much for all your assistance and hard work on this project. Also, thanks to Alex, Sarah, and Jonathan for their hard work and creative thinking.

Sincerely,



Matthew D. Manahan

MDM/dcu  
Enclosure

cc: Alex Jaegerman (w/enclosure)  
Sarah Hopkins (w/enclosure)  
Jonathan Spence (w/enclosure)

One Monument Square  
Portland, ME 04101-1100  
207.791.1100 v  
207.791.1350 f

77 Winthrop Street  
Augusta, ME 04330-5552  
207.622.6311 v  
207.623.9367 f

115 Court Street  
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Portsmouth, NH 03802-1009  
603.433.6300 v  
603.433.6372 f

Six Harris Street  
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978.465.9945 f

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& PAUL J JTS  
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CONGRESS STREET ASSOCIATES LLC  
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YESSENIA E JTS  
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COOMBS BLAINE L & JEANNE JTS  
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CORBIN JEFFREY P  
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DELIVERANCE CENTER  
1008 CONGRESS ST  
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DIBIASE KATHLEEN E  
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DICKSON DANIEL B  
24 GILMAN ST  
PORTLAND, ME 04102

DINARDI WILLIAM S &  
DIANE E JTS  
36 FREDERIC ST  
PORTLAND, ME 04102

DINSMORE REGINA  
10 HUNTRESS ST  
PORTLAND, ME 04102

DOMINIC REALI REALTY LLC  
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WOBURN, MA 01801

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HO DUC N &  
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HOWARD AIMEE  
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SOUTH PORTLAND, ME 04106

IGHANI FARAHMAND &  
MAHIN GHAYEBI-SEYSAN  
254 VALLEY ST  
PORTLAND, ME 04102

INHABITANTS OF THE COUNTY OF  
CUMBERLAND  
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PORTLAND, ME 04101

INN AT ST JOHN THE  
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PORTLAND, ME 04102

J WESTON WALCH PUBLISHER  
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PORTLAND, ME 04102

JACOBSKY ANTHONY M JR &  
BRIDGET A JTS  
1673 WESTBROOK ST  
PORTLAND, ME 04102

JK PROPERTIES INC  
1004 CONGRESS ST  
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JORDAN ROBERT K &  
NANCY H JTS  
1050 ISLAND AVE  
LONG ISLAND, ME 04050

JOY ROBERT E KW VET  
78 GILMAN ST  
PORTLAND, ME 04102

KAPOTHANASIS CONSTANTINE &  
EFFIE JTS  
70 SCOTT DR  
WESTBROOK, ME 04092

KARGAR MOHAMMAD I &  
SHAMAYEL JTS  
14 MUIRFIELD RD  
FALMOUTH, ME 04105

KELLEY PATRICK MICHAEL  
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MARY A JTS  
PO BOX 617  
PORTLAND, ME 04104

KELLY PETER W III &  
MARY A JTS  
PO BOX 617  
PORTLAND, ME 04104

KEY BANK OF MAINE  
ONE CANAL PLAZA  
PORTLAND, ME 04101

KILMARTIN JAMES P &  
KATHERINE B JTS  
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PORTLAND, ME 04102

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WILLIAM D JTS  
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YARMOUTH, ME 04096

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LOGAN CONSUELO S  
26 WISTLER LANDING  
SCARBOROUGH, ME 04074

LYDON WARREN D  
47 SUNSET RD HIGHLAND LAKE  
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MAINE MEDICAL CENTER  
22 BRAMHALL ST  
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MAKOT PECH MARKET LLC  
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CAPE ELIZABETH, ME 04107

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WILMA L JTS  
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THANH MON THI DANG JTS  
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CAPE ELIZABETH, ME 04107

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MARILYN R M RASMUSSEN JTS  
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ROMANO RALPH III  
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CAPE ELIZABETH, ME 04107

ROUSE LEOLA G  
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MARTINEZ, CA 94533

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SAWYER JANE N  
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SAY LOY & KEV VORN JTS  
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PORTLAND, ME 04102

SEA OTTER 12G LIMITED LIABILITY  
COMPANY  
39 COVESIDE LN  
YARMOUTH, ME 04096

SEA OTTER 16G LIMITED LIABILITY  
COMPANY  
39 COVESIDE LN  
YARMOUTH, ME 04096

SEA STREET PROPERTIES INC  
5 C ST  
PORTLAND, ME 04102

SELLERS ROLAND J WWII VET &  
HELEN E JTS  
45 BURNHAM ST  
PORTLAND, ME 04102

SEM RIN  
15 HUNTRESS ST  
PORTLAND, ME 04102

SEV REALTY INC  
34 NORTHWOOD DR  
PORTLAND, ME 04103

SEVERINO ASSOCIATES LIMITED  
LIABILITY COMPANY  
7 CRESTWOOD DR  
WESTBROOK, ME 04092

SITEMAN RICHARD &  
LORAIN A LOWELL JTS  
28 FOREST ST  
PORTLAND, ME 04102

SKINNER GABRIEL M  
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SPARKS ALAN E  
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SPECTOR ELIZABETH L  
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ST JOHN LEASING CORP  
202 US ROUTE 1 # 362  
FALMOUTH, ME 04105

STEVENS LAWRENCE L & VIRGINIA  
& THOMAS S HEALD JTS  
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PORTLAND, ME 04102

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BONNEVA A JTS  
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STEVENS VIRGINIA &  
ELEANOR S HEALD ETAL  
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STODDARD LAWRENCE &  
CLAUDIA JTS  
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STORAGE REALTY CORP  
980 FOREST AVE # 102  
PORTLAND, ME 04103

THITHUAN URAIVAN  
1525 CROWFOOT CIR SVE #202  
HOFFMAN ESTATES, IL 60194



STATE OF MAINE  
 DEPARTMENT OF TRANSPORTATION  
 16 STATE HOUSE STATION  
 AUGUSTA, MAINE  
 04333-0016

ANGUS S. KING, JR.  
 GOVERNOR

JOHN G. MELROSE  
 COMMISSIONER

**Developer:** Mercy Health Systems of Maine  
**Location:** Between the Fore River and St. Johns Street on the proposed I-295 connector in Portland  
**Project:** Ambulatory Care Unit, Hospital and Medical Offices  
**Identification Number:** Div. 06-00035-A-N

Pursuant to the provision of 23 M.R.S.A. § 704-A and Chapter 305 of the Department's Regulations, the Department of Transportation has considered the application of Mercy Health Systems of Maine with supportive data, agency review and other related materials on file.

**Project Description**

The applicant proposes to construct a 60,000 square foot Ambulatory Care Unit, 75,000 square foot Medical Office Building, and a 300,000 square foot hospital with 250 beds. The development is expected to generate 784 passenger car equivalent trips in the a.m. peak hour of adjacent street, 687 passenger car equivalent trips in the p.m. peak hour of adjacent street and 990 passenger care equivalent trips in the p.m. peak hour of generator.

**Findings**

Based on the findings of fact, the Department approves the Traffic Movement Permit application Mercy Health Systems of Maine, subject to the following conditions:

**MITIGATION**

**On Site Mitigation**

A. The project will provide two driveways onto the proposed Commercial Street Extension (CSE). The northerly most driveway will provide two entrance lanes and a single right turn only exit lane with divisional island to channelize the right turning traffic from the site. The southerly driveway will provide a single right turn in only entrance lane with channelizing divisional island and separate left and right turn exit lanes. A third driveway will be provided toward the rear of the site for emergency and service vehicles only. An existing access drive to the correctional facility toward the back of the site will be relocated to align with the third proposed driveway.

B. Mercy shall provide and erect the necessary signs at each of the two driveways to convey the prohibited turning movements.

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C. A right turn lane 100 feet in length plus appropriate taper shall be provided on the CSE for right turning vehicles into the southerly site driveway.

D. A left turn lane 200 feet in length plus appropriate taper and deceleration length shall be provided on the CSE to provide for queued left turning vehicles into the site at the northerly driveway.

E. Underground conduit shall be installed at the intersection of the CSE / southerly site driveway for potential future signalization.

F. Provide a dual use pole with mast arm over the CSE at the southerly site driveway to support intersection lighting, a pedestrian actuated flasher, and a NO LEFT TURN symbol sign for southbound vehicles. Mercy shall be responsible for providing and installing the entire assembly with associated pedestrian actuated push button.

G. Mercy shall provide overhead lighting at the CSE / northerly site driveway intersection and at the emergency entrance at the rear of the site.

#### **Off Site Mitigation**

H. An off ramp to the site will be provided on the westerly side of the CSE to provide access to the site for southbound vehicles which would typically be accommodated via a left turn movement on the CSE at the southerly driveway. Left turns into the site off the Connector Road at the southerly driveway will be prohibited.

I. Provide overhead lighting at the intersection of the CSE and the southbound Mercy off ramp.

J. Underground conduit shall be installed at the intersection of the CSE / I-295 Northbound Off Ramp for potential future signalization.

K. Mercy Medical Facilities shall place \$150,000 in an escrow account for traffic signals and potential signal system interconnection for the intersections of the CSE with the southerly driveway and the I-295 northbound off ramp. These escrow accounts shall be provided prior to construction of each development phase and held until a signal warrant analysis is completed by Mercy 6 months after the opening of each phase. If the escrow money is not used within 12 months of the last development phase or ten years of the escrow agreement date (whichever comes first), the money and all accrued interest shall be returned to Mercy Health Systems.

L. Stevens Avenue (at the intersection with Congress Street) shall be restriped to reflect a left and a left/through/right turn lane. Congress Street shall be restriped to provide for receiving the Stevens Avenue dual left turn lanes. The City recognizes and accepts the responsibility for improvements necessary at this intersection to allow the intersection to operate at acceptable levels of service. This work shall be done within three years of the hospital opening.

M. The applicant shall provide the support necessary, such as signal equipment and/or monetary support, to ensure the timing and phasing indicated in the Traffic Impact Study, dated December 2001 and with associated supplements, can be realized in the field at the study area intersections.

N. The applicant shall place \$ 83,000 dollars in escrow to be applied toward unspecified future improvements for the highway overlap section of Route 22 and Route 114 in the towns of Scarborough and Gorham. If the escrow money is not used within ten years of the escrow agreement date, the money and all accrued interest shall be returned to Mercy Health Systems.

O. Mercy Health Systems of Maine shall provide a \$ 5,000 contribution to the City for construction of a traffic signal at the intersection of Commercial Street and Park Street. The City has recognized forecast queues may exceed existing roadway lengths and has accepted responsibility for future improvements if required. All details associated with this payment are between the City of Portland and Mercy Health Systems and shall be built within within three years of development opening if warranted.

Signage (ground and overhead) and striping shall be in accordance with the Manual on Uniform Traffic Control Devices (MUTCD) and the Maine Department of Transportation Highway Design Guide.

Because the proposed project effects the state highway and drainage systems and requires improvement to that system, the applicant must obtain approval of the design plans and coordinate work through MeDOT's State Traffic Engineer, who can be reached at (207)-287-3775 in Augusta.

By:



Bruce A. Ibarguen, P.E.  
State Traffic Engineer

Date: 5-13-02

in section 14.1 if Purchaser has elected an early Closing Date pursuant to section 1.4, and (vi) real estate and ad valorem taxes not due and payable by the Closing Date (the "Permitted Encumbrances"), all subject to the provisions of section 5.4 below. For purposes of this agreement, "Encumbrance To Be Discharged" shall mean a mortgage or other voluntary monetary lien granted by Seller and any mechanics lien, but shall not include any lien or encumbrance arising out of a Violation.

5.2 If, on the Closing Date, there are any liens or encumbrances which Seller is obligated to cause to be paid or discharged in order to convey the title to the Premises as is herein provided to be conveyed, Seller may use any portion of the purchase price to satisfy the same.

5.3 Purchaser shall proceed promptly to have the title to the Premises examined by the Title Company and shall on or before July 1, 2001 deliver a full copy of the title report to Seller's counsel with a copy of any encumbrance that Purchaser believes to be an Encumbrance To Be Discharged.

5.4 If, on the Closing Date, title to the Premises shall be subject to mortgages, liens, encumbrances or objections, other than Permitted encumbrances, or if Purchaser shall have any other grounds, as set forth in this agreement, for refusing to close this transaction, and if Purchaser shall be unwilling to waive the same and to close this transaction without abatement of the purchase price or allowance of any kind, except as may otherwise be provided in this agreement, then, at Purchaser's election, Seller shall use reasonable efforts for up to thirty (30) days to remove, remedy or comply with such mortgages, liens, encumbrances, objections or other grounds. In such event, Seller shall be entitled to an adjournment of the Closing Date for a period not to exceed thirty days, and the Closing Date shall be adjourned to such date specified by Seller which is not beyond such thirty (30) day period. If Seller shall not have succeeded in removing, remedying or complying with such mortgages, liens, encumbrances, objections or other grounds, Seller shall give the Purchaser written notice thereof and Purchaser shall have ten (10) days from the mailing of such notice to elect by written notice to Seller to purchase the Premises, subject to such mortgages, liens, encumbrances, objections or other grounds, and to set the new Closing Date, which shall be not later than fifteen (15) days thereafter. If Purchaser shall then be unwilling to waive the same and to close this transaction without abatement of the purchase price or allowance of any kind, or if Purchaser elects not to have Seller use reasonable efforts to cure the deficiencies, this agreement shall be terminated and Purchaser shall be entitled to a return of its option payments as its sole and exclusive remedy.

5.5 At Seller's request, Purchaser shall enter into an agreement with Seller, if such facts shall be true, acknowledging that this agreement has terminated and is no longer enforceable by either party, provided that Purchaser has received back any deposits, together with any earnings thereon, to which Purchaser is entitled under the provisions of this agreement.

Notwithstanding anything to the contrary, if Purchaser shall default in Purchaser's performance hereunder, pursuant to which Seller terminates this agreement as provided in Section 17.1, then Seller shall be entitled to such agreement without return of such deposits.

## 6. *Time and Place of Closing.*

6.1 The Deed, the Bill of Sale and any other documents required in connection herewith, shall be delivered upon the receipt of the aforesaid payments and purchase money documents required by this agreement, at the office of Purchaser's attorneys, Pierce Atwood, One Monument Square, Portland, Maine, at 10:00 A.M. on the Closing Date specified in the Notice of Exercise, (the "Closing"), or at such other date, time or place as the parties shall mutually agree. Time is of the essence herein.

## 7. *Inspections; additional rights and obligations of Purchaser*

7.1 *Inspection and testing.* Purchaser and its representatives shall have the right, at all reasonable times, and from time to time, (and without unreasonably interfering with the tenants or



operation of the Premises), to inspect the Premises and to take measurements thereof for any purpose. Seller will cooperate with Purchaser to assist Purchaser in gaining such access. Purchaser's right of inspection shall include entry upon the Premises with its agents and their equipment for the purpose of making such environmental tests as Purchaser deems appropriate, provided that Purchaser shall be responsible for restoration of the Premises to its condition prior to making such tests, such obligation to restore to exist and continue if Purchaser shall not acquire the Premises for any reason other than Seller's default hereunder. Purchaser shall indemnify Seller for all loss, costs and damages resulting from Purchaser's inspection and testing; the foregoing indemnification shall survive the Closing or termination of this agreement. If such testing reveals a violation of law or regulation, Seller shall have no obligation to correct or remediate such violation or to make any adjustment to the purchase price; and Purchaser's sole right shall be to choose whether or not to exercise the Option.

7.2 *Purchaser's assumption of obligations.* If Purchaser exercises the Option or accepts the Deed, Purchaser shall thereafter defend and hold Seller and Seller's officers, employees, stockholders, agents and affiliates harmless from every claim, loss, cost, damage and expense (including attorneys fees) arising in connection with hazardous materials or Violations, regardless of the of the time or cause of the event giving rise to such claim; excepting only that Purchaser shall have no obligation to indemnify Seller from matters where a court of competent jurisdiction orders (after all appeals) that the Violation was caused by the willful action of Seller or that a hazardous substance was first discharged into the soil or groundwater of the Premises during the period that Seller or party in common ownership with Seller held title to the Premises. The foregoing exception does not include claims based on Seller's failure to remove or remediate substances already in the soil or groundwater, whenever discovered, or Seller's failure to carry out remedial actions ordered during its period of ownership.

7.3 *Approvals.* Purchaser shall have the right, at any time during the term of this Option, to seek zoning changes and any and all such other permits or approvals as Purchaser shall deem necessary or desirable in order to facilitate the development of the Premises; provided, however, that (a) all such actions shall be at the sole cost and expense of Purchaser; and (b) no such zoning change, contract zoning, or other approvals shall be effective if Purchaser does not acquire title to the Premises. Seller agrees to cooperate with Purchaser, at no cost or expense to Seller, in obtaining all such zoning changes, contract zone or other permits, approvals or consents, provided Seller shall have no obligation to cooperate or acquiesce in any proceeding which may adversely affect Seller's actual or permitted use of the Premises ("Adverse Impact"). Prior to delivering the Notice of Exercise, Purchaser shall not apply for a zoning change or permit or approval which would have an Adverse Impact, and Purchaser shall correct any proceeding (including, but not limited to withdrawal of its application) where the applicable government agency grants or proposes to grant an approval that would have an Adverse Impact. Purchaser shall keep Seller timely apprised of all such proceedings and shall provide copies of all such applications to Seller and such further documentation as Seller may reasonably request.

7.4 *Protection of access license.* Seller's present access to the Premises is across the premises of the Cumberland County jail, pursuant to a license granted by Cumberland County. Purchaser and its officers, employees and agents shall comply with the terms of said license and shall indemnify the Seller against any loss, cost or damage resulting from the revocation or limitation of said license arising out of Purchaser's violation of the license. Purchaser's obligations under this section shall survive the Closing or termination of the agreement.

7.5 *Seller's rights with respect to Purchaser's consultants.* Purchaser shall notify Seller of the identity of any engineer or consultant that Purchaser intends to engage for inspection of the premises and Seller shall have the right to state any objection that Seller may have to the use of such consultant. Seller shall have the right to review and comment on any draft report prepared by Purchaser's consultant before

P.D. Merrill, President  
Merrill Industries, Inc.  
601A Danforth Street  
Portland, Maine 04104  
Fax: 207-761-3782

with a copy by either first class mail or any of the foregoing delivery methods to:

John Achatz, Esq.  
61 Mount Vernon Street  
Boston, Massachusetts 02108  
Fax: 617-720-5482

9.2 All notices pursuant to the agreement from Seller to Purchaser, or from Purchaser to Seller, will be effective if executed by and sent by their respective attorneys. Purchaser and Seller, and their respective counsel, all hereby agree that if notice is given hereunder by counsel, such counsel may communicate directly in writing with all principals, as required to comply with the foregoing notice provisions.

10 *Seller's Representations, Warranties and Agreements.*

10.1 Seller represents and warrants that it has full power and authority to enter into this agreement and to carry out the transactions contemplated hereby, and the persons executing this agreement on behalf of Seller are duly authorized to execute, on behalf of Seller, this agreement, the Deed, Bill of Sale, assignments and other instruments or documents reasonably necessary to effect the transactions contemplated by this agreement. Seller makes no further representations or warranties.

10.2 During the Option Term, Seller shall not convey the Premises or any interest therein without the consent of Purchaser, provided that Seller may:

- (a) convey the Premises to an affiliate; such affiliate shall assume in writing all of Seller's obligations hereunder;
- (b) grant mortgages or other monetary liens, provided that the Seller shall discharge the same at the time of or prior to the Closing;
- (c) consent to the taking of a portion of the premises for the so-called I-295 connector highway; and
- (d) enter into leases and occupancy arrangements as expressly permitted in section 11.4 of this agreement.

10.3 *Right of First Refusal.* If the Option terminates because Purchaser does not pay the First Option Payment, and if thereafter and on or before August 1, 2001, Seller receives an offer to purchase the Premises on terms that Seller in its sole discretion is willing to accept and such offer is for a purchase price less than 95% of the Purchase Price stated herein, then Seller shall notify Purchaser of the material terms of such offer ("First Refusal Notice") and shall submit to Purchaser a form of binding purchase agreement containing such terms ("First Refusal Purchase Agreement"). Purchaser shall have then have the right to enter into a binding purchase agreement by executing and delivering the First Refusal Purchase Agreement to Seller within twenty days of the First Refusal Notice. This right of first refusal shall not apply if the third-party offer also includes an offer to purchase any material operating assets or any portion of Merrill's Marine Terminal.

11. *Alterations, Casualty and Condemnation, Tenants.*

11.1 *Alterations.* The parties acknowledge that the structures and improvements now situated on the Premises are not material to this transaction. Seller shall have the right to modify or remove any structure or improvement on the Premises in Seller's sole discretion, subject to the limitation that no such modification results in a structure that substantially increases the aggregate cost of demolition of the structures on the Premises.

11.2 *Casualty.* If prior to the Closing Date, all or any portion of the Premises is damaged by fire or other casualty, Seller shall have no obligation to restore the Premises, adjust the purchase price or assign any proceeds of insurance.

11.3 *Condemnation.* If Purchaser exercises the Option following the taking of all or any part of the Premises by a governmental body, including the anticipated taking of a portion of the Premises for the so-called I-295 connector highway, Seller shall assign to Purchaser the net proceeds of the taking. For purposes of this provision, net proceeds shall mean the total proceeds of the taking minus any costs incurred by Seller in negotiating the terms or compensation for the taking or of restoring the Premises. This section 11.3 shall survive the Closing.

11.4 *Tenants.* Between the date hereof and the Closing Date, Seller may enter into, extend, modify or terminate any lease or occupancy arrangement for the Premises on such terms as the Seller deems appropriate without the prior approval of Purchaser, except that without Purchaser's prior consent, (a) Seller shall not enter into any lease or occupancy arrangement that cannot be terminated on ninety-days notice or less and (b) Seller shall not enter into or extend any lease or occupancy arrangement after the Notice of Exercise.

## 12. *Violations.*

12.1 Seller shall have no obligation to cure or comply with any violations of law, including municipal ordinances and regulations, and orders or requirements noted or issued by any federal, state, county or municipal agency having jurisdiction over or affecting the Premises or any encroachment or any violation of an easement or encumbrance affecting the Premises, (all of the foregoing violations, orders and requirements hereinafter being referred to as "Violations").

## 13 *Default of Either Party.*

13.1 If, prior to Closing, Purchaser shall for any reason whatsoever default in the performance of Purchaser's obligations under this agreement, Seller may terminate the Option and retain any payments made hereunder.

13.2 If, prior to Closing, Seller shall for any reason whatsoever default in the performance of Seller's obligations under this agreement to deliver the documents required to be executed by Seller, Purchaser may elect by written notice to Seller within 30 days of such default, one of the following as its sole remedies at law or in equity:

(a) to terminate this agreement for such default, and receive back Purchaser's option payments; or

(b) to purchase the Premises, subject to such liens, encumbrances, objections or other grounds (but not subject to any Encumbrances To Be Discharged, which Seller shall remain obligated to discharge) and without abatement of the Purchase Price or allowance of any kind, and to set the new Closing Date, which shall be not later than fifteen (15) days thereafter. If Purchaser elects to purchase pursuant to this clause (b), then Purchaser shall have the right to seek specific performance of the provisions of this clause (b).

## 14. *Survival and Waiver.*

14.1 The acceptance by the Purchaser of the Deed on the Closing Date shall be deemed full performance and discharge of each and every agreement and obligation on the part of Seller hereunder to be performed, and any and all agreements, representations and warranties of Seller contained in this agreement or in any other manner prior to the Closing Date shall not survive the Closing Date, unless otherwise expressly provided in this agreement, or by the terms hereof are to be thereafter completed or performed. If a provision is either specified as surviving the Closing Date, or is to be thereafter completed or performed, such survival shall expire only as therein specified, or by operation of law, if no other expiration date is given.

14.2 The acceptance by the Purchaser of the Deed on the Closing Date shall constitute, and be conclusive evidence of, Purchaser representation and warranty to Seller that Purchaser (a) has examined the Premises, and is familiar with the physical condition thereof; (b) has taken title to the Premises subject to any and all applicable laws, ordinances, rules, regulations, Violations, defects or the like, now or hereafter in effect, with respect to the Premises; (c) has not relied on any representation or warranty by Seller as to the physical condition, income, expenses, operations or legality of occupancy of the Premises or any other matter or thing affecting or relating to the Premises, except as in this agreement specifically set forth; (d) acknowledges and represents that no such other representations or warranties have been made by Seller or implied.

14.3 PURCHASER FURTHER AGREES, EXCEPT AS IN THIS AGREEMENT SET FORTH, TO TAKE THE PREMISES "AS IS" AND "WITH ALL FAULTS" IN ITS PRESENT PHYSICAL CONDITION AND SUBJECT TO REASONABLE USE, WEAR, TEAR AND NORMAL DEPRECIATION BETWEEN THE DATE HEREOF AND THE CLOSING DATE. Seller shall not be liable or bound in any way by any verbal or written statements, representations, or information pertaining to the Premises furnished by any agent or employee of Seller, or any other person, and Purchaser acknowledges and agrees that such agents or employees have no authority to make any such statement or representation. It is understood and agreed that (i) all contemporaneous or prior representations, statements, understandings and agreements, oral or written, between the parties are merged in this agreement, which alone fully and completely expresses the agreement of the parties, and (ii) that this agreement is entered into after full investigation, neither party relying on any statement or representation made by the other which is not embodied in this agreement.

14.4 The provisions of this Section 14 shall survive the Closing Date.

#### 15. *Miscellaneous Provisions.*

15.1 This agreement may be executed in any number of counterparts, each of which when executed and delivered shall be of the same binding effect as an original.

15.2 If any one or more of the provisions of this agreement shall be held invalid, illegal or unenforceable in any respect, such provision shall not affect any other provision hereof, and this agreement shall be construed as if such provision had never been contained herein.

15.3 It shall be a condition of Closing that Seller's representations and warranties contained in this agreement are true and correct in each material respect as of the Closing Date, and that Seller shall have performed its covenants and agreements contained herein. If such be not so, Purchaser's sole remedy, if Purchaser does not waive the same, shall be to as set forth in section 5.4 and section 13.2.

15.4 This agreement constitutes the entire agreement of the parties with respect to the Premises, any prior agreements or understandings having been rescinded or merged into the terms hereof. This agreement, and all the covenants, terms and provisions contained herein, shall be binding upon and inure to the benefit of the parties hereto and to their respective successors and assigns.

15.5 Purchaser will hold Seller harmless and indemnified against any loss, cost or expense arising in connection with Purchaser's inspection of the Premises.

15.6 If Purchaser shall record or file this agreement, or a copy thereof, in or with the public records in which Deeds are recorded or filed, then, at Seller's option, such shall be deemed a default, and this agreement shall terminate.

15.7 If any provision of this agreement requires a consent which is not to be unreasonably delayed, failure to send notice of disapproval within ten (10) business days (unless a longer time is specified in this agreement) after receipt of all the information necessary to determine whether to consent, shall be deemed approval.

15.8 *Confidentiality.* Purchaser agrees to maintain in strictest confidence the terms of this agreement and any information and data furnished or made available by Seller to Purchaser and its officers, employees and representatives in connection with Purchaser's investigation of the Premises and the transactions contemplated by this agreement; provided, however, that Purchaser may disclose such information and data to prospective lenders, Purchaser's consultants and Purchaser's other advisors in connection with the sale and purchase contemplated by this agreement. In addition, Purchaser may disclose such information to government agencies as required by law or as may be required to obtain approval for Purchaser's acquisition and use of the Premises, provided that Purchaser shall use its best efforts to limit such disclosure to the minimum required to obtain such approvals. The foregoing obligation of confidence shall terminate on the earlier to occur of (a) the Closing, or (b) such time as the information and data in question becomes generally available to the business community other than through the breach by Purchaser or its officers, employees, or representatives of the obligation of confidence owed to Seller hereunder. Purchaser agrees that if this agreement is terminated for any reason whatsoever, Purchaser shall, upon Seller's request, promptly return to Seller all information and data furnished or made available by Seller to Purchaser and its officers, employees, and representatives in connection with Purchaser's investigation of the Premises and the transactions contemplated by this agreement (and Purchaser agrees not to retain any copies of any such information or data in such event).

15.9 *Applicable Law.* This agreement is and shall constitute a contract under and is to be construed in accordance with the internal laws of the State of Maine wherein the Premises are located.

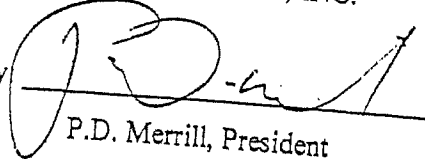
15.10 *Modifications.* This agreement may not be changed or terminated orally. The provisions of this agreement shall apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

15.10 *Captions.* The captions to sections hereof are not part of this agreement and shall not be deemed to affect the meaning or construction of any of its provisions.

[Continued on next page]

IN WITNESS WHEREOF, this agreement has been duly executed by the parties hereto as of the day and year first above written.

MERRILL INDUSTRIES, INC.

By:   
P.D. Merrill, President

MERCY HEALTH SYSTEM OF MAINE, INC.

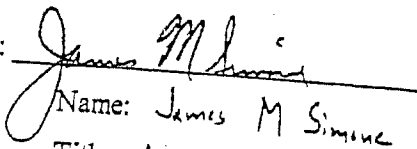
By:   
Name: James M. Simone  
Title: Vice President Finance & Treasurer

EXHIBIT A  
DESCRIPTION OF PREMISES

BK 14022 PG 306

EXHIBIT "A"

A certain lot or parcel of land with buildings thereon situated on the northerly side of the Blue Star Memorial Highway (Route #1) at the Veteran's Memorial Bridge on the Fore River in the City of Portland, County of Cumberland and State of Maine being bounded and described as follows:

Beginning at a rod marking a point 50.00' westerly of and at right angles to the center line of the main track marking a P.C. Station of 23 + 11.35 as shown on right of way and track map Portland Terminal Company dated June 30, 1916 revised March 1938 filed in the Portland Terminal Company in VI-D over 1-A; Said rod being approximately 675' northerly of the northerly right of way line of said Route #1;

Thence through land of the Grantor and being 50.00' westerly of the centerline of said main track N 10° 46' 19" W a distance of 482.85' to a rod opposite station 18 + 28.50;

Thence continuing through land of the Grantor and being 50.00' westerly of the centerline of said main track N 10° 57' 07" W a distance of 290.08' to a rod opposite station 15 + 38.42;

Thence continuing through land of the Grantor N 9° 29' 00" W a distance of 197.09' to a rod marking the westerly right of way line for the existing spur track and being 33.00' westerly and opposite P.C. Station 2 + 00.64' as shown on said railroad plan;

Thence continuing through land of the Grantor and being along said right of way line of said spur track along a curve to the left whose radius is 922.37', an arc distance of 185.63' to a rod on the westerly edge of a paved drive, said rod being found on a chord of N 22° 33' 26" W a distance of 185.32';

Thence continuing through land of the Grantor and following the westerly edge of said paved drive S 9° 2' 42" W a distance 110.67' to a rod';

Thence continuing through land of the Grantor on the following courses:

N 78° 59' 25" W a distance of 42.80' to a rod;

S 10° 55' 38" E a distance of 580.68' to a rod, said rod being 160.00' westerly of and at right angles to the centerline of the main track opposite said Station 18 + 28.50';

S 78° 59' 25" W a distance of 580' ± to the easterly bank of the Fore River and continuing to the approximate low water line a total distance of 1165' ±;

Thence along a southerly, easterly-southerly, easterly and westerly line following the approximate low water line a distance of 1800' ± to the northerly right of way line of said Route #1;

Thence by the northerly right of way line of said Route #1 N 71° 56' 20" E a distance of 455' ± to the easterly bank of said Fore River;



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Thence continuing by said northerly right of way line of Route #1 on same course of N 71° 56' 20" E a distance of 370' ± to a point being 50.00' northerly of the centerline of said main track and opposite Station 32 + 86.66, at the intersection of a non-tangent curve;

Thence continuing through land of the Grantor along a curve to the left whose radius is 831.95' an arc of 920' ± to the point of beginning.

Above courses are grid north.

Being a portion of the premises conveyed to the Grantor herein by deeds recorded in the Cumberland County Registry of Deeds in Book 881 Page 299 and Book 881 Page 318.

Said parcel being also sold subject to various utility easements of record.

The Grantor hereby reserves to itself, its successors, assigns and affiliates, a permanent non-exclusive fifty (50') foot easement and right-of-way (the "Reserved Right-of-Way"), or so much land as required to establish a public way in accordance with all governmental specifications and requirements, over, upon, across, under and through the portion of the Premises to the boundary of the Premises, more particularly identified as the "APPROXIMATE LOCATION OF 50' WIDE 'RESERVED RIGHT OF WAY' AND UTILITY EASEMENT" on a survey plan of the Premises entitled "Standard Boundary Survey, Route 1 Blue Star Memorial Highway, Portland Terminal Company to Merrill Industries, Inc." prepared for Merrill Industries, Inc. by Owen Haskell, Inc. and dated May 19, 1998, Job. No. 97109P, a copy of said plan being attached hereto and marked as Exhibit "B" and the original of said plan to be recorded with the Cumberland County Registry of Deeds (hereinafter referred to as the "Merrill Plan"), for all purposes of access of any description necessary and convenient, including but not limited to, pass and repass on foot and with vehicles, machinery, utilities and drainage of every nature and description.

The Grantor further hereby reserves to itself, its successors, assigns and affiliates, a permanent non-exclusive easement over, under, across, upon, and through the Reserved Right of Way, as shown on the aforementioned Merrill Plan, for utility purposes, including for the purpose of accessing, constructing, installing, operating, maintaining, modifying, repairing, replacing, relocating and removing pipes, conduits and other utility facilities and equipment. Said easement shall be located in a manner as not to interfere unreasonably with the Grantee's use of the Premises. The Grantee further hereby grants to the Grantor, its successors, assigns, and affiliates the right to access and/or tap into any existing or future utilities located within the Reserved Right of Way as shown on the Merrill Plan.

The Premises are conveyed together with a permanent non-exclusive fifty (50') foot easement and right of way (the "Granted Right of Way"), or so much land as required to establish a public way in accordance with all governmental specifications and requirements, over, upon, across, under

BK 14022PG308

and through land of the Grantor, more particularly identified as the "50' WIDE 'GRANTED RIGHT OF WAY' AND UTILITY EASEMENT" as shown on the Merrill Plan, for all purposes of access of any description necessary and convenient, including but not limited to, pass and repass on foot and with vehicles, machinery, utilities and drainage of every nature and description.

The Premises are further conveyed together with a permanent non-exclusive easement over, under, across, upon, and through the Granted Right of Way, as shown on the Merrill Plan, for utility purposes, including for the purpose of accessing, constructing, installing, operating, maintaining, modifying, repairing, replacing, relocating and removing pipes, conduits and other utility facilities and equipment. Said easement shall be located in a manner as not to interfere unreasonably with the Grantor's use of its remaining land. The Grantor further hereby grants to the Grantee, its successors, assigns, and affiliates the right to access and/or tap into any existing or future utilities located with the Granted Right of Way as shown on the Merrill Plan.

The Grantor may relocate the Granted Right of Way, and the Grantee may relocate the Reserved Right of Way, provided in each instance that the party relocating such right of way (1) gives reasonable notice of the intended relocation to the other party (2) pays all costs of relocating any improvements or facilities located within the right of way, (3) carries out such relocation in a manner that does not materially interfere with the uninterrupted passage on foot and with vehicles and machinery or with the uninterrupted provision of utility services through such right of way and (4) records plan showing the relocated boundaries of such right of way.

AH. #5

PIERCE  
ATWOOD

September 19, 2001

MATTHEW D.  
MANAHAN

DIRECT  
207.791.1189

E-MAIL  
MManahan@  
PierceAtwood.com

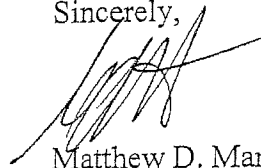
Jonathan Spence, Planner  
City of Portland  
Portland City Hall  
389 Congress St.  
Portland, ME 04101

RE: Mercy Hospital Neighborhood Meeting

Dear Jonathan:

As we recently discussed, I enclose a copy of the minutes of the neighborhood meeting Mercy conducted on September 6 in connection with the rezoning application. Please call me if you have any questions about these materials.

Sincerely,



Matthew D. Manahan

MDM/dcu  
Enclosure

cc: Sarah Hopkins  
Larry Plotkin  
Stephen R. Bushey  
Dr. Steve Hess

One Monument  
Square  
Portland, Maine  
04101-1110

VOICE  
207.791.1100

FAX  
207.791.1350

E-MAIL  
info@PierceAtwood.com

WEB SITE  
www.PierceAtwood.com

**Mercy Hospital  
Public Informational/Neighborhood Meeting  
September 6, 2001  
Minutes**

The meeting began at 7:05 p.m. in the Board Room of the Portland Metro at 114 Valley Street in Portland. Larry Plotkin began the meeting by introducing the representatives of Mercy Hospital. Mr. Plotkin then summarized the reasons Mercy has proposed relocating to the Fore River site.

Mr. Plotkin noted that Mercy had six basic criteria in choosing a new site: (1) sufficient land to accommodate a variety of uses, (2) proximity to Maine Medical Center, (3) good highway access, (4) proximity to doctors, (5) access to public transportation, and (6) a location accepted by the community. Mr. Plotkin noted that the Fore River site is currently owned part by Guilford Industries and part by Merrill Industries.

Mr. Plotkin then showed an aerial photograph of the site. Mr. Plotkin noted that the Maine Department of Transportation (MDOT) has developed a plan to provide access to the site by building a connector road from Congress Street to Commercial Street. MDOT will take land for the connector road by eminent domain and will build a pedestrian and bike path.

Mr. Plotkin then showed the conceptual site plan, emphasizing that the plan is conceptual at this stage. Mr. Plotkin said that the first stage of construction will involve a medical office building of about 50,000 square feet, and an ambulatory care center. Mr. Plotkin said that the hospital will be built in the second stage of construction, which could be anywhere from six months to five years after Phase I. The hospital will be about 300,000 square feet, and likely will be four stories high, so that the footprint will be about

100,000 square feet. The hospital will cost approximately \$80 million. There will be parking on both sides of the hospital building.

Mr. Plotkin said that later buildings may include a parking structure, a day care facility, medical office buildings, and housing for families, among other uses.

Mr. Plotkin noted that there are wet areas on the site that Mercy is trying to avoid impacting. Mercy hopes to make the pond into a site amenity.

Mr. Plotkin summarized the major permits that will be required. First, rezoning will be required. The property currently is zoned industrial. Mercy is negotiating a contract zone agreement with the City. Second, City site plan approval will be required. Third, Site Location of Development approval will be needed from the Maine Department of Environmental Protection (MDEP). Fourth, MDEP approval will be required for wetland impacts. Fifth, wetland impacts also will require a permit from the U.S. Army Corps of Engineers. Sixth, a permit will be required from the Federal Aviation Administration because of the proximity to the Portland Jetport.

Matt Manahan, counsel for Mercy, noted that the Planning Board likely will hold a public hearing on the contract rezoning application on October 9 at 7:00 p.m., at City Hall, and that the public is invited to attend and comment on the proposal.

After explaining the pending proposal, Mr. Plotkin provided an opportunity for public questions and comment.

Question: Does shoreland zoning present an issue?

Mr. Plotkin: It must be considered because a portion of the property is within 250 feet of the water.

Question: Where will Amtrack trains run?

Mr. Plotkin: They will run on the tracks adjacent to the site.

Question: What is the schedule for construction of the MDOT connector?

Mr. Plotkin: It's not definite yet, but projected final completion is 2004-2005.

Question: Is Mercy paying for the connector?  
Mr. Plotkin: The money for the road is coming from federal, state, and local funds. The road was planned before Mercy identified this site for the new hospital campus. Mercy will contribute land for the connector.

Question: Isn't this facility going to be too small to accommodate all Mercy's satellite facilities?  
Mr. Plotkin: It will be big enough for the uses Mercy intends to put there, and for future growth.

Question: Why do you need to use a contract zone agreement?  
Mr. Plotkin: There was no readily available alternative zone to use for this hospital campus proposal.

Question: How far will the rezoning extend?  
Mr. Plotkin: Only to the Mercy property itself.

Question: Why were all adjacent property owners notified of this meeting by certified mail?  
Mr. Plotkin: Because the MDEP's rules require it.

Question: Is Mercy going to expand beyond this property?  
Mr. Plotkin: The site is boxed in on all sides, so further expansion is not possible.

Question: When will Mercy begin construction?  
Mr. Plotkin: We're not certain, though Mercy needs to be sure the connector road will be completed before it fully commits.

Question: Will the elderly in downtown Portland be able to access the hospital easily?  
Mr. Plotkin: That's why Metro access was important to Mercy.  
Dr. Hess: Mercy may keep some physician presence at the State Street site.

Question: What will you do with the current hospital building?  
Dr. Hess: We don't know yet.

Question: Will people walk their dogs in the new green space on the property?  
Mr. Plotkin: It's too early to tell.

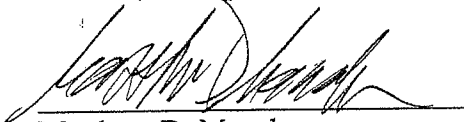
Several members of the public commented that it is a very good proposal, and commended Mercy for its plans. David Littell, President of Portland Trails, commended

Mercy on its willingness to cooperate with the City in the creation of a pedestrian trail and bike path.

Because there were no further questions, the meeting concluded at about 7:50 p.m. Mr. Plotkin thanked everyone for coming.

Attached to these minutes are copies of: (1) the form of notices of the meeting that were sent by certified mail to all property owners within 500 feet of the subject property (including abutters), to the municipal office of the City of Portland, and to others suggested by the City's planning staff; (2) the list of property owners and others who received the certified mail notices; and (3) a copy of the notice of the meeting that was published in the Portland Press Herald.

I hereby certify that the public informational/neighborhood meeting was noticed and held in accordance with DEP Regulation Chapter 2, Section 8, and City of Portland Code Section 14-32(c). There were 12 attendees at the meeting, as shown on the attached sign-in sheet, which was circulated at the meeting.



Matthew D. Manahan  
Attorney for Mercy Hospital

Date: Sept. 11, 2001

## NOTICE OF PUBLIC INFORMATIONAL/NEIGHBORHOOD MEETING

Please take notice that Mercy Hospital (through its affiliate Mercy Health System of Maine, Inc., 144 State Street, Portland, ME 04101, Tel.: 879-3000) intends to file an application with the Maine Department of Environmental Protection for Site Location of Development Act (38 M.R.S.A. §§ 481-490; DEP Regulations Chapters 371-377) and Natural Resources Protection Act (38 M.R.S.A. §§ 480-A to 480-Z; DEP Regulations Chapters 305-359) permits for a proposed project in Portland, Maine.

**Description:** The proposed project will be constructed on approximately 42 acres of land located along the Fore River, west of St. John Street. The Fore River Site is bounded by the river and railroad tracks. The Cumberland County Jail is located northeast of the site. The Merrill Marine Terminal is located south of the site, and a number of St. John Street businesses are located to the east of the site.

The Hospital intends to initially construct a medical office building and an ambulatory care center on the site, to be followed by construction of an adjoining hospital facility. Later phases may include additional supporting amenities such as a day care center, physical fitness facilities, a teaching center, and additional medical office buildings, all in a campus setting. The project will result in the construction of parking facilities, access drives, utilities, and other site amenities. Access to the site will be primarily from a new connector roadway to be constructed by the Maine Department of Transportation between the I-295 Exit 5 interchange and the Veterans Memorial Bridge.

In addition to the DEP applications, Mercy has filed an Application for Zoning Amendment with the City of Portland, with the intention of entering into a contract zone agreement with the City.

Mercy will conduct a **PUBLIC INFORMATIONAL MEETING** at 7 p.m. on September 6, 2001 at the Board Room of the Portland Metro at 114 Valley Street in Portland. Representatives for the Hospital will explain the project and will provide an opportunity for public questions and comments. You are invited to attend the meeting.

Written comments or inquiries concerning this project are encouraged and can be directed to:

Larry Plotkin  
The Plotkin Company LLC  
32 Buttonwood Lane  
Portland, ME 04102  
(207) 775-3656



**LEGAL ADVERTISEMENT**

**NOTICE OF PUBLIC**

**INFORMATIONAL**

**NEIGHBORHOOD MEETING**

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In addition to the DEP applications, Mercy has filed an Application for Zoning Amendment with the City of Portland with the intention of entering into a contract zone agreement with the City.

Mercy will conduct a PUBLIC INFORMATIONAL MEETING at 7 p.m. on September 5, 2001, at the Board Room of the Portland Metro at 114 Valley Street in Portland. Representatives for the Hospital will explain the project and will provide an opportunity for public questions and comments. You are invited to attend the meeting.

Written comments or inquiries concerning this project are encouraged and can be directed to:

Larry Plotkin  
The Plotkin Company LLC  
32 Buttonwood Lane  
Portland, ME 04102  
(207) 775-3858

-713072



September 6, 2001

To: Portland Planning Board Members  
From: Larry Plotkin, representing Mercy Hospital

Re: Tax value of Fore River Site development

At previous Planning Board workshops regarding the Mercy Fore River Site, there has been some discussion of the taxable value to the City of the Mercy project. The most recent draft of the proposed contract zoning document contains a requirement that the first phase of the Mercy project will have a taxable value of at least \$7.5 million. The figure may go higher, based on early indications of market demand for office space. Further, ancillary development on the site over time may result in a longer term taxable value of several times that of the first phase.

To put this into context, with the help of DeLuca Hoffman, we have estimated that if the site were fully developed industrially as provided in the current I-H zone, taxable value would be \$8 - \$10 million. However, this may overstate the real taxable value to the City because an industrial development may well be in conjunction with tax increment financing.

The Mercy project will bring many benefits to Portland, including a better health care offering to its citizens, employment opportunities, the enhancement of Portland as the medical hub of northern New England, and the development of an attractive campus at a gateway location to the City. All of this can be done while at the same time generating substantial tax revenues comparable to or better than what might otherwise occur on the Fore River Site.

Thank you for your continued consideration.

Att. # 7

**From:** "Larry Plotkin" <lplotkin@maine.rr.com>  
**To:** Portland.CityHall(JSpence)  
**Date:** Thu, Sep 6, 2001 9:26 AM  
**Subject:** Public Policy Statement

Jonathan,

As you requested, I have taken a stab at rewriting articles 2 and 4 of the draft Public Policy Statement in regard to the Mercy project. Please feel free to further amend these statements.

I think we have made a lot of progress and am looking forward to our September 11 meeting with the Planning Board. I will also prepare a statement on the tax issue and bring it to the September 11 meeting for distribution to the Board. I will e-mail a copy of it to you, probably tomorrow.

Rewritten paragraphs:

#### 2. Summary of Benefits

The benefits enjoyed by the City as a result of the location of two major hospitals are numerous and extensive. Portland's stature as a hub for medical care north of Boston will be enhanced. The facilities will likely attract a larger medical community to the area, greatly enhancing the health, welfare and safety to Portland's residents. Further, the hospitals together provide varied, diverse employment opportunities and untold economic benefits. The hospital may also spur the revitalization of the Valley Street/St. John street corridor. The Mercy Hospital campus will provide an attractive gateway into Portland's West End.

#### 4. Mercy Hospital's Desired Location Attributes

Mercy's growth and development has been limited by the fact that its current facility sits on only 3 1/2 acres. Parking is very tight, and the facility is cramped and overcrowded. Efforts to expand the hospital, even in a limited way, have been met by resistance from the neighborhood, the historical society and City officials. Mercy's management came to realize that a new long term home was needed. The ideal site would be large enough to accommodate a relocated hospital in a campus setting, while also being easily accessible to doctors, public transportation and near the Maine Medical Center. The result of an extensive search determined only one such parcel existed, called the Fore River Site. Mercy Hospital has been able to secure control of the Fore River Site and is now looking for help from the City in creating a zoning solution that recognizes the uniqueness of the parcel and the applicant.

Larry

**CC:** "Matt Manahan" <mmanahan@pierceatwood.com>, "Steve..."

PIERCE  
ATWOOD

AH. #8

July 27, 2001

MATTHEW D.  
MANAHAN

DIRECT  
207.791.1189

E-MAIL  
MManahan@  
PierceAtwood.com

Jaimey Caron, Chair  
Planning Board  
City of Portland  
Portland City Hall  
389 Congress Street  
Portland, ME 04101

RE: Mercy Hospital; Fore River Site

Dear Mr. Caron:

We read in the July 27 Press Herald the article by Mark Shanahan discussing the Planning Board's concerns about Mercy's tax exempt status. I write this letter to address those concerns.

First, the Portland Land Use Ordinance and State law expressly prohibit inclusion in a contract zone agreement of conditions and restrictions that relate to anything other than the physical development or operation of the property. Portland Code § 14-62; 30-A M.R.S.A. § 4352(8)(C). Thus, the contract zone agreement may not include a requirement of payments in lieu of taxes.

Second, and in any case, Mercy believes that development of the Fore River Site will increase the City's overall tax base, notwithstanding Mercy's tax exempt status. This increase will be brought about by development of many taxable (non-Mercy-owned) uses on the Fore River Site hospital campus, such as professional offices, restaurants, and medical retail establishments. In addition, by moving to the Fore River Site, Mercy will open up the possibility that its existing tax-exempt State Street site may be converted to a taxable use.

Third, equity -- in terms of a level playing field -- dictates that all hospitals in Portland be subject to the same tax burdens. It would be unfair to require Mercy to make payments in lieu of taxes simply because it is relocating within the City, while other existing hospital uses are not required to make such payments.

Thank you for the opportunity to provide these comments to the Board. Mercy appreciates the Planning Board's consideration of its application, and we

One Monument  
Square  
Portland, Maine  
04101-1110

VOICE  
207.791.1100

FAX  
207.791.1350

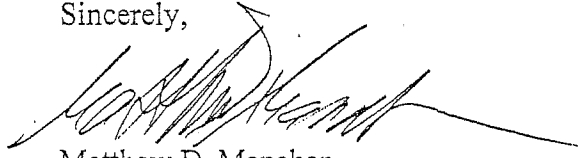
E-MAIL  
info@PierceAtwood.com

WEB SITE  
www.PierceAtwood.com

Jaimey Caron, Chair  
July 27, 2001  
Page 2

look forward to working with the Board to ensure that all your concerns are adequately addressed.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew D. Manahan", with a long horizontal flourish extending to the right.

Matthew D. Manahan

cc: Larry Plotkin  
Steve Bushey  
Alex Jaegerman  
Sarah Hopkins  
Jonathan Spence  
Penny Littell, Esq.

September 7, 2001

**VIA FAX**

Jonathan Spence  
City Planner  
City of Portland  
389 Congress Street  
Portland, ME 04101



RE: Mercy Hospital Contract Zone Request

Dear Jonathan:

We write relating to the Mercy Hospital project on the Fore River. I attended the public hearing last night with Mercy and spoke separately the night before with the Mercy Project Manager, Larry Plotkin. I spoke to Mr. Plotkin regarding the concern that the current version of the plan shows parking lot areas over the configuration for part of the trail plan, and by Portland Trails, MDOT, and the City in this area.

Mr. Plotkin told me that apparent trail/parking lot conflict was unintentional and thanked me for bringing it to his attention and assured me that Mercy is willing to revise the plans to incorporate this very important section of the Fore Trail along the new connector roadway.

We understand from Mr. Plotkin that Mercy has agreed to incorporate a provision into the contract zone for this project that will commit it to make whatever design changes are necessary, including moving of the easement lines, or right-of-way lines for MDOT, to incorporate the future trail. Based on these representations and the understanding that these provisions will be in the contract zone, Portland Trails writes to convey its strong support for this project.

We look forward to working with Mercy Hospital, the City, and MDOT to see that a trail and waterside park is built along the new connector roadway which will be a significant asset for not only the Mercy facility, but the entire neighborhood and the City of Portland.

Very truly yours,

David Littell

DPL:pmp

cc: Larry Plotkin

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David Littell

*President*

Elizabeth Ehrenfeld

*Vice President*

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*Executive Director*

Nan Cumming

Planning & Urban Development



**CITY OF PORTLAND**

August 3, 2001

Matthew D. Manahan  
Pierce Atwood  
One Monument Square  
Portland, ME 04101-1110

Dear Mr. Mahanan:

Thank you for your recent correspondence including the draft contact zone and letter discussing concerns arising from Mercy's tax-exempt status. The City of Portland is very excited about working with Mercy Hospital in the creation of a dynamic hospital campus along the Fore River. This campus will be a tremendous asset to the citizens of Portland and will serve as a model not only for this type of development but also in the cooperative relationship which forms between an applicant and the City. We look forward to the development of this relationship as Mercy moves towards the realization of the Fore River development.

In order to assist in the drafting of the language of the contract zone, it is necessary for the City to understand the vision Mercy Hospital has for the eventual build out of the site. We would like the opportunity to discuss this vision with members of your development team and suggest a meeting on Tuesday, August 7<sup>th</sup> at 11:00 A.M. in conference room on the 4<sup>th</sup> floor of City Hall. If this time is not convenient please call and we will reschedule to a time that works. What follows is a list of questions that will enable the City to better understand the proposed development.

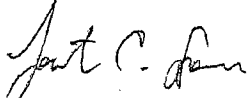
- How many acres of the site will be available for buildable parcels net of the wetlands and the connector road R.O.W.?
- How many square feet does Mercy believe that their new hospital building will consist of?
- What is the estimated order of magnitude at buildout of the combined proposed uses envisioned for the campus?
- How much pavement or parking will be required for this mix of uses?
- What is the maximum building height envisioned in the campus?
- What percentage of the building parcels is expected to be impervious?
- Will the development result in the creation of City accepted streets or will the projects traffic circulation system consist of private drives and ways?
- What type of unified architectural theme does Mercy Hospital anticipate its campus demonstrating?
- What is the possible timing and phasing of the development?
- What possible type of outdoor amenities such as walking trails, open spaces and natural features will the project contain?



- What type of parking management program is anticipated?

Attached please find a copy of the O-P Office Park Zone text from the City's Zoning Ordinance. Although the permitted uses do not correspond to this project, the development standards may be helpful in drafting language for the contract zone. We are eager to meet with you next week to further discuss this exciting project. We recognize that many of these issues are not able to be resolved at this time. Any ranges or estimates of the development program will assist us in working with you to create an appropriate zoning solution.

Sincerely,



Jonathan C. Spence  
Planner

cc. Larry Plotkin  
Steve Bushey  
Joseph Gray, City Manager  
Penny Littell, Associate Corporation Counsel  
Alexander Jaegerman, Chief Planner  
Sarah Hopkins, Development Review Services Manager

AH:

City of Portland, Maine  
Code of Ordinances  
Sec 14-322

Land Use  
Chapter 14  
Rev. 12-1-00

- (g) *Minimum lot area:* Twenty thousand (20,000) square feet.
- (h) *Minimum width of lot:* One hundred (100) feet.
- (i) *Minimum lot frontage on street or shoreline:* One hundred (100) feet.
- (j) *Minimum shoreline setback:* All principal structures other than permitted piers, docks, wharves, breakwaters, causeways, bridges, boathouses and storehouses for fishermen's gear: Seventy-five (75) feet.  
(Code 1968, § 602.13A.B; Ord. No. 499-74, § 6, 8-19-74)

**Sec. 14-323. Off-street parking.**

Any off-street parking in a R-P resource protection zone is required as provided in division 20 of this article.  
(Code 1968, § 602.13A.B; Ord. No. 499-74, § 6, 8-19-74)

**Sec. 14-324. Shoreland and flood plain management regulations.**

Any lot or portion of a lot located in a shoreland zone as identified on the city shoreland zoning map or in a flood hazard zone shall be subject to the requirements of division 26 and/or division 26.5.  
(Ord. No. 15-92, § 25, 6-15-92)

**DIVISION 19.5. HELISTOP OVERLAY ZONE**

**Sec. 14-325. Purpose.**

The intent of this zone is to create an overlay zone in which helicopter landing areas are permitted on individual sites in addition to those uses permitted in the underlying zone. The purpose of this zone is to protect the public health and safety by allowing helicopters serving medical needs to land in certain areas, while protecting surrounding areas from any negative effects associated with such a use.  
(Ord. No. 48-93, 7-19-93)

**Sec. 14-326. Helistop defined.**

A helistop, for purposes of this division, shall be defined as

an area used for the landing of helicopters at any location other than an airport. Such area shall include a landing area or pad, and may include parking required for access to the landing area or pad, a loading and unloading area for emergency vehicles, and other related facilities other than maintenance and repair facilities.  
(Ord. No. 48-93, 7-19-93)

Sec. 14-327. Regulations for helistops.

(a) *Helistops which have more than five landings per month:*

- (1) All such helistops must comply with all applicable Federal Aviation Association regulations, including those for marking of landing areas.
- (2) All take-off, landing and parking areas at such a helistop site shall be surfaced with grass or with a dust-proof material.
- (3) Each landing pad shall be set back at least two hundred (200) feet from any residence, school or church. Each landing pad shall be set back at least fifty (50) feet from any commercial or industrial structure. All setbacks shall be measured from the edge of the landing pad.
- (4) The area in which a landing pad is located shall be enclosed by a fence or other barrier of not less than three (3) feet in height or shall be secured by a locked gate, as approved by the fire department.
- (5) All such helistops shall be subject to review under article V of this chapter.

(b) *Helistops which have five or fewer landings per month:*

- (1) All such helistops must comply with all applicable Federal Aviation Association regulations.
- (2) All such helistops shall be subject to approval by the zoning administrator and the fire department.
- (3) Such helistops shall not be subject to review under article V of this chapter.  
(Ord. No. 48-93, 7-19-93)

**CONTRACT ZONE AGREEMENT  
BETWEEN  
CITY OF PORTLAND  
AND  
MERCY HOSPITAL**

**AGREEMENT** made this \_\_\_\_ day of \_\_\_\_\_, 2001 by and between the **CITY OF PORTLAND**, a body corporate and politic, located in Cumberland County and State of Maine (hereinafter the “**CITY**”) and **MERCY HOSPITAL**, a nonprofit corporation located in the City of Portland and **MERCY HEALTH SYSTEM OF MAINE**, a nonprofit corporation located in the City of Portland (hereinafter collectively “**MERCY**”).

**W I T N E S S E T H**

**WHEREAS, MERCY** has determined that it can no longer meet the long term needs of the community from its 144 State Street location; and

**WHEREAS, MERCY** has located a Portland site, a contiguous tract of land (called the Fore River Site) large enough to meet **MERCY’S** long term needs (including a mix of uses both taxable and tax-exempt) while being easily accessible and convenient to doctors, public transportation, and the Maine Medical Center; and

**WHEREAS, MERCY** requested a rezoning of the Fore River Site (also referred to herein as the “**PROPERTY**”), which is located in Portland at Map 73, Block A, Lot 1; Map 73, Block B, Lot 2; Map 74, Block A, Lot 1; Map 75, Block A, Lot 3; and Map 75, Block A, Lot 33, in order to permit the establishment and operation of a hospital campus on up to 42 acres of land; and

**WHEREAS**, the Planning Board of the City of Portland, pursuant to 30-A M.R.S.A. § 4352(8) and Portland City Code §§ 14-60 to 14-62 and 14-264, and after notice and hearing and due deliberation thereon, recommended the rezoning of the **PROPERTY** as aforesaid, subject, however, to certain conditions; and

**WHEREAS**, the **CITY** by and through its City Council has determined that said rezoning would be and is pursuant to and consistent with the **CITY'S** comprehensive land use plan and consistent with the purposes of the I-H zone, and the its existing and permitted uses within the original zone and the purposes of the I-H zone; and

**WHEREAS**, the **CITY** has determined that the proposed development will be designed and operated so that it will prevent undue adverse environmental impacts, substantial diminution of the value or utility of neighboring structures, or significant hazards to the health or safety of neighboring residents by controlling noise levels, emissions, traffic, lighting, odors, and any other potential negative impacts of the proposal; and

**WHEREAS**, the **CITY** has determined that because of the unusual nature and unique location of the proposed development it is necessary and appropriate to impose by agreement the following conditions and restrictions in order to ensure that the rezoning is consistent with the **CITY'S** comprehensive land use plan; and

**WHEREAS**, the **CITY** authorized the execution of this Agreement on \_\_\_\_\_, 2001;

**NOW, THEREFORE**, in consideration of the mutual promises made by each party to the other, the parties covenant and agree as follows:

1. The **CITY** hereby amends the Zoning Map of the City of Portland, dated December 2000, as amended and on file in the Department of Planning and Urban Development,

and incorporated by reference into the Zoning Ordinance by § 14-49 of the Portland City Code, by adopting the map change amendment shown on Attachment 1, and by designating the **PROPERTY** a Helistop Overlay Zone limited to a single helicopter landing pad; provided however, that this contract rezoning shall become null and void, and the **PROPERTY** shall revert to the I-H zone, in the event that (1) **MERCY** fails to acquire said **PROPERTY** before August 1, 2003, or (2) before August 1, 2003 **MERCY** provides written notice to the **CITY** of **MERCY'S** decision not to purchase the **PROPERTY** or (3) if any party other than **MERCY** purchases the **PROPERTY** prior to August 1, 2003. The **CITY** shall not issue **MERCY** any building permits until **MERCY** has purchased the **PROPERTY**.

2. *Permitted Uses.* **MERCY** shall be authorized to establish and maintain the following uses on the **PROPERTY**:

- a. Hospitals, clinics, and medical research facilities.
- b. Community living arrangements, congregate care facilities, intermediate care facilities, long term or extended care facilities, and sheltered care group homes.
- c. Office complexes and professional offices.
- d. Day care facilities and adult day care facilities.
- e. Exercise and fitness centers and health clubs.
- f. Personal services, restaurants, and retail establishments of no more than 50,000 square feet, except that there shall be no drive through facilities.
- g. Dwellings, hotels, motels, inns, rooming units, and lodging houses for hospital or clinic employees or volunteers and patients' family members.
- h. Teaching centers.
- i. Accessory uses, including, but not limited to, parking facilities and structures, utility services, stormwater management systems, and site amenities.

All above listed uses shall be related and complementary to the medical uses of the site.

3. The uses on the **PROPERTY** will be within multiple buildings to be constructed in phases, some owned by **MERCY** and some owned by others. The new structures will be a mix of single and multi-level buildings developed in a campus-like setting. The buildings may be freestanding or linked, depending upon the phasing and ultimate development program proposed.

4. The first phase of construction will include a medical office building, which may be built concurrently with an ambulatory care facility. The medical office building, its associated land, and its personal property shall be taxed based on a market value of, at minimum, \$7.5 million dollars.
5. A portion of the **PROPERTY** will be transferred to the Maine Department of Transportation's ("MDOT") for its construction of the proposed Commercial Street Connector roadway (hereinafter referred to as the "**CONNECTOR**").
6. At minimum, the portion of the **PROPERTY** identified as "Open Space" on Attachment 2 shall be reserved as public open space. Upon its purchase of the **PROPERTY**, MERCY shall record in the Cumberland County Registry of Deeds an easement in perpetuity granting the public access and recreational use during daylight hours of such Open Space.

Such open space may be used in the calculation of the impervious surface requirements contained in paragraph 12 of this Agreement. MERCY shall cooperate with the City in the creation of a pedestrian trail and bike path:

In addition, MERCY shall cooperate with the City in the creation of a pedestrian trail and bike path at least along the perimeter of its property as shown, generally, on Attachment 2. Once the location of the pedestrian trail and bike path is determined, and providing that MERCY maintains ownership interest in the underlying property, then MERCY shall record in the Cumberland County Registry of Deeds an easement in perpetuity granting the public access and recreational use during daylight hours along and over such path and trail.

7. For purposes of calculating impervious surface required in paragraph 12 below, land separated by the MDOT **CONNECTOR** may be included, but any intertidal lands shall not be included in said calculation.
8. Access to the **PROPERTY** via County Way shall be permitted for service vehicles only provided that **MERCY** demonstrates to the **CITY'S** Traffic Engineer that County Way provides an adequate level of service to the **PROPERTY** and **MERCY** provides evidence of its right, title or interest to access said street.
9. For purposes of front yard setbacks, the front yard for each building developed on the **PROPERTY** south of the pond shall have as the front yard the area between the building and the **CONNECTOR**. ~~Building facades facing the **CONNECTOR** will demonstrate a high degree of design and visual appeal.~~
10. ~~Development Guidelines.~~ The **PROPERTY** shall be developed substantially in accordance with the conceptual master plan shown on Attachment 2, provided, however, that each phase of the development building, whether classified as a major or minor development, shall be subject to site plan review by the Planning Board.

and; if applicable, subdivision review by the Planning Board. Any site plan review applications shall fully comply with the detailed site plan application requirements contained in article V (site plan) of the Land Use Code. The Planning Board may permit deviations from the conceptual master plan, as long as the deviations are consistent with the purposes of this Agreement. In reviewing the site plan submissions, the Planning Board shall consider the following development guidelines:

- a. ~~Promotion of a campus-like atmosphere through the internal arrangement and mix of uses.~~
- b. ~~Adjacent compatibility within the development.~~
- e. ~~Consideration of compatibility with existing or potential development of perimeter uses to those adjacent to the **PROPERTY**.~~
- d. ~~Use of the proposed **CONNECTOR** as the primary access to the site.~~
- e. ~~Uses arranged to provide a high level of user convenience.~~
- f. ~~A high degree of pedestrian orientation.~~
- g.a. ~~A non-highway-oriented design.~~

11.10. Development Standards-All site plans may be approved by the Planning Board only if, in addition to the dimensional requirements of paragraph 11 and the applicable provisions of article IV (subdivisions) and article V (site plan), the development meets the following development standards:

- a. *Design relationship to site:* Development proposals shall demonstrate a reasonably unified design of the site in a campus-like setting, including the architecture, the layout of the buildings, pedestrian and vehicular circulation plan, open space, drainage, and the topography, soil conditions, vegetation, and other natural features of the site. Integration of open spaces and natural features shall be achieved by incorporation of outdoor amenities for the benefit of users of the site, such as jogging and walking trails, gardens, and benches. The proposed layout of the buildings and uses shall demonstrate compatibility within the site in addition to compatibility with existing and future perimeter uses.
- b. *Landscaping:* Development proposals shall include a landscape program. All land areas not covered by structures, parking areas, or circulation facilities shall be landscaped and maintained. In order to soften the visual impact of large expanses of pavement in parking lots, vegetation shall be planted or retained in islands or planting strips where required by article



IV (subdivisions) and article V (site plan) of the Land Use Code.

- c. *Sidewalks Pedestrian Orientation:* Development proposals shall include a fully integrated pedestrian circulation system, including internal sidewalks, illustrating the manner in which the developer will provide this amenity to take advantage of the topography and natural features of the site and providing for safe pedestrian access to all buildings and parking areas with the ability to conveniently access all portions of the site without additional driving. The pedestrian circulation system shall intermittently link with the shoreline trail feature of the site.
- d. *Vehicular Access and Circulation:* The primary access to serve the entire development will be from two access points from the CONNECTOR. Vehicular circulation through internal driveways and roadways will provide safe access to all portions of the site.
- ~~e.~~ *Buffers and screens:* Development proposals shall include appropriate measures of a dense and continuous nature (for example, a double staggered row of white pine twenty-five (25) feet on center, etc.) in order to buffer parking lot visibility from public roads.
- ~~e.~~ *Preservation of natural features:* Development proposals shall identify the extent to which the developer will preserve natural features including, but not limited to, existing vegetation, flood plains, rock outcroppings, surface water bodies, drainage swales and courses, and wetlands; provided any such program shall consider and be sensitive to the need to preserve such natural features.
- ~~f.~~ *Architectural design:* All buildings shall be designed or approved by a registered architect in the State of Maine. The scale, texture, color, and massing of the buildings shall be coordinated. The full range of high-quality, permanent, and traditional or contemporary building materials and technology may be incorporated in a manner so that the development as a whole embodies distinguishing attributes that achieve the developer's desired degree of excellence and are in conformance with the architectural guidelines provided in any private development restrictions. Particular emphasis shall be placed on the appearance of building facades from public streets and highways including the CONNECTOR, from driveway and parking areas, and from other nearby buildings. Building elevation drawings shall be submitted which indicate architectural style, exterior finishes and color, building height and scale, and location and scale of window and door openings. Samples of exterior building materials shall also be submitted
- ~~g.~~ *Signs:* Signage shall be focused internally to the site and shall neither be oriented or scaled to address the adjacent highways. Development proposals shall identify all proposed signage. Signs shall be designed in

proportion and character with the building facades. All signs shall be constructed of permanent materials and shall be coordinated with the building and landscaping design through the use of appropriate materials and finishes.

- h. Master plan:* Prior to development on the PROPERTY, MERCY shall provide a master plan of the campus. The master plan shall include the following: The location of the building(s) on the site; infrastructure of the site; identification of common areas; traffic circulation, architectural character and treatment of the building(s); proposed building envelopes; phasing and timing of the development; private development restrictions; and such other information necessary and sufficient to ensure compliance with the standards in this section. Master plans are dynamic representations that assist in guiding projects through phased development. Master plans are flexible and adaptable to changes that occur within the development process. The master plan shall be subject to periodic revision and update as needed and as phased development occurs over time.

~~12.11.~~ *Dimensional Requirements.* The following dimensional requirements shall apply to the **PROPERTY** as a whole, and not additionally to individual lots (if any) within the **PROPERTY**:

- a. Maximum impervious surface ratio: Eighty (80) percent;
- b. Maximum building height: Ninety (90) feet;
- c. Minimum front yard landscaped buffer: Thirty (30) feet from the edge of the CONNECTOR right-of-way shall be in the form of a landscaped buffer complying with the landscaping requirements of paragraph 10(e) of this Agreement provided-, however, that the area within such buffer may include a walkway, trail or pathway but no buildings, roadways, parking areas or other expanses of pavement. ~~Fifteen (15) feet;~~
- d. Minimum side yards: Ten (10) feet;
- e. Minimum rear yard: Ten (10) feet;
- f. Pavement setback from lot boundaries: Fifteen (15) feet.

~~13.12.~~ The provisions of this Agreement, including the permitted uses listed in paragraph 2, are intended to replace the uses and requirements of the underlying I-H zone.

~~14.13.~~ Pursuant to Code § 14-264(d), all development plans shall include complete information of processes, materials, or methods of storage to be used by the development and shall specify how hazardous impacts to neighboring properties will be prevented.

~~15.14.~~ During the period before **MERCY** purchases the **PROPERTY**, the **PROPERTY** may continue to be used for stockpiling and consolidation of cargo and such uses as the current owners have undertaken on the **PROPERTY**, including, but not limited to, the uses listed in Portland City Code § 14-262(a), (c), (d), (e), (f), (h), and (m).

The above stated restrictions, provisions, and conditions are an essential part of the rezoning, shall run with the **PROPERTY**, shall bind and benefit **MERCY**, any entity affiliated with **MERCY** that takes title to the **PROPERTY**, their successors and assigns, and any party in possession or occupancy of said **PROPERTY** or any part thereof, and shall inure to the benefit of and be enforceable by the **CITY**, by and through its duly authorized representatives. **MERCY** shall file a copy of this Agreement in the Cumberland County Registry of Deeds, along with a reference to the Book and Page locations of the deeds for the **PROPERTY**.

If any of the restrictions, provisions, conditions, or portions thereof set forth herein is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed as a separate, distinct, and independent provision and such determination shall not affect the validity of the remaining portions hereof.

Except as expressly modified herein, the development use and occupancy of the subject premises shall be governed by and comply with the provisions of the Land Use Code of the City of Portland and any applicable amendments thereto or replacement thereof.

In the event that **MERCY** or any successor fails to continue to utilize the **PROPERTY** in accordance with this Agreement, or in the event of a breach of any condition(s) set forth in this Agreement, the Planning Board shall have the authority, after hearing, to resolve the issue resulting in the breach. The resolution may include a recommendation to the City Council that the site be rezoned to only I-H or any successor

zone and that the Agreement be terminated, requiring a cessation of the hospital campus use.

**WITNESS:**

**CITY OF PORTLAND**

\_\_\_\_\_

By \_\_\_\_\_

Joseph E. Gray  
City Manager

**WITNESS:**

**MERCY HOSPITAL**

\_\_\_\_\_

By \_\_\_\_\_

Howard Buckley  
President and CEO

**WITNESS:**

**MERCY HEALTH SYSTEM OF MAINE**

\_\_\_\_\_

By \_\_\_\_\_

Howard Buckley  
President and CEO

STATE OF MAINE  
CUMBERLAND, ss.

Date: \_\_\_\_\_, 2001

Personally appeared before me the above-named Joseph E. Gray, in his capacity as City Manager, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of the City of Portland.

Before me,

\_\_\_\_\_  
Notary Public/Attorney at Law

STATE OF MAINE  
CUMBERLAND, ss.

Date: \_\_\_\_\_, 2001

**From:** Matt Manahan <mmanahan@PierceAtwood.com>  
**To:** "Jonathan Spence (E-mail)" <jspence@ci.portland.me...>  
**Date:** Wed, Sep 26, 2001 5:07 PM  
**Subject:** Contract Zone Agreement

Jonathan --

We have revised the draft contract zone agreement to address the comments of the Planning Board members yesterday. Please let me know what you think.

On the specific points raised:

- \* Erin Rodriquez said that it seems premature to make the finding contained in the third whereas clause on page 2. That finding, though, is required by Ordinance Section 14-264(c).
- \* Erin Rodriquez raised a concern about what would happen if the property is sold to another buyer before August 1, 2003, but Mercy has not provided written notice that it will not purchase the property. To address this concern, we have added a statement providing that the contract zone will lapse if another buyer purchases the property before August 1, 2003.
- \* Cyrus Hagge suggested that retail establishments should be limited to those that relate to health. We have made this change in paragraph #2(f).
- \* Orlando Delogu said that the contract should not preclude use of a parking garage. That concern is addressed by the clarification in paragraph #2(i).
- \* Jaimey Caron asked whether public access to the open space will be assured. We have addressed that concern in paragraph #6.
- \* Orlando Delogu said that parking should not be allowed to cannibalize the designated open space. That concern is already addressed in paragraph #6.
- \* Jaimey Caron said that he would like to ensure that all development goes through Planning Board review. We have addressed this concern by clarifying in paragraph #10 that all development (not just "each phase") shall be subject to site plan review and subdivision review, if applicable.
  
- \* Ken Cole said that the contract should be clear about whether the guidelines in paragraph #10 and the standards in paragraph #11 supersede the standards in the Ordinance. I have addressed that concern by adding language stating that those guidelines and standards supplement, and do not supersede, the standards in the ordinance. That new language, along with the paragraph on page 7 (stating that "Except as expressly modified herein, the use and occupancy of the subject premises shall be governed by and comply with the provisions of the Land Use Code of the City of Portland and any applicable amendments thereto or replacement thereof.") should be sufficient to address this issue.
- \* Deb Krichels said that paragraph #10 subparagraphs e, f, and g are too ambiguous, and thus virtually useless. To address that comment, we have simply removed those subparagraphs, because those items are adequately addressed elsewhere.
- \* Cyrus Hagge and Ken Cole said that the front yard setback should be measured from the centerline of the road. I have changed paragraph #12(c) to address that.
- \* Ken Cole said we should consider whether lots can be sold without violating subdivision standards. I believe this issue is addressed by the language in paragraph #12 stating that the dimensional requirements apply to

the property as a whole, and not additionally to individual lots (if any) within the property. Thus, there are no dimensional standards (including street frontage) that would apply to individual lots. Can you think of any other subdivision issues that might pose a problem?

\* Orlando Delogu said the number of helistops should be limited to one, and I have added that limit in a new paragraph #16.

I think that covers the issues that were raised. Please let me know if you have questions about these suggested changes, or further suggestions.

Thanks,  
Matt

<<rev contract zone 092601.doc>>

**CC:** "Larry Plotkin (E-mail)" <lplotkin@maine.rr.com>, ...

**CONTRACT ZONE AGREEMENT  
BETWEEN  
CITY OF PORTLAND  
AND  
MERCY HOSPITAL**

**AGREEMENT** made this \_\_\_\_ day of \_\_\_\_\_, 2001 by and between the **CITY OF PORTLAND**, a body corporate and politic, located in Cumberland County and State of Maine (hereinafter the “**CITY**”) and **MERCY HOSPITAL**, a nonprofit corporation located in the City of Portland and **MERCY HEALTH SYSTEM OF MAINE**, a nonprofit corporation located in the City of Portland (hereinafter collectively “**MERCY**”).

**W I T N E S S E T H**

**WHEREAS, MERCY** has determined that it can no longer meet the long term needs of the community from its 144 State Street location; and

**WHEREAS, MERCY** has located a Portland site, a contiguous tract of land (called the Fore River Site) large enough to meet **MERCY’S** long term needs (including a mix of uses both taxable and tax-exempt) while being easily accessible and convenient to doctors, public transportation, and the Maine Medical Center; and

**WHEREAS, MERCY** requested a rezoning of the Fore River Site (also referred to herein as the “**PROPERTY**”), which is located in Portland at Map 73, Block A, Lot 1; Map 73, Block B, Lot 2; Map 74, Block A, Lot 1; Map 75, Block A, Lot 3; and Map 75, Block A, Lot 33, in order to permit the establishment and operation of a hospital campus on up to 42 acres of land; and

**WHEREAS**, the Planning Board of the City of Portland, pursuant to 30-A M.R.S.A. § 4352(8) and Portland City Code §§ 14-60 to 14-62 and 14-264, and after notice and hearing and due deliberation thereon, recommended the rezoning of the **PROPERTY** as aforesaid, subject, however, to certain conditions; and

**WHEREAS**, the **CITY** by and through its City Council has determined that said rezoning would be and is pursuant to and consistent with the **CITY'S** comprehensive land use plan and consistent with the existing and permitted uses within the original zone and the purposes of the I-H zone; and

**WHEREAS**, the **CITY** has determined that the proposed development will be designed and operated so that it will prevent undue adverse environmental impacts, substantial diminution of the value or utility of neighboring structures, or significant hazards to the health or safety of neighboring residents by controlling noise levels, emissions, traffic, lighting, odors, and any other potential negative impacts of the proposal; and

**WHEREAS**, the **CITY** has determined that because of the unusual nature and unique location of the proposed development it is necessary and appropriate to impose by agreement the following conditions and restrictions in order to ensure that the rezoning is consistent with the **CITY'S** comprehensive land use plan; and

**WHEREAS**, the **CITY** authorized the execution of this Agreement on \_\_\_\_\_, 2001;

**NOW, THEREFORE**, in consideration of the mutual promises made by each party to the other, the parties covenant and agree as follows:

1. The **CITY** hereby amends the Zoning Map of the City of Portland, dated December 2000, as amended and on file in the Department of Planning and Urban Development,



and incorporated by reference into the Zoning Ordinance by § 14-49 of the Portland City Code, by adopting the map change amendment shown on Attachment 1, and by designating the **PROPERTY** a Helistop Overlay Zone; provided however, that this contract rezoning shall become null and void, and the **PROPERTY** shall revert to the I-H zone, in the event that (1) **MERCY** fails to acquire said **PROPERTY** before August 1, 2003, ~~or~~ (2) before August 1, 2003 **MERCY** provides written notice to the **CITY** of **MERCY'S** decision not to purchase the **PROPERTY**, or (3) before August 1, 2003 the **PROPERTY** is sold to another buyer before being sold to **MERCY**. The **CITY** shall not issue **MERCY** any building permits until **MERCY** has purchased the **PROPERTY**.

2. *Permitted Uses.* **MERCY** shall be authorized to establish and maintain the following uses on the **PROPERTY**:

- a. Hospitals, clinics, and medical research facilities.
- b. Community living arrangements, congregate care facilities, intermediate care facilities, long term or extended care facilities, and sheltered care group homes.
- c. Office complexes and professional offices.
- d. Day care facilities and adult day care facilities.
- e. Exercise and fitness centers and health clubs.
- f. Personal services, restaurants, and retail establishments of no more than 50,000 square feet, except that there shall be no drive through facilities. Shops and stores shall be limited to those that offer at least in part goods or merchandise having some relation to human health, whether physical, psychological, or otherwise, including, without limitation, flower shops and pharmacies.
- g. Dwellings, hotels, motels, inns, rooming units, and lodging houses for hospital or clinic employees or volunteers and patients' family members.
- h. Teaching centers.
- i. Accessory uses, including, but not limited to, parking facilities (including parking garages), utility services, stormwater management systems, and site amenities.

3. The uses on the **PROPERTY** will be within multiple buildings to be constructed in phases, some owned by **MERCY** and some owned by others. The new structures will be a mix of single and multi-level buildings developed in a campus-like setting.

The buildings may be freestanding or linked, depending upon the phasing and ultimate development program proposed.

4. The first phase of construction will include a medical office building, which may be built concurrently with an ambulatory care facility. The medical office building, its associated land, and its personal property shall be taxed based on a market value of, at minimum, \$7.5 million dollars.
5. A portion of the **PROPERTY** will be transferred to the Maine Department of Transportation's ("MDOT") for its construction of the proposed Commercial Street Connector roadway (hereinafter referred to as the "**CONNECTOR**").
6. At minimum, the portion of the **PROPERTY** identified as "Open Space" on Attachment 2 shall be reserved as open space, which shall be left available for daytime recreational use by individual members of the public. Such open space may be used in the calculation of the impervious surface requirements contained in paragraph 12 of this Agreement. MERCY shall cooperate with the City in the creation of a pedestrian trail and bike path.
7. For purposes of calculating impervious surface required in paragraph 12 below, land separated by the MDOT **CONNECTOR** may be included, but any intertidal lands shall not be included in said calculation.
8. Access to the **PROPERTY** via County Way shall be permitted for service vehicles only provided that **MERCY** demonstrates to the **CITY'S** Traffic Engineer that County Way provides an adequate level of service to the **PROPERTY** and **MERCY** provides evidence of its right, title or interest to access said street.
9. For purposes of front yard setbacks, the front yard for each building developed on the **PROPERTY** south of the pond shall have as the front yard the area between the building and the **CONNECTOR**. Building facades facing the **CONNECTOR** will demonstrate a high degree of design and visual appeal.
10. *Development Guidelines.* The **PROPERTY** shall be developed substantially in accordance with the conceptual master plan shown on Attachment 2, provided, however, that ~~each phase of the~~ all development shall be subject to site plan review and, ~~if applicable,~~ subdivision review by the Planning Board, if applicable. Any site plan review applications shall fully comply with the detailed site plan application requirements contained in article V (site plan) of the Land Use Code. The Planning Board may permit deviations from the conceptual master plan, as long as the deviations are consistent with the purposes of this Agreement. In reviewing the site plan submissions, the Planning Board shall consider the following development guidelines, which supplement, and do not supersede, the standards of the Land Use Code of the City of Portland:

- a. Promotion of a campus-like atmosphere through the internal arrangement and mix of uses.
- b. Adjacent compatibility within the development.
- c. Consideration of compatibility with existing or potential development of perimeter uses to those adjacent to the **PROPERTY**.
- d. Use of the proposed **CONNECTOR** as the primary access to the site.
- ~~e. Uses arranged to provide a high level of user convenience.~~
- ~~f. A high degree of pedestrian orientation.~~
- ~~g. A non-highway-oriented design.~~

11. Development Standards. The following standards supplement, and do not supersede, the standards of the Land Use Code of the City of Portland.

- a. *Design relationship to site:* Development proposals shall demonstrate a reasonably unified design of the site, including the architecture, the layout of the buildings, pedestrian and vehicular circulation plan, open space, drainage, and the topography, soil conditions, vegetation, and other natural features of the site. Integration of open spaces and natural features shall be achieved by incorporation of outdoor amenities for the benefit of users of the site, such as jogging and walking trails, gardens, and benches.
- b. *Landscaping:* Development proposals shall include a landscape program. All land areas not covered by structures, parking areas, or circulation facilities shall be landscaped and maintained. In order to soften the visual impact of large expanses of pavement in parking lots, vegetation shall be planted or retained in islands or planting strips where required by article IV (subdivisions) and article V (site plan) of the Land Use Code.
- c. *Sidewalks:* Development proposals shall include internal sidewalks, illustrating the manner in which the developer will provide this amenity to take advantage of the topography and natural features of the site and providing for safe pedestrian access to all buildings.
- d. *Buffers and screens:* Development proposals shall include appropriate measures of a dense and continuous nature (for example, a double staggered row of white pine twenty-five (25) feet on center, etc.) in order to buffer parking lot visibility from public roads.
- e. *Preservation of natural features:* Development proposals shall identify the extent to which the developer will preserve natural features including,

but not limited to, existing vegetation, flood plains, rock outcroppings, surface water bodies, drainage swales and courses, and wetlands; provided any such program shall consider and be sensitive to the need to preserve such natural features.

- f. *Architectural design:* All buildings shall be designed or approved by a registered architect in the State of Maine. The scale, texture, color, and massing of the buildings shall be coordinated. The full range of high-quality, permanent, and traditional or contemporary building materials and technology may be incorporated in a manner so that the development as a whole embodies distinguishing attributes that achieve the developer's desired degree of excellence and are in conformance with the architectural guidelines provided in any private development restrictions. Particular emphasis shall be placed on the appearance of building facades from public streets and highways, from driveway and parking areas, and from other nearby buildings. Building elevation drawings shall be submitted which indicate architectural style, exterior finishes and color, building height and scale, and location and scale of window and door openings. Samples of exterior building materials shall also be submitted.
- g. *Signs:* Development proposals shall identify all proposed signage. Signs shall be designed in proportion and character with the building facades. All signs shall be constructed of permanent materials and shall be coordinated with the building and landscaping design through the use of appropriate materials and finishes.
- h. *Master plan:* Prior to development on the PROPERTY, MERCY shall provide a master plan of the campus. The master plan shall include the following: The location of the building(s) on the site; infrastructure of the site; identification of common areas; traffic circulation, architectural character and treatment of the building(s); proposed building envelopes; phasing and timing of the development; private development restrictions; and such other information necessary and sufficient to ensure compliance with the standards in this section. Master plans are dynamic representations that assist in guiding projects through phased development. Master plans are flexible and adaptable to changes that occur within the development process. The master plan shall be subject to periodic revision and update as needed and as phased development occurs over time.

12. *Dimensional Requirements.* The following dimensional requirements shall apply to the **PROPERTY** as a whole, and not additionally to individual lots (if any) within the **PROPERTY**:

- a. Maximum impervious surface ratio: Eighty (80) percent;
- b. Maximum building height: Ninety (90) feet;

- c. Minimum front yard (measured from the centerline of the **CONNECTOR**):  
~~Fifteen-Fifty-five (1555)~~ feet;
  - d. Minimum side yards: Ten (10) feet;
  - e. Minimum rear yard: Ten (10) feet;
  - f. Pavement setback from lot boundaries: Fifteen (15) feet.
13. The provisions of this Agreement, including the permitted uses listed in paragraph 2, are intended to replace the uses and requirements of the underlying I-H zone.
14. Pursuant to Code § 14-264(d), all development plans shall include complete information of processes, materials, or methods of storage to be used by the development and shall specify how hazardous impacts to neighboring properties will be prevented.
15. During the period before **MERCY** purchases the **PROPERTY**, the **PROPERTY** may continue to be used for stockpiling and consolidation of cargo and such uses as the current owners have undertaken on the **PROPERTY**, including, but not limited to, the uses listed in Portland City Code § 14-262(a), (c), (d), (e), (f), (h), and (m).
16. The **PROPERTY** shall be limited to one helistop.

The above stated restrictions, provisions, and conditions are an essential part of the rezoning, shall run with the **PROPERTY**, shall bind and benefit **MERCY**, any entity affiliated with **MERCY** that takes title to the **PROPERTY**, their successors and assigns, and any party in possession or occupancy of said **PROPERTY** or any part thereof, and shall inure to the benefit of and be enforceable by the **CITY**, by and through its duly authorized representatives. **MERCY** shall file a copy of this Agreement in the Cumberland County Registry of Deeds, along with a reference to the Book and Page locations of the deeds for the **PROPERTY**.

If any of the restrictions, provisions, conditions, or portions thereof set forth herein is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed as a separate, distinct, and independent provision and such determination shall not affect the validity of the remaining portions hereof.

Except as expressly modified herein, the use and occupancy of the subject premises shall be governed by and comply with the provisions of the Land Use Code of the City of Portland and any applicable amendments thereto or replacement thereof.

In the event that **MERCY** or any successor fails to continue to utilize the **PROPERTY** in accordance with this Agreement, or in the event of a breach of any condition(s) set forth in this Agreement, the Planning Board shall have the authority, after hearing, to resolve the issue resulting in the breach. The resolution may include a recommendation to the City Council that the site be rezoned to only I-H or any successor zone and that the Agreement be terminated, requiring a cessation of the hospital campus use.

**WITNESS:**

**CITY OF PORTLAND**

\_\_\_\_\_

By \_\_\_\_\_

Joseph E. Gray  
City Manager

**WITNESS:**

**MERCY HOSPITAL**

\_\_\_\_\_

By \_\_\_\_\_

Howard Buckley  
President and CEO

**WITNESS:**

**MERCY HEALTH SYSTEM OF MAINE**

\_\_\_\_\_

By \_\_\_\_\_

Howard Buckley  
President and CEO

STATE OF MAINE  
CUMBERLAND, ss.

Date: \_\_\_\_\_, 2001

Personally appeared before me the above-named Joseph E. Gray, in his capacity as City Manager, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of the City of Portland.

Before me,

\_\_\_\_\_  
Notary Public/Attorney at Law

STATE OF MAINE  
CUMBERLAND, ss.

Date: \_\_\_\_\_, 2001

Personally appeared before me the above-named Howard Buckley, in his capacity as President and CEO, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of Mercy Hospital and Mercy Health System of Maine, Inc..

Before me,

\_\_\_\_\_  
Notary Public/Attorney at Law

*Neighborhood labels as requested*



**CITY OF PORTLAND**

Sarah Greene Hopkins  
Development Review Services Manager  
Planning & Urban Development

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CARSON LOIS F WID KW VET &  
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1047 CONGRESS ST  
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CHARLES JAMES  
259 ST JOHN ST  
PORTLAND, ME 04102

CHASE PATRICIA P  
210 SAINT JOHN ST  
PORTLAND, ME 04102

CHEN HSUEH-CHEN  
89 GILMAN ST  
PORTLAND, ME 04102

CHILDS THOMAS W  
96 VESPER ST  
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CLOUTIER ANN K  
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CONGRESS STREET ASSOCIATES LLC  
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& ROBERT M JTS  
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CONLEY STEPHEN J WWII VET  
232 VALLEY ST  
PORTLAND, ME 04102

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PORTLAND, ME 04102

CONTRERAS DONYS &  
YESSENIA E JTS  
23 HEMLOCK ST  
PORTLAND, ME 04102

COOMBS BLAINE L & JEANNE JTS  
8 CHERRY ST  
PORTLAND, ME 04102

CORBIN JEFFREY P  
248 VALLEY ST  
PORTLAND, ME 04103

CUMMINGS THOMAS L  
12 A ST  
PORTLAND, ME 04102

CURLEW ROBERT W  
158 SAINT JOHN ST  
PORTLAND, ME 04102

CUSACK LINDA H &  
HELEN C FOREST JTS  
1050 CONGRESS ST  
PORTLAND, ME 04102

DELIVERANCE CENTER  
1008 CONGRESS ST  
PORTLAND, ME 04102

DELUCA RALPH M WWII VET  
205 SAINT JOHN ST  
PORTLAND, ME 04102

DIBIASE KATHLEEN E  
29 LOWELL ST  
PORTLAND, ME 04102

DICKSON DANIEL B  
24 GILMAN ST  
PORTLAND, ME 04102

DINARDI WILLIAM S &  
DIANE E JTS  
36 FREDERIC ST  
PORTLAND, ME 04102

DINSMORE REGINA  
10 HUNTRESS ST  
PORTLAND, ME 04102

DOMINIC REALI REALTY LLC  
312 ST JOHN ST 2ND FL  
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DONOVAN JOHN J ETAL JTS  
378 PARK AVE  
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DRISCOLL EDWARD D  
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PORTLAND, ME 04102

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JONES DAVID L  
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KAPOTHANASIS CONSTANTINE &  
EFFIE JTS  
70 SCOTT DR  
WESTBROOK, ME 04092

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SHAMAYEL JTS  
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ONE CANAL PLAZA  
PORTLAND, ME 04101

KILMARTIN JAMES P &  
KATHERINE B JTS  
32 FOREST ST  
PORTLAND, ME 04102

KINSMAN BETH ANN &  
WILLIAM D JTS  
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11:24 AM

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47 SUNSET RD HIGHLAND LAKE  
FALMOUTH, ME 04105

MAINE MEDICAL CENTER  
22 BRAMHALL ST  
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MAKOT PECH MARKET LLC  
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PORTLAND, ME 04102

MAREAN KARL J &  
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NO WHITEFIELD, ME 04353

MARINE ROBERT A TRUSTEE  
18 HAZELTINE DR  
CUMBERLAND CTR, ME 04021

MARSHALL BRIAN P &  
RUTH A JTS  
9 GRETA AVE  
DERRY, NH 03038

MARTIN SARAH A  
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MMC REALTY CORP  
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MOODY JAMES L JR  
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WILMA L JTS  
11 CHERRY ST  
PORTLAND, ME 04102

MORIN GERALD H JR  
212 ST JOHN ST  
PORTLAND, ME 04102

NGUYEN THANH-VAN &  
THANH MON THI DANG JTS  
101 GILMAN ST  
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PARADY RALPH C  
95 GILMAN ST  
PORTLAND, ME 04102

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SALVAGE INC  
253 CONGRESS ST  
PORTLAND, ME 04101

POSTOLACHE IONEL  
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PORTLAND, ME 04102

PEDA MARILENA LILI  
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PORTLAND, ME 04102

PROPERTY RESOLUTIONS INC  
51-A BURNHAM ST  
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PROSSER ALAN  
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RASMUSSEN KAREN  
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PORTLAND, ME 04102

RASMUSSEN TIMOTHY A &  
MARILYN R M RASMUSSEN JTS  
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MARY M JTS  
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SAY LOY & KEV VORN JTS  
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SEA OTTER 12G LIMITED LIABILITY  
COMPANY  
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YARMOUTH, ME 04096

SEA OTTER 16G LIMITED LIABILITY  
COMPANY  
39 COVESIDE LN  
YARMOUTH, ME 04096

SELLERS ROLAND J WWII VET &  
HELEN E JTS  
45 BURNHAM ST  
PORTLAND, ME 04102

SEM RIN  
15 HUNTRESS ST  
PORTLAND, ME 04102

SEV REALTY INC  
34 NORTHWOOD DR  
PORTLAND, ME 04103

SEVERINO ASSOCIATES LIMITED  
LIABILITY COMPANY  
7 CRESTWOOD DR  
WESTBROOK, ME 04092

SITEMAN RICHARD &  
LORAIN A LOWELL JTS  
28 FOREST ST  
PORTLAND, ME 04102

SKINNER GABRIEL M  
19 FREDERIC ST  
PORTLAND, ME 04102

SPECTOR ELIZABETH L  
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PORTLAND, ME 04103

SPRING STEPHEN D  
240 VALLEY ST  
PORTLAND, ME 04102

ST JOHN LEASING CORP  
202 US ROUTE 1 # 362  
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STEVENS LAWRENCE L & VIRGINIA  
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STEVENS MICHAEL &  
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PORTLAND, ME 04102

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CLAUDIA JTS  
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STORAGE REALTY CORP  
21 SACO ST  
WESTBROOK, ME 04092

SUNSHINE PROPERTIES LLC &  
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TREAT C STEPHEN  
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TUNDRA ASSOCIATES  
15 LOWELL ST  
PORTLAND, ME 04102

TUNDRA ASSOCIATES  
% MAINE EYE CENTER  
15 LOWELL ST  
PORTLAND, ME 04102

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C/O MAINE EYE CENTER  
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## Planning and Zoning for Medical Districts

By Michelle Gregory

Health care is the topic of the 1990s. Who isn't drafting a plan to simplify it? As health care services have become more specialized, more costly, and more complex, so have health care facilities. Hospitals are constantly expanding to make room for emerging technology, new beds, more parking, and related uses like dialysis centers or physical therapy clinics. New medical facilities are being planned to accommodate an even wider array of medical uses such as laboratories, medical supply stores,

classroom buildings, offices, housing for hospital staff and students, and other accessory uses. These facilities provide essential services and serve as major employment centers that contribute greatly to a community's economic health. But, as behemoth land uses go, they can be a nuisance if not an outright encroachment on surrounding neighborhoods.

But planning and zoning for this industry so ironically called the "ailing health care system" have become simpler with the emergence of medical districts. These districts represent a collaborative effort by planners, health care facility developers, and citizens to produce guidelines that protect adjacent landowners from the ill effects of medical facilities, while facilitating the most efficient and viable development of the medical campus. This issue of *Zoning News* examines the site planning issues planners should consider in developing a medical district.

*Zoning News* reviewed all the examples of medical district ordinances it could find and gleaned from them their best features. This compilation is by no means a model medical district ordinance and should not be interpreted as such. The dimensional requirements, standards, and ordinance texts italicized here are excerpted from the sources cited. Dimensional requirements and standards should always reflect individual

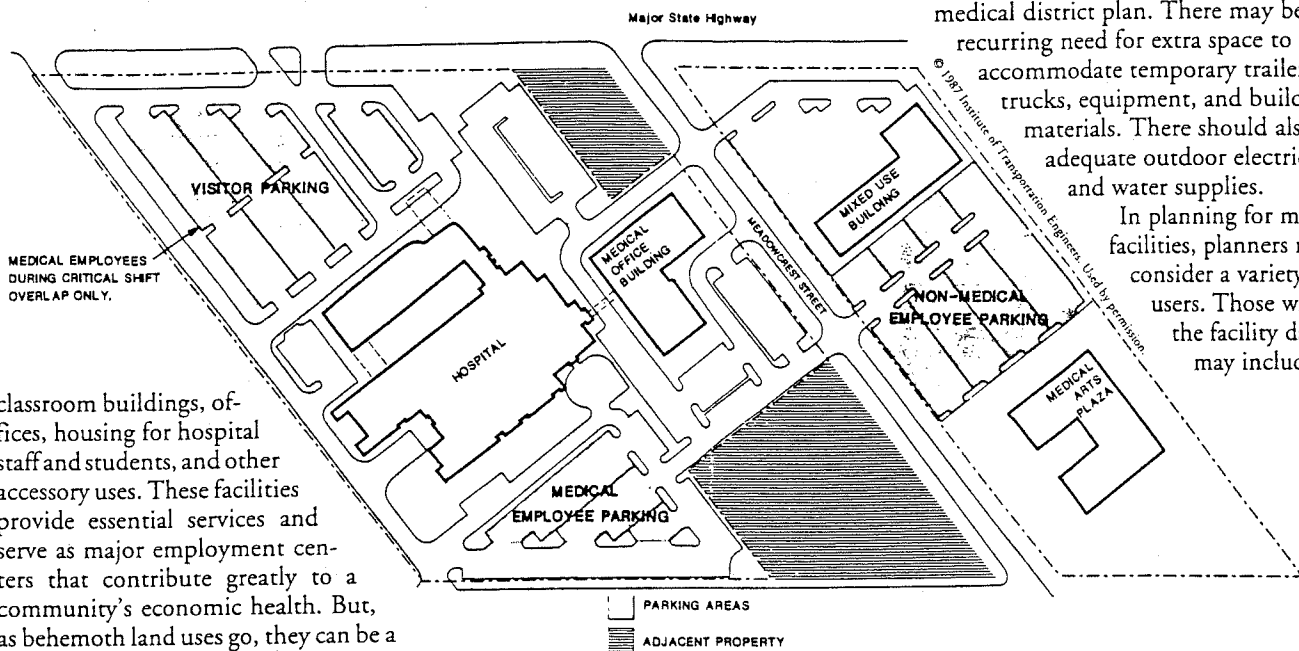
community needs and specific site characteristics. An ordinance is less likely to be challenged if supported by local research. The box on page 4 lists some organizations that can provide data on various medical facilities.

### Users and Design Review Considerations

Medical campuses may contain a wide range of uses, but they invariably contain a hospital. For hospitals, the number of beds and bed occupancy rates are frequently used as indicators for requirements such as parking, visitor facilities, and construction phasing. The demand for more beds, along with the constant accommodation of new technology, puts many medical campuses in a constant state of construction or expansion.

Planners should keep this in mind when reviewing the parking lot size and outdoor storage provisions of a medical district plan. There may be a recurring need for extra space to accommodate temporary trailers, trucks, equipment, and building materials. There should also be adequate outdoor electrical and water supplies.

In planning for medical facilities, planners must consider a variety of users. Those who use the facility daily may include



*Proposed parking lot redesign in a 1987 study published in ITE Journal concerning traffic at a suburban New Orleans medical facility.*

medical employees (doctors, nurses, technicians, and researchers), non-medical employees (dietitians, maintenance staff, and administrative staff), paramedics, patients, students, visitors, and delivery persons. Many of these users have specific access needs. Generally, staff parking is located behind medical buildings. Doctors have a separate parking lot close to the building. This is due in part to their place atop the medical hierarchy, but also because many hospitals require doctors to use a specific entrance that monitors their presence. Medical employees work around the clock and usually require close, well-lit parking.

Emergency access and parking for ambulances should be resolved during site plan review and should be reviewed by a traffic engineer. Non-medical employees, the lowest in the health care hierarchy, generally work during the day and get the parking spaces farthest from the building. Sometimes a covered walkway

is constructed down the center of the lot to shelter those who must walk long distances during inclement weather.

Parking for visitors, who come and go frequently, should be clearly separated from staff parking. It should be close to a non-emergency entrance, and access should be controlled. A study of parking activity at a suburban New Orleans medical facility showed that hospital employees used visitor-designated parking to avoid walking long distances. Assignment of individual parking spaces and better enforcement prevented the hospital from having to add an additional lot. (See *ITE Journal*, "Reevaluation of Parking Facilities at a Medical Facility: A Case Study," October 1987.) To avoid confusion, signs that clearly indicate the location of lots should be posted near all entrances to the facility.

Many medical campuses, especially those with teaching hospitals, will be abuzz with medical students. Students' housing and classes frequently are located on or near the medical campus, and students are less likely to travel by car. They often require integrated, well-lit, and well-marked sidewalks and bicycle paths. In Hunstville, Alabama, applicants must include a sidewalk plan that is contiguous throughout the development and integrated into the community sidewalk system. Medical campuses should also provide for bicycle storage. Bus routes should circulate through the site, and stops should be well-marked and sheltered.

Finally, separate access for delivery trucks should be situated near the loading areas and away from emergency vehicle routes.

### The Medical District Ordinance

The compilation below draws from medical district provisions we found in *Alabama* (Huntsville); *California* (Escondido); *Colorado* (Denver); *Florida* (Daytona Beach, Indian River County, Jupiter, Miami Beach); *Illinois* (Peoria); *Iowa* (Dubuque); and *Missouri* (Creve Coeur, Higginsville, Oakland).

**Title.** The district's title should be generic. The most obvious title is simply Medical District. Other possibilities in use are Hospital Professional Zone (Escondido), Health Uses District (Oakland), Health Services District (Higginsville), Planned Hospital District (Creve Coeur), or Institutional District (Dubuque). This last option is more encompassing and usually includes provisions for universities or large government facilities.

**Description.** This should convey the public purpose associated with establishing the district and should be in plain English. If the purpose is not clear, the community may want to reevaluate the need for the district. Here are two examples. The first is succinct:

*The purpose and intent of the Medical Center District is to provide areas in appropriate locations where medical facilities may be established when the need exists. (Jupiter)*

A community wishing to emphasize the district's place within the community or its relevance to a comprehensive plan could use this language:

*The Medical District is intended to implement the Indian River County Comprehensive Plan policies for managing the development of the major portions of land designated as part of a hospital/commercial node, to provide a variety of uses which support a major medical facility, and to protect such a facility from encroachment by land uses which may have an adverse effect on the operation and potential expansion of the facility. Land uses that could cause an adverse effect would generally include those uses that are likely to be objectionable to neighboring properties because of noise, vibration, odors,*

*No building or structure shall be erected, altered, or used, except for one, or more of the following. Outdoor storage shall be prohibited within the Medical District. Site plan review shall be required for all uses, pursuant to the provisions of Section 23.*

#### **Institutional Uses**

Child Care and Adult  
Care Facilities  
Hospitals, General and Specialty  
Nursing Homes, Rest Homes,  
Convalescent Homes, and  
Homes for the Aged  
Total Care Facilities

#### **Community Service Uses**

Business Schools, including  
Medical Educational  
Institutions  
Emergency Services, including  
Ambulance Service

#### **Recreational Uses**

Parks Open to the Public

#### **Commercial Uses**

General Office  
Automatic Teller Machines  
Health Services  
Optical Firms  
Medical Related Offices  
Business Services  
Medical Research, Experimental  
and Testing Laboratories  
Medical and Dental Equipment  
and Supply Facilities  
Limited Retail Sales  
Apothecary, including  
prescription drugs  
Bookstore and Stationers  
Florist  
Greeting Card Shops

*smoke, amount of traffic generated, or other physical manifestations. These medical district regulations are intended to protect, promote, and improve the public health, safety, comfort, order, appearance, convenience, and general welfare of the inhabitants of this district and its environs. (Indian River County)*

**Definitions.** Some ordinances we reviewed included a definitions section for various uses specific to that district. Others simply refer the reader to another section of the land-use code or zoning ordinance where all definitions are listed.

**Permitted, Special, Accessory, Conditional, or Prohibited Uses.** Uses are often listed individually in an exhaustive, single-column format. However, they can be grouped by type and expanded as the need arises. This makes an ordinance appear better organized and easier to cross-reference with other provisions that apply to those uses generally. It is also a good idea to include a paragraph that explains the ground rules for all uses in that category. In the example in the box, which pertains only to the permitted uses section, Indian River County employs both techniques.

**Dimensional Requirements and Other Site Planning Issues.** Dimensional requirements vary widely among the ordinances we surveyed. There are typical requirements for minimum front-, rear-, and side-yard setbacks and for maximum lot coverage. Some ordinances contain a minimum site size for the whole district (five acres in Daytona Beach, 30 acres in Creve Coeur), while others list only a minimum lot size within the district (8,500 square feet in Huntsville, 7,000 square feet in Escondido).

Some ordinances include building height restrictions, which are intended to keep flight paths clear for helicopters and to reduce noise reverberation. In Escondido, height is further restricted by a heliport overlay zone, which divides the land surrounding Palomar Hospital into 11 graduated, height-restricted areas with increments that correspond to distances from the hospital. The areas farthest from the hospital may have the highest buildings. The overlay includes an interesting provision for a deed restriction requirement as a condition for approval of any new use or expansion of an existing use within the zone:

*The language of the deed restriction or equivalent document shall be in a form satisfactory to the city attorney. This document shall have the dual purpose of both preventing potential safety problems resulting from structures encroaching into the required heliport flight path and*



erting future owners [of property in the zone] as to the presence of the height restrictions. (Escondido Heliport Overlay Zone. Article XXII, Sec. 33-494-b)

### **Residential Neighbors: A Special Concern**

When districts border on residential property, friction with the community is predictable. Standard dimensional requirements should be customized for these areas to reduce any negative impacts a medical district might have on surrounding residences. Public hearings are a surefire way to find out what concerns neighbors have. Most often, residents are worried about noise, traffic, view obstruction, glare, property values, trash and other forms of outdoor storage, and employees parking on the street. Planners should facilitate communication between neighborhood organizations and representatives from the medical facility to iron out some of these difficulties.

Denver formalized this process in 1991 after controversy flared over a proposed expansion by a Kaiser-Permanente medical facility. Its ordinance now includes a provision that guarantees public notification and an opportunity for participation in the approval process prior to certain types of construction. Its code also invites public comment on landscaping requirements near residential areas. Below are some excerpts from a lengthy section of the Denver Hospital District ordinance called "Construction Subject to Special Review." It applies to any new construction related to emergency access, which is a frequent generator of noise and traffic.

*Upon receipt of an application for zoning permit for construction . . . the department of zoning administration shall transmit a copy of such application to the planning office, city council office, public works, affected registered neighborhood organizations . . . and to other such agencies, either public or private, as may be deemed by the department to have an interest (Sec. 59.533.10 (2)) . . . a planning board committee meeting at which all parties and interested citizens shall have an opportunity to be heard, may be held within thirty (30) days following the date that the completed zoning permit was received . . . All reviewing agencies, both public and private, shall transmit to the planning office their recommendations or comments no later than three (3) working days prior to the planning board committee meeting. (Sec. 59.533.10 (3))*

The concerns of nearby citizens can also be effectively diffused by requiring larger setbacks and extensive buffering and landscaping for areas near residential streets. The Creve Coeur code addresses this:

*Side and rear yards: No building, structure, or parking lot shall be located within two hundred (200) feet of any abutting single-family residential zoning district "A," "B," "C," and "AR," districts except that the setback may be reduced to twenty-five (25) feet for parking or driveway and sixty (60) feet for building setback when adjacent to any single-family residential zoning district property in the "A," "B," "C," and "AR" districts containing churches, synagogues, or other places of worship, or any buildings from property zoned to any other zoning district shall be twenty (20) feet. The buffer area resulting from these setback requirements shall be landscaped and provided with other screening devices as deemed appropriate by the planning and zoning commission (Creve Coeur Code Sec. 26-40.5 (c) 2)*

Creve Coeur also does a good job of linking its medical district provision to other local environmental regulations for the protection of the community at large:

*Environmental controls: All development shall conform with the Environmental Performance Standard provided in Section 26-80 and with all other appropriate environmental controls including those relating to landscaping, lighting, buffering, stormwater retention, and erosion control provided in Article V. (Creve Coeur Code Sec. 26-40.5 (c) 2e)*

Open space around medical campuses, particularly hospitals, is extremely important. In addition to acting as a buffer, it provides an amenable environment for visitors who may be waiting to see a patient, for staff on breaks, and for students who often fill time studying. Claire Cooper Marcus's *People Places* (chapter seven, "Hospital Outdoor Spaces") is highly recommended reading. Landscaping for open space areas, driveways, parking areas, walkways, sitting areas, and entranceways should also be required. Escondido's provision, too long to reprint here, addresses these issues effectively.

Problems generated by traffic can be further mitigated by cutting off access to the facilities from residential streets. Daytona Beach does this:

*Where HM district property abuts two streets and also abuts any residential district, access to the HM district property shall be provided only from the street not abutting the residential district. Access may be provided from a residential district only as a special use. (Daytona Beach Land Development Code Sec. 3-HM, 3.5(c))*

*Lighting and Signs.* Lighting from signs and parking lots also irritates homeowners near medical facilities. Jupiter's ordinance deals with this issue briskly.

*Artificial lighting used to illuminate the premises and/or advertising copy shall be directed away from adjacent properties. (Sec. 513.4.A)*

As with definitions, most medical districts include no special sign provisions, but simply refer to the community's sign ordinance. Escondido's Hospital Professional Zone is the only one we surveyed with its own provision for signs. In summary, it has specific provisions to allow only: signs that contain names of establishments, goods, or services; building identification; directional signs; "for rent," "for sale," or "for lease" signs; temporary signs applying to construction; certain types of freestanding signs; and historical, point-of-interest, or other state cultural signs. (Sec. 33-317 a-h)

*Parking Requirements.* Parking requirements for uses within medical districts vary. As with the definitions, many cities require the reader to refer to a general section on parking requirements for the whole ordinance. Others include them in the medical district ordinance. Below are some of the standards we found in our collection of medical district ordinances. More examples may be found in *Off-Street Parking Requirements* (PAS Report No. 432).

- *Hospital*
  - 1.5 spaces per bed (Miami Beach)
  - 1 space per each bed (Huntsville)
  - 1.5 spaces per bed, plus 1 space per staff doctor (Jupiter)
- *Educational facility*
  - 1 space per 5 seats in the main auditorium or 1 space for 3 seats per classroom, which ever is greater (Miami Beach)

# 1420 Health Care Fac.

- **General offices**
  - 1 space per 400 square feet of area (Miami Beach)
  - 1 space per 200 square feet of floor area (Huntsville)
- **Clinic**
  - 1 space per 400 square feet of area (Miami Beach)
  - 1 space per 150 square feet of floor area (Oakland)
  - 1 space per 200 square feet of area (Huntsville)
  - 5 spaces per 1,000 square feet of total floor area, plus 1 space for each tenant (Jupiter)
- **Hospital Staff Office**
  - 1 space per 350 square feet of area (Miami Beach)
- **Doctors' and Nurses' Quarters**
  - 1 space per unit (Huntsville)
- **Nursing Home, Convalescent Home, Home for the Aged, Life Care Facility**
  - 1 space for each three beds (Oakland)
  - 1 space for each four beds (Huntsville)
  - 1 space for each four boarding units, and 1 space for each two staff persons on the largest working shift (Daytona)
- **Drug Store**
  - 1 space per 200 square feet of area (Huntsville)
- **Ambulance Service**
  - 2 spaces for each ambulance vehicle controlled (Huntsville)
- **Medical Laboratory or Medical Supply House**
  - 1 space per each 300 square feet (Huntsville)
- **Day Care Centers**
  - 5 spaces for transient use plus 1 space per employee and assistant with a minimum of 2 employee parking spaces (Jupiter)
- **Restaurant/Cafeteria**
  - At least 1 parking space for each 3 seats offered to the public in a restaurant or cafeteria and for each 2 seats in a lounge, plus 1 space per employee on the shift of greatest employment. (Jupiter)

## Site Plan Approval, Submission Requirements, and Procedures.

The best way to ensure the implementation of standards and requirements such as those above is to require developers to go through a master or conceptual plan approval process. Open communication among developers, planners, engineers, builders,

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## Information

For more information on design, parking, traffic generation, and traffic circulation related to medical facilities, call:

- American Institute of Architects—202-626-5170
- Institute of Transportation Engineers—202-554-8050
- National Parking Association—202-296-4336
- Transportation Research Board—202-334-2934

Organizations involved in planning for medical facilities include:

- The Society for Health Care Planning and Marketing of the American Hospital Association—312-280-6000 (Addresses institutional and multi-institutional strategic planning and marketing issues.)
- National Rural Health Association—816-756-3140 (Aims to create a better understanding of health care problems unique to rural areas.)
- American Ambulance Association—916-483-3827 (Provides publications and seminars on federal, state, and local regulations regarding emergency medical transportation.)
- Association of Air Medical Services—818-793-1232 (Provides publications and research on the development of safety standards for emergency air transport.)
- The Forum for Health Care Planning—202-857-1162 (Provides training and information services for those committed to improving health care services and facilities.)

and zoning officials serves to mitigate problems before any concrete is poured. Dubuque's ordinance fleshes out its entire review and approval process, outlined below. See Supplement No. 5 Section 3-5-D, "Procedures for district establishment and expansion," of its institutional district ordinance for details:

- (1) Application and conceptual development plan submission
  - a. Written information
  - b. Graphic materials
- (2) Commission hearing
- (3) Commission recommendation
- (4) Conceptual development plan approval
- (5) Council action
- (6) Submission of final site development plan
- (7) Development according to final site development plan
  - a. Site development plan review
  - b. Construction of improvements or posting of bond
  - c. Time limitation
  - d. Extension of time limitation
  - e. Changes from plan

## Link to the Comprehensive Plan

Finally, as with any district, it is a good practice to link its provisions to the community's future. Health care districts continue to surface as a legitimate issue to be dealt with in the comprehensive planning process. Redding, California; Asheville, North Carolina; Baton Rouge, Louisiana; and Baytown, Texas, all address health care services and facilities in their most recent comprehensive plans. This is important not only as a social issue but also as an economic one for any community that relies on a large medical district as a major employment center. Including a statement that emphasizes the importance of the medical district in your community's plan for the future lets residents, developers, and health care administrators know their responsibility to the community as a whole.

**CITY OF PORTLAND, MAINE  
MEMORANDUM**

**TO:** Chair Caron and Members of the Portland Planning Board  
**FROM:** Jonathan Spence, Planner  
**DATE:** July 24, 2001  
**SUBJECT:** Zoning Options for the Mercy Hospital Campus Siting Along the Fore River

**Introduction**

Mercy Hospital is requesting a workshop session before the Planning Board to discuss possible zoning options for a parcel of land located adjacent to the Fore River. Mercy has determined that it can no longer meet the long-term needs of the community from their current location at 144 State Street. A site search determined that the only site that possessed the desired attributes related to size and proximity was the "Fore River Site". This site is currently zoned I-H and is adjacent to properties zoned I-L and I-Mb. The existing zoning does not allow the types of uses Mercy has envisioned for the construction of their new Hospital Campus. Mercy currently holds options to purchase the property consisting of two parcels and is in the process of securing the necessary zoning to permit the proposed use.

Originally Mercy was encouraged by the City to pursue a text amendment to the I-Hb zone to permit the proposed use. An application for the text amendment has been received and is included as attachment 2 and a synopsis of those amendments is included as attachment 3. Staff has conducted a preliminary review of the proposed text amendment through identifying applicant objectives, City policy objectives, and possible alternatives. Staff requests the Planning Boards assistance in recommending a direction for the applicant to pursue.

**Applicant's Objectives**

Create a zoning scheme that will enable the following:

1. Accommodate the siting of a Medical Center Complex which may include but would not be limited to the following uses:
  - A. Hospitals, Clinics and Medical research facilities.
  - B. Community living arrangements, congregate care facilities, intermediate care facilities, long term or extended care facilities, and sheltered care group homes.
  - C. Office Complexes and professional offices
  - D. Day care facilities and adult day care facilities.
  - E. Exercise and fitness centers and health clubs.
  - F. Personal services, restaurants, and retail establishments of no more than 50,000 square feet per lot.
  - G. Dwellings, hotels, motels, inns, rooming units, and lodging houses for hospital or clinic employees or volunteers and patients' family members.
  - H. Teaching centers.

Contract

- on going development of standards  
- flexibility for other review agencies

- public amenities  
- walking trails  
- Conceptual Master Plan

2. Preserve the underlying industrial zoning to enable industrial development if the medical campus idea does not come to fruition.
3. Create flexibility within the parameters of zoning to allow for a mix of uses.
4. Establish zoning to permit the siting of a medical center complex including ancillary uses with time constraints established as a result of the ongoing due diligence process.

### **Public Policy Objectives**

Proceed through the use of available planning tools to:

1. Encourage the full development of previously under-developed property that utilizes to the greatest extent possible proposed improved access.
2. Accommodate the growth and development of Mercy Hospital through appropriate means.
3. Ensure that all mixed-use developments are based on rational and compatible land use decisions.
4. Preserve and enhance the City's tax base.

These or other related policy objectives should be made official policy of the comprehensive plan if the rezoning enacted. (See further discussion below.)

### **Analysis of Available Planning Tools**

Option 1- A text amendment to the existing industrial zoning to permit non-industrial, hospital campus type uses. (See attachments for applicant's proposal)

This procedure adequately preserves the existing underlying industrial zoning while also permitting the types of uses envisioned in the hospital campus and the degree of flexibility desired by the applicant. This technique does not prevent the possibility of incompatible adjacent uses, does not rely on any particular vision or planning program to create a fully developed, cohesive property and does not safeguard the city from unplanned haphazard development if the Mercy Hospital proposal does not come to fruition. The underlying industrial zoning does not contain the necessary regulatory measures to effectively assist staff, the developer and the Planning Board in making land use decisions.

Option 2- Rezoning the property to an existing zoning that allows the intended uses.

Rezoning would allow the property to be developed for the proposed uses but would not provide the applicant's desired degree of flexibility. The

industrial uses would no longer be permitted which would not enable the property to be used for industrial purposes if the Mercy Plan is not implemented. If the Mercy Plan were not implemented, the City would have no means of ensuring that a cohesive, planned project would result.

### Option 3- The development of a Contract Zone

A contract zone between the applicant and the City would enable the development of the property as a hospital campus while preserving the underlying industrial uses if the Mercy plan were to fall through. The contract zone could provide the flexibility the applicant is looking for while also containing a certain level of specificity. In addition, the contract zone would be able to acknowledge the unique character of the proposed use and the development site. Traditionally, contract zones have been accompanied by a master plan that assists the Planning Board and the City Council in visualizing, to some degree, the end product. The applicant is not prepared at this stage to produce a master plan. In substitute, the staff is recommending a set of development principles or guidelines that could be used to review potential development occurring under the contract. Staff requests the board's guidance on whether this approach is viable. The proposed principles, still under development include:

1. A conceptual master plan required prior to commencement of phased development
2. The promotion of a campus like atmosphere through appropriate green spaces and building orientations.
3. A rationale to the internal arrangement of the mix of uses
4. Adjacent compatibility within the development
5. Considerations made on the development within the property to compatibility with existing or potential development outside of the property.
6. Full and complete use of proposed access road as the primary access to the site.
7. Uses arranged to provide a high level of user convenience
8. High degree of pedestrian orientation
9. The stressing of a non-highway oriented design
10. Appropriate signage
11. The inclusion of the neighborhood within the planning process to the extent reasonable

Several concerns have been identified with this approach. First, contract zones are required to be compatible with the underlying zone district which might be viewed as a potential weakness if the rezoning were to be challenged. Second, as mentioned above, previous contract zones have been accompanied by site development plans which are not available for this project at this time. Third,

consistency with the comprehensive plan must be demonstrated. (See further discussion below)

#### Option 4- The creation of an Overlay Zone

Using this method, an overlay zone with language similar to the language used in the contract zone would be written. The underlying industrial uses would not be permitted if the overlay were triggered through the approval of a site development application. This approach is currently under review by corporation counsel to determine how an overlay zone could work. The applicant has expressed some preference to this approach if option 1 is not pursued.

#### **Consistency with the Comprehensive Plan**

Any option for a zoning amendment must be consistent with the comprehensive plan. At present, there is no mention of hospital campus development in this or any other location in the policies of the comprehensive plan. It is suggested that a policy statement such as those presented above under Public Policy Objectives be adopted as amendments to the comprehensive plan if this rezoning is enacted under any approach mentioned above.

The applicant is eager to proceed with this application and requests some direction from the board as to which approach to develop for advertising purposes. We expect language to be prepared for the September 11<sup>th</sup> Planning Board Workshop.

#### Attachments

1. Rezoning Application
2. Proposed Text Amendments
3. Site Location Map
4. Consolidation of Proposed Text Amendments

APPLICATION FOR ZONING AMENDMENT  
City of Portland, Maine  
Department of Planning and Urban Development  
Portland Planning Board

1. Applicant Information:  
**Mercy Hospital**  
**144 State Street**  
**Portland, ME 04101**  
**879-3000**  
**Fax: 879-3945 (Dr. Steve Hess)**

2. Subject Property:  
**On Ogdensburg Street (a paper street)**

Assessor's References

<i>Owner</i>	<i>Tax Map-Block-Lot Number</i>
<b>Merrill Industries, Inc.</b>	<b>73-A-1</b>
<b>Merrill Industries, Inc.</b>	<b>73-B-2</b>
<b>Portland Terminal Co.</b>	<b>74-A-1</b>
<b>Portland Terminal Co.</b>	<b>75-A-3</b>
<b>Portland Terminal Co.</b>	<b>75-A-33</b>

3. Property Owners: \_\_\_\_\_ Applicant    XX Other  
**Portland Terminal Company**  
**c/o Guilford Transportation Industries, Inc.**  
**Iron Horse Park**  
**North Billerica, MA 01862**  
**Attn: Roland Theriault, Vice President, Real Estate**  
**978-663-6939; Fax 978-663-6959**

**Merrill Industries, Inc.**  
**601A Danforth St.**  
**Portland, ME 04104**  
**207-772-3254; Fax 207-761-3782**

4. Right, Title, or Interest: Please identify the status of the applicant's right, title, or interest in the subject property:

**Mercy holds options to purchase the two properties; copies of the options are attached as Exhibits A and B.**

Provide documentary evidence, attached to this application, of applicant's right, title, or interest in the subject property. (For example, a deed, option or contract to purchase or lease the subject property.)

5. Vicinity Map: Attach a map showing the subject parcel and abutting parcels, labeled as to ownership and/or current use. (Applicant may utilize the City Zoning Map or Parcel Map as a source.)

**DeLuca-Hoffman Associates, Inc., has prepared the following figures, attached hereto in Exhibit C, that outline the project site and its relationship to the surrounding vicinity:**

- a. **Figure 1, USGS Topographic Map, Portland West Quadrangle**
- b. **Figure 2, USDA Soils Map, Soil Survey of Cumberland County, Sheets 82 & 86**
- c. **Figure 3, Excerpt of City of Portland Zoning Map**
- d. **Figure 4, Existing Conditions Plan containing existing topography, property boundaries, and abutting lot information**
- e. **Figure 5, Aerial photograph of the project including connector roadway alignment**

6. Existing Use. Describe the existing use of the subject property:

***In General***

**The site is prominently located along the Fore River waterfront. The site generally extends from just east of the recently constructed I-295 Exit 5 Interchange ramps easterly along the Fore River to the Veterans Memorial Bridge. The site is bounded to the north and east by an active railroad line operated by Guilford Industries. Farther to the northeast, St. John Street is primarily commercial development. Existing uses along St. John Street include Barber Foods, Century Tire, Redlon and Johnson, and the Union Station Plaza. Merrill Industries operates a marine terminal to the southeast of the Veterans Bridge and the development area. The Cumberland County Correctional Facility was constructed a few years ago on land that is between the development site and Congress Street to the north. The Fore River extends across the site's southwestern portion.**

**Approximately one-half of the site consists of mud flats off the Fore River. This land area will remain undeveloped.**

***Historical Uses***

**Various railroad companies have owned the property for at least the past 50 years. Up until the 1980s the site contained a railroad yard that included multiple tracks and other ancillary rail features. In the late 1980s and 1990s the railroad activity ceased and all but one set of abandoned tracks were removed from the site.**

***Existing Structures and Conditions***

**Merrill Industries, Inc., has used the southeast side of the site for material storage associated with marine terminal activities. Piles of glass and other raw materials have been stockpiled in the area. In years past the southeast area was used for various construction-related stockyard activities. The site's northwest side is generally undeveloped and mostly wooded except for the remains of a former gravel pit in the middle of the site.**



There is one single-story wood-framed building and one metal-framed warehouse-type structure in the southeast area of the site. The larger of these two structures is less than 8,000 SF. These structures will be removed as part of the hospital development program.

The site also contains an abandoned gravel pit. Representatives of Guilford Industries have stated that the gravel pit was operated by the railroad as a source of gravel materials for railroad operations since the 1950s and also during the construction of the Veterans Memorial Bridge. The railroad continued to actively mine gravel from the site through the 1970s. Lesser amounts of gravel continued to be excavated from the existing pit area into the mid 1980s. The railroad has ceased any excavation of materials from the site, since around the mid-1980s.

7. Current Zoning Designation(s): I-H

The site is currently zoned I-H. Surrounding zones include IL in the vicinity of the Correctional Center. The north end of St. John Street around Union Station is zoned B-2, and the south end of St. John Street is zoned I-Mb.

8. Proposed Use of Property: Please describe the proposed use of the subject property. If construction or development is proposed, please describe any changes to the physical condition of the property.

The proposed use is as a hospital and related uses, including: medical office building; ambulatory care center; fitness center; day care centers for children and adults; psychiatric services; medical research; nursing home; assisted living facilities; residences for student doctor residents, relatives of patients, etc.; teaching center; retail and restaurant uses to service the hospital uses; and a helicopter pad.

These uses will be within multiple buildings to be constructed in phases over perhaps the next ten years. The new structures will be a mix of single and multi-level buildings developed in a campus-like setting. The buildings may be freestanding or linked, depending upon the phasing and ultimate development program proposed. Other ancillary development features include parking facilities, utility services, stormwater management systems, and site amenities. Parking for the campus is likely to be primarily surface lots, although a parking garage may be considered in the future. Approximately 22 to 28 acres of land will be developed for the hospital campus.

A portion of the site will be used for the construction of the proposed Commercial Street Connector roadway. This connector roadway is currently in the MDOT design phase. Construction of the connector is a critical aspect of the development feasibility and Mercy Hospital is coordinating closely with the MDOT and involved parties with regard to the funding and timing of the construction.

The preliminary connector roadway layout includes the extension of the Exit 5 connector between Congress Street and the northbound ramps. The connector will extend easterly across land of Ralph Romano III and Guilford Industries, Inc. The connector will cross the railroad tracks above grade and proceed across the proposed Mercy Hospital property generally along the Fore River frontage. The connector roadway will include significant

reconstruction of the Veterans Memorial Bridge intersection and rotary with Commercial Street, Danforth Street, and St. John Street. The connector plan calls for a separate pedestrian walking/bikeway along the Fore River frontage. It is anticipated that at least two separate access drives to the hospital campus will be provided off the connector. Additional service access likely will be provided off Countyway, the access road for the Correctional Center.

The Hospital project will require permitting review by the following regulatory bodies:

- a. **The City of Portland Planning Board and City Council**
  - b. **The Maine Department of Environmental Protection**
  - c. **The U.S. Army Corps of Engineers**
  - d. **The Maine Department of Transportation**
  - e. **The Federal Aviation Administration**
9. Sketch Plan: On a separate sheet please provide a sketch plan of the property, showing existing and proposed improvements, including such features as buildings, parking, driveways, walkways, landscape and property boundaries. This may be a professionally drawn plan, or a carefully drawn plan, to scale, by the applicant. (Scale to suit, range from 1"=10' to 1"-100'.) **See Figure 4, attached.**
10. Proposed Zoning: Please check all that apply:
- A.  **Zoning Map Amendment, from I-H to I-Hb and Helistop Overlay Zone**
  - B.  **Zoning Text Amendment to Sections 14-261, 14-262, 14-263, 14-265**  
  
For Zoning Text Amendment, attach on a separate sheet the exact language being proposed, including existing relevant text, in which language to be deleted is depicted as crossed out (~~example~~), and language to be added is depicted with underline (example). **See Exhibit D attached.**
  - C.  **Conditional or Contract Zone**  
  
A conditional or contract rezoning may be requested by an applicant in cases where limitations, conditions, or special assurances related to the physical development and operation of the property are needed to ensure that the rezoning and subsequent development are consistent with the comprehensive plan and compatible with the surrounding neighborhood. (Please refer to Division 1.5, Sections 14-60 to 62).
11. Application Fee: A fee for this application for a zoning amendment must be submitted, by check payable to the City of Portland in accordance with Section 14-54 of the Municipal Code (see below). The applicant also agrees to pay all costs of publication (or advertising) of the Public Hearing Notice as required for this application. Such amount will be billed to the applicant following the appearance of the advertisement.


	<u>1-25 Units</u>	<u>26-50 Units</u>	<u>51-75 Units</u>	<u>75 &amp; Over</u>
Residential Zones	\$350.00	\$400.00	\$450.00	\$500.00
Nonresidential Zones	\$350.00	\$400.00	\$450.00	\$500.00
	0-15,000 sq. ft. or 0-5 acres (which- ever is less)	15,000-30,000 sq. ft. or 6-10 acres (which- ever is less)	30,000-45,000 sq. ft. or 10-15 acres (which- ever is less)	45,000-60,000 sq. ft. or 15-20 acres (which- ever is less)

- Legal Advertisements (one for workshop and one for public hearing) percent of total bill
- Notices (one for workshop and one for public hearing) 40 cents each
- Text Amendments \$300.00

**\$500 + \$300 = \$800** Amount of Fee

12. Signature: The above information is true and accurate to the best of my knowledge.

7/9/01  
Date of Filing

  
Signature of Applicant

Further Information:

Please contact the Planning Office for further information regarding the rezoning process. Applicants are encouraged to make an appointment to discuss their rezoning requests before filing the application.

Applicants are encouraged to include a letter or narrative to accompany the rezoning application which can provide additional background or context information, and describe the proposed rezoning and reasons for the request in a manner that best suits the situation.

**Mercy Hospital has determined that it can no longer meet the long term needs of the community from its 144 State Street location. The current building is cramped for space, has little expansion capabilities and is short on parking. The hospital is located in a neighborhood not well-suited to a hospital. Therefore the Board of Trustees directed that a search be undertaken for a new site for Mercy that can meet the Portland area's long term needs for a state-of-the-art community hospital.**

**The results of the site search found there is only one site (called the Fore River Site) that has all the desired attributes of being on a parcel of land large enough to meet Mercy's long term needs, while being easily accessible and convenient to doctors, public transportation, and the Maine Medical Center. Mercy has been able to secure control of the Fore River Site, and is now seeking the right to build on it. The**

**first step in this process is changing the zoning of the site to allow a hospital and related uses.**

In the event of withdrawal of the zoning amendment application by the applicant in writing prior to the submission of the advertisement copy to the newspaper to announce the public hearing, a refund of two-thirds of the amount of the zone change fee will be made to the applicant by the City of Portland.

Portland Planning Board  
Portland, Maine

Effective: July 6, 1998

## DIVISION 15. I-H AND I-Hb INDUSTRIAL ZONES

**Sec. 14-261. Purpose.**

The high impact industrial zones are intended to provide areas suitable for higher impact industrial uses than are permitted in other industrial zones, as well as hospital-related uses.

Due to the intensity of use, the I-H zones are intended for uses which may require extensive outdoor storage and usage and may utilize heavy equipment. Processes may require separation from residential or sensitive environmental areas. The I-H zones are separated from other nonindustrial uses as well as natural or constructed features.

High impact industrial uses will be of a higher intensity, with a greater lot coverage, than the other zones. Due to the intensity of uses, the performance standards will allow for the higher intensity of use.

**Section 14-262. Permitted uses.**

The following uses are permitted whether provided by private or public entities in the high impact industrial zone and the I-Hb zone:

- (a) Low impact industrial uses, including but not limited to bakeries, breweries, bottling, printing and publishing, pharmaceuticals, machine shops, musical instruments, precision instruments, watchmakers, toys and sporting goods, wood products, jewelry, assembly of electrical components, tool and die shops and the packaging of food.
- (b) Research and development.
- (c) Wholesale trade.
- (d) Warehousing and distribution facilities.
- (e) Intermodal transportation facilities and transportation terminals.
- (f) Repair services, including all types of automotive repair services.
- (g) High impact industrial uses.
- (h) Building contractors and construction services.
- (i) Plant and tree nurseries, including associated recycling activities.
- (j) Lumber yards.

- (k) Fish waste processing facility, provided that it has received all required licenses and is in compliance with all applicable licensing requirements.
- (l) Commercial kitchens or other food preparation, provided that, except in the I-Hb zone, the food is not prepared for service on the premises.
- (m) Recycling facilities.
- (n) Food and seafood processing.
- (o) Dairies.
- (p) Municipal or regional solid waste disposal facilities, provided that all disposal activities are carried out within an enclosed structure.
- (q) Utility substations.
- (r) Correctional prerelease facilities for up to twelve (12) persons, plus staff, serving a primary clientele of parolees or persons in correctional prerelease programs, provided that:
  - 1. No correctional prerelease facility shall be located within one thousand (1,000) feet of another, as measured in a radius from the center of the lot;
  - 2. Such facilities shall not be permitted in the I-Hb zone;
  - 3. If a facility requires a state or federal license, staffing of the facility shall be as required by such license. If a facility does not require state or federal licenses, there shall be a minimum of one (1) staff person for every ten (10) residents or fraction thereof; and
  - 4. The facility shall provide twenty-four-hour supervision of program participants.
- (s) The following additional uses are permitted in the I-Hb zone:
  - 1. Hospitals, clinics, and medical research facilities.
  - 2. Community living arrangements, congregate care facilities, intermediate care facilities, long term or extended care facilities, and sheltered care group homes.
  - 3. Office complexes and professional offices.
  - 4. Day care facilities and adult day care facilities.

5. Exercise and fitness centers and health clubs.
6. Personal services, restaurants, and retail establishments of no more than 50,000 square feet per lot.
7. Dwellings, hotels, motels, inns, rooming units, and lodging houses for hospital or clinic employees or volunteers and patients' family members.
8. Teaching centers.

**Section 14-263. Prohibited uses.**

Uses that are not expressly enumerated herein as permitted uses are prohibited. Those uses that are prohibited shall include, but are not limited to, the following:

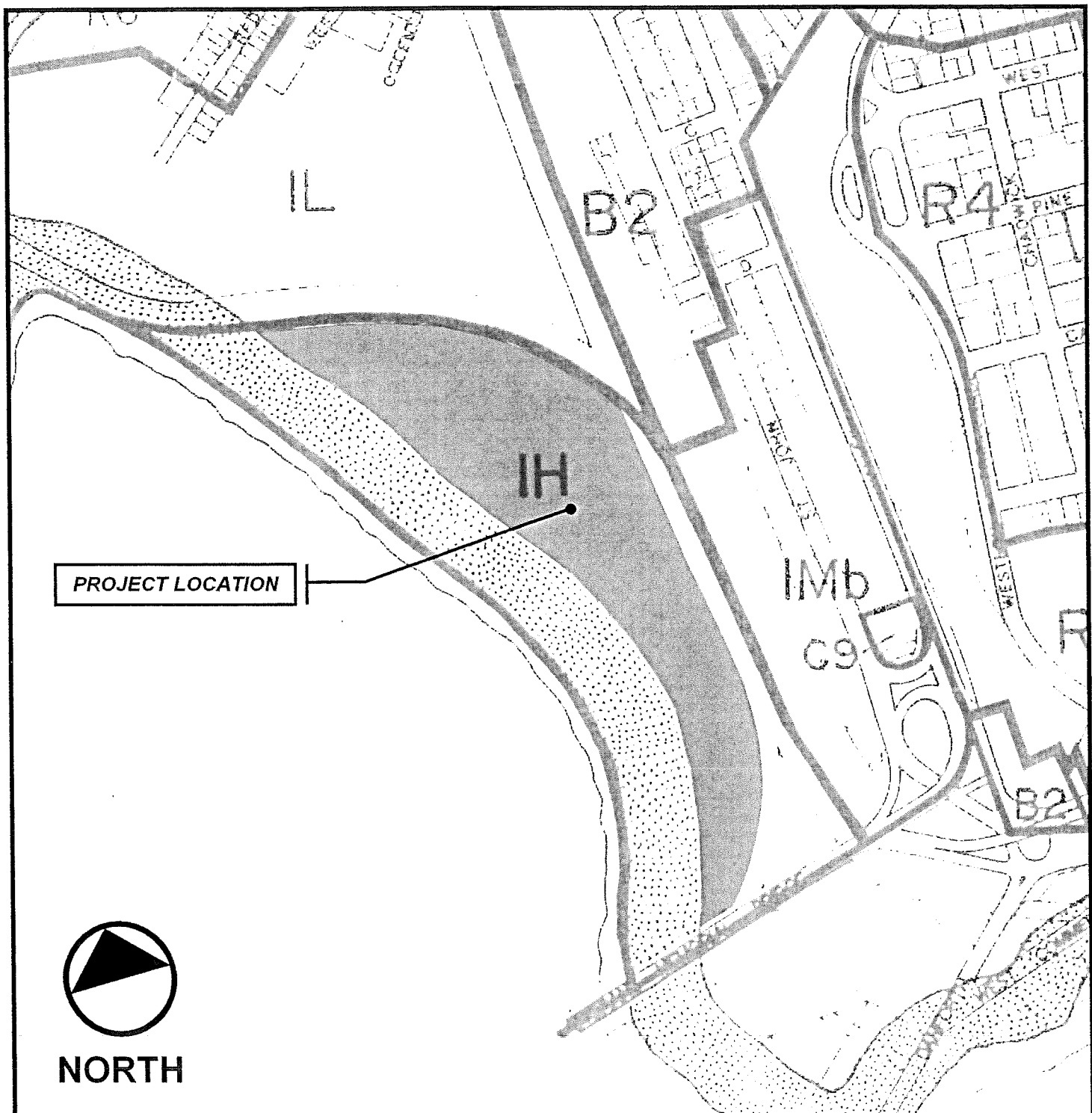
- (a) Residential uses, except as listed in section 14-262(s).
- (b) Retail trade that is not ancillary to a permitted use, except as listed in section 14-262(s).
- (c) Restaurant uses, except as listed in section 14-262(s).
- (d) Junk yards.
- (e) Amusement parks.
- (f) Refining of petroleum or its products, including tar distillation.
- (g) Distillation of bones; fat rendering; glue, soap, or fertilizer manufacture, except that fish waste processing may be permitted as set forth in section 14-262.
- (h) Dumping, disposal, incineration, or reduction of garbage, sewage, offal, dead animals, or refuse.
- (i) Stockyard or slaughtering of animals.
- (j) Smelting of iron, copper, tin, zinc, or any other ore.
- (k) Manufacture of explosives or fireworks.
- (l) Coal distillation or coke ovens.
- (m) Creosote treatment.
- (n) Drop forging.

- (o) Steel mills or furnaces.
- (p) Coal- or coke-fired kilns.
- (q) Used tire storage.
- (r) Extraction of raw materials.
- (s) Concert halls or dance halls.
- (t) Banquet facilities.
- (u) Office uses other than offices that are accessory to a permitted use, except as listed in section 14-262(s).
- (v) Drive-through facilities.

**Sec. 14-265. Dimensional requirements.**

- (a) *Minimum lot size:*
  - 1. Correctional prerelease facilities: Ten thousand (10,000) square feet.
  - 2. Other uses: None.
- (b) *Maximum impervious surface ratio:* I-H zone: Eighty-five (85) percent. I-Hb zone: One hundred (100) percent.
- (c) *Maximum building height:* Seventy-five (75) feet.
- (d) *Minimum side yards:* Principal and accessory structures in the I-H zone: Thirty-five (35) feet. Principal and accessory structures in the I-Hb zone: None.
- (e) *Minimum rear yards:* Principal and accessory structures in the I-Hb zone: None.
- (f) *Minimum front yard:* Principal and accessory structures in the I-H zone: Twenty-five (25) feet. Principal and accessory structures in the I-Hb zone: None.
- (g) *Minimum street frontage:* Sixty (60) feet.
- (h) *Pavement setback from lot boundaries:* Ten (10) feet. I-Hb zone: None.





### ZONING MAP

### Mercy Hospital Feasibility Study – Portland, Maine

SOURCE: GPCOG. Cartographic Division; DATED: 1991



DeLUCA-HOFFMAN ASSOCIATES, INC.  
 CONSULTING ENGINEERS  
 778 MAIN STREET, SUITE 8  
 SOUTH PORTLAND, MAINE 04106  
 TEL. 207-775-1121  
 FAX 207-879-0896

DESIGNED	SRB	DATE	JUNE 2001
DRAWN	JDL	SCALE	N.T.S.
CHECKED	SRB	JOB NO.	2149

FIGURE  
**3**

### **Consolidation of Proposed Text Amendments**

Add “as well as hospital-related uses” to the statement of purpose for the zone district.

Remove the restriction that food prepared in the I-Hb district not be served on the premises.

Add the following uses to the list of permitted uses in the I-Hb zone district.

1. Hospitals, Clinics and Medical research facilities.
2. Community living arrangements, congregate care facilities, intermediate care facilities, long term or extended care facilities, and sheltered care group homes.
3. Office Complexes and professional offices
4. Day care facilities and adult day care facilities.
5. Exercise and fitness centers and health clubs.
6. Personal services, restaurants, and retail establishments of no more than 50,000 square feet per lot.
7. Dwellings, hotels, motels, inns, rooming units, and lodging houses for hospital or clinic employees or volunteers and patients’ family members.
8. Teaching centers.

Remove the prohibitions on residential, office, retail and restaurant uses if the particular use is now included in the list of permitted uses.

Add “drive through facilities” as a prohibited use in the zone district.

Remove the required 10’ pavement setback requirement from the I-Hb district.

# Mercy Hospital Contract Zone Meeting 9-4-01 Agenda

Welcome-

Status-

Planning Board Workshop 9-11-01

Items-

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*The master plan shall be subject to periodic review and updates as needed and as phased development occurs over time.*

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Proposed Planning Board Memo Text

The proposed contract zone included with this memo is the applicants preferred version. Following the previous workshop, staff has been successful in working with Mercy in creating language that addressed many of the concerns voiced. Staff requests guidance from the board in addressing two remaining concerns, both related to surface parking.

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*Statement of intent of Master Plan  
PBD makes final Master Plan  
meets the intent of contract zone.*

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3. Proposed Policy Statement

See Handout

4. Proposed Text Amendment to IH Zone

See Handout

5. Other Issues-

Adjournment

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The benefits enjoyed by the City as a result of the location of two major hospitals are numerous and extensive. The benefits to the health, welfare and safety of Portland's residents are tremendous and in many ways incalculable. The hospitals together provide varied, diverse employment opportunities and untold economic benefits to the people of the City of Portland.

## 3. Challenges Facing Mercy Hospital

Mercy Hospital's current location of 144 State Street in the City's West End Neighborhood has presented itself as a barrier to the continued evolution of the Hospital. Because of inadequate available space for natural expansion, for adaptation to changing conditions within the medical industry and for parking, Mercy has begun a search for a location more suited to meet the Portland area's long term needs for a state-of-the-art community hospital.

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Mercy Hospital desires a parcel of land of great enough size to accommodate its long-term needs while also being easily accessible and convenient to doctors, public transportation and the Maine Medical Center. A result of an extensive site search determined that only one such parcel existed, called the Fore River Site. Mercy Hospital has been able to secure control of the Fore River Site and is now looking for help from the City in creating a zoning solution that recognizes the uniqueness of the parcel and the applicant.

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The City of Portland recognizes the parcel of land known as the Fore River Site is currently underutilized and is suitable and well located for the planned use as a hospital campus. The planned use of the property as a hospital campus developed within the context of the contract zone language is compatible with neighboring properties and uses, both current and foreseen. The City of Portland proposes an adjustment to the land use policy to enable a hospital campus to be developed at the Fore River Site through available zoning constructs.

**Sec. 14-261. Purpose.**

The high impact industrial zones are intended to provide areas suitable for higher impact industrial uses than are permitted in other industrial zones and other uses including hospital campuses that are capable of demonstrating, through design, layout and topography, their non-intrusion on existing or future higher impact industrial uses on adjacent or neighboring I-H zoned properties.

Due to the intensity of use, the I-H zones are intended for uses which may require extensive outdoor storage and usage and may utilize heavy equipment. Processes may require separation from residential or sensitive environmental areas. The I-H zones are separated from other nonindustrial uses as well as natural or constructed features.

High impact industrial uses will be of a higher intensity, with a greater lot coverage, than the other zones. Due to the intensity of uses, the performance standards will allow for the higher intensity of use.

(Ord. No. 164-97, § 8, 1-6-97)

**CONTRACT ZONE AGREEMENT  
BETWEEN  
CITY OF PORTLAND  
AND  
MERCY HOSPITAL**

**AGREEMENT** made this \_\_\_\_ day of \_\_\_\_\_, 2001 by and between the **CITY OF PORTLAND**, a body corporate and politic, located in Cumberland County and State of Maine (hereinafter the "**CITY**") and **MERCY HOSPITAL**, a nonprofit corporation located in the City of Portland (hereinafter "**MERCY**").

**W I T N E S S E T H**

**WHEREAS, MERCY** has determined that it can no longer meet the long term needs of the community from its 144 State Street location; and

**WHEREAS, MERCY** has located a Portland site, a contiguous tract of land (called the Fore River Site) large enough to meet **MERCY'S** long term needs (including a mix of uses both taxable and tax-exempt) while being easily accessible and convenient to doctors, public transportation, and the Maine Medical Center; and

**WHEREAS, MERCY** requested a rezoning of the Fore River Site (also referred to herein as the "**PROPERTY**"), which is located in Portland at Map 73, Block A, Lot 1; Map 73, Block B, Lot 2; Map 74, Block A, Lot 1; Map 75, Block A, Lot 3; and Map 75, Block A, Lot 33, in order to permit the establishment and operation of a hospital campus on up to 42 acres of land; and

**WHEREAS**, the Planning Board of the City of Portland, pursuant to 30-A M.R.S.A. § 4352(8) and Portland City Code §§ 14-60 to 14-62 and 14-264, and after

notice and hearing and due deliberation thereon, recommended the rezoning of the **PROPERTY** as aforesaid, subject, however, to certain conditions; and

**WHEREAS**, the **CITY** by and through its City Council has determined that said rezoning would be and is pursuant to and consistent with the **CITY'S** comprehensive land use plan and consistent with the existing and permitted uses within the original zone and the purposes of the I-H zone; and

**WHEREAS**, the **CITY** has determined that the proposed development will be designed and operated so that it will prevent undue adverse environmental impacts, substantial diminution of the value or utility of neighboring structures, or significant hazards to the health or safety of neighboring residents by controlling noise levels, emissions, traffic, lighting, odors, and any other potential negative impacts of the proposal; and

**WHEREAS**, the **CITY** has determined that because of the unusual nature and unique location of the proposed development it is necessary and appropriate to impose by agreement the following conditions and restrictions in order to ensure that the rezoning is consistent with the **CITY'S** comprehensive land use plan; and

**WHEREAS**, the **CITY** authorized the execution of this Agreement on \_\_\_\_\_, 2001;

**NOW, THEREFORE**, in consideration of the mutual promises made by each party to the other, the parties covenant and agree as follows:

1. Effective upon the recording of deeds transferring title ownership from Merrill Industries, Inc. and Portland Terminal Company to **MERCY** and receipt by the **CITY** of a statement from **MERCY** that **MERCY** has so recorded said deeds, the **CITY** hereby amends the Zoning Map of the City of Portland, dated December 2000, as amended and on file in the Department of Planning and Urban Development, and incorporated by reference into the Zoning Ordinance by § 14-49 of the Portland City



Code, by adopting the map change amendment shown on Attachment 1, and by designating the **PROPERTY** a Helistop Overlay Zone; provided however, that this contract rezoning shall become null and void in the event **MERCY** fails to acquire said **PROPERTY** before August 1, 2003.

2. *Permitted Uses.* **MERCY** shall be authorized to establish and maintain the following uses on the **PROPERTY**:
  - a. Hospitals, clinics, and medical research facilities.
  - b. Community living arrangements, congregate care facilities, intermediate care facilities, long term or extended care facilities, and sheltered care group homes.
  - c. Office complexes and professional offices.
  - d. Day care facilities and adult day care facilities.
  - e. Exercise and fitness centers and health clubs.
  - f. Personal services, restaurants, and retail establishments of no more than 50,000 square feet, except that there shall be no drive through facilities.
  - g. Dwellings, hotels, motels, inns, rooming units, and lodging houses for hospital or clinic employees or volunteers and patients' family members.
  - h. Teaching centers.
  - i. Accessory uses, including, but not limited to, parking facilities, utility services, stormwater management systems, and site amenities.
3. The uses on the **PROPERTY** will be within multiple buildings to be constructed in phases, some owned by **MERCY** and some owned by others. The new structures will be a mix of single and multi-level buildings developed in a campus-like setting. The buildings may be freestanding or linked, depending upon the phasing and ultimate development program proposed.
4. The first phase of construction will include a medical office building, which may be built concurrently with an ambulatory care facility. The medical office building, its associated land, and its personal property shall be taxed based on a market value of, at minimum, \$7.5 million dollars.
5. A portion of the **PROPERTY** will be used for the Maine Department of Transportation's ("MDOT's") construction of the proposed Commercial Street Connector roadway.

6. At minimum, the portion of the **PROPERTY** identified as "Open Space" on Attachment 2 shall be reserved as open space. Such open space may be used in the calculation of the impervious surface requirements contained in paragraph 12 of this Agreement. MERCY shall cooperate with the City in the creation of a pedestrian trail and bike path.
7. For purposes of calculating impervious surface required in paragraph 12 below, land separated by the MDOT connector road may be included, but any intertidal lands shall not be included in said calculation.
8. Access to the **PROPERTY** via County Way shall be permitted for service vehicles only provided that MERCY demonstrates to the **CITY'S** Traffic Engineer that County Way provides an adequate level of service to the **PROPERTY** and MERCY provides evidence of its right, title or interest to access said street.
9. For purposes of front yard setbacks, the front yard for each building developed on the **PROPERTY** south of the pond shall have as the front yard the area between the building and the connector. Building facades facing the connector will demonstrate a high degree of design and visual appeal.

~~10. The number of surface lot parking spaces permitted on the whole of the **PROPERTY**, whether or not said **PROPERTY** is subdivided in the future, shall be no greater than six hundred (600). When six hundred (600) surface lot parking spaces have been established MERCY shall be obligated to erect a parking structure, whether under existing or proposed buildings or as a stand alone garage structure, capable of handling any additional parking demands at the **PROPERTY**. Unless off-site parking is provided in a parking garage structure, such off-site parking may not satisfy the parking requirements for future development on **PROPERTY**.~~

~~11.~~10. *Development Guidelines.* The **PROPERTY** shall be developed substantially in accordance with the conceptual master plan shown on Attachment 2, provided, however, that each phase of the development shall be subject to site plan review and, if applicable, subdivision review by the Planning Board. The Planning Board may permit deviations from the conceptual master plan, as long as the deviations are consistent with the purposes of this Agreement. In reviewing the site plan submissions, the Planning Board shall consider the following development guidelines:

- a. Promotion of a campus-like atmosphere through the internal arrangement and mix of uses.
- b. Adjacent compatibility within the development.
- c. Consideration of compatibility with existing or potential development of perimeter uses to those adjacent to the **PROPERTY**.

- d. Use of the proposed connector as the primary access to the site.
- e. Uses arranged to provide a high level of user convenience.
- f. A high degree of pedestrian orientation.
- g. A non-highway-oriented design.

11. 12.—Development Standards

- a. *Design relationship to site:* Development proposals shall demonstrate a reasonably unified design of the site, including the architecture, the layout of the buildings, pedestrian and vehicular circulation plan, open space, drainage, and the topography, soil conditions, vegetation, and other natural features of the site. Integration of open spaces and natural features shall be achieved by incorporation of outdoor amenities for the benefit of users of the site, such as jogging and walking trails, gardens, and benches.
- b. *Landscaping:* Development proposals shall include a landscape program. All land areas not covered by structures, parking areas, or circulation facilities shall be landscaped and maintained. In order to soften the visual impact of large expanses of pavement in parking lots, vegetation shall be planted or retained in islands or planting strips where required by article IV (subdivisions) and article V (site plan) of the Land Use Code.
- c. *Sidewalks:* Development proposals shall include internal sidewalks, illustrating the manner in which the developer will provide this amenity to take advantage of the topography and natural features of the site and providing for safe pedestrian access to all buildings.
- d. *Buffers and screens:* Development proposals shall include appropriate measures of a dense and continuous nature in order to buffer parking lot visibility from public roads.
- e. *Preservation of natural features:* Development proposals shall identify the extent to which the developer will preserve natural features including, but not limited to, existing vegetation, flood plains, rock outcroppings, surface water bodies, drainage swales and courses, and wetlands; provided any such program shall consider and be sensitive to the need to preserve such natural features.
- f. *Architectural design:* All buildings shall be designed or approved by a registered architect in the State of Maine. The scale, texture, color, and massing of the buildings shall be coordinated. The full range of high-quality, permanent, and traditional or contemporary building materials and technology may be incorporated in a manner so that the development as a

whole embodies distinguishing attributes that achieve the developer's desired degree of excellence and are in conformance with the architectural guidelines provided in any private development restrictions. Particular emphasis shall be placed on the appearance of building facades from public streets and highways, from driveway and parking areas, and from other nearby buildings. Building elevation drawings shall be submitted which indicate architectural style, exterior finishes and color, building height and scale, and location and scale of window and door openings. Samples of exterior building materials shall also be submitted.

- g. *Signs:* Development proposals shall identify all proposed signage. Signs shall be designed in proportion and character with the building facades. All signs shall be constructed of permanent materials and shall be coordinated with the building and landscaping design through the use of appropriate materials and finishes.

~~h. *Master plan:* Prior to development on the **PROPERTY, MERCY** shall provide a master plan of the campus. The master plan shall include the following: The location of the building(s) on the site; infrastructure of the site; identification of common areas; traffic circulation; architectural character and treatment of the building(s); proposed building envelopes; phasing and timing of the development; private development restrictions; and such other information necessary and sufficient to ensure compliance with the standards in this section.~~

~~12.~~ ~~13.~~ *Dimensional Requirements.* The following dimensional requirements shall apply to the **PROPERTY** as a whole, and not additionally to individual lots (if any) within the **PROPERTY**:

- a. Maximum impervious surface ratio: Eighty (80) percent;
- b. Maximum building height: Ninety (90) feet;
- c. Minimum front yard: Fifteen (15) feet;
- d. Minimum side yards: Ten (10) feet;
- e. Minimum rear yard: Ten (10) feet;
- f. Pavement setback from lot boundaries: Fifteen (15) feet.

~~13.~~ ~~14.~~ The provisions of this Agreement, including the permitted uses listed in paragraph 2, are intended to replace the uses and requirements of the underlying I-H zone.

~~14.~~ ~~15.~~ Pursuant to Code § 14-264(d), all development plans shall include complete information of processes, materials, or methods of storage to be used by the development and shall specify how hazardous impacts to neighboring properties will be prevented.

The above stated restrictions, provisions, and conditions are an essential part of the rezoning, shall run with the **PROPERTY**, shall bind and benefit **MERCY**, its successors and assigns (including, without limitation, Mercy Health System of Maine, Inc.), and any party in possession or occupancy of said **PROPERTY** or any part thereof, and shall inure to the benefit of and be enforceable by the **CITY**, by and through its duly authorized representatives. **MERCY** shall file a copy of this Agreement in the Cumberland County Registry of Deeds, along with a reference to the Book and Page locations of the deeds for the **PROPERTY**.

If any of the restrictions, provisions, conditions, or portions thereof set forth herein is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed as a separate, distinct, and independent provision and such determination shall not affect the validity of the remaining portions hereof.

Except as expressly modified herein, the use and occupancy of the subject premises shall be governed by and comply with the provisions of the Land Use Code of the City of Portland and any applicable amendments thereto or replacement thereof.

In the event that **MERCY** or any successor fails to continue to utilize the **PROPERTY** in accordance with this Agreement, or in the event of a breach of any condition(s) set forth in this Agreement, the Planning Board shall have the authority, after hearing, to resolve the issue resulting in the breach. The resolution may include a recommendation to the City Council that the site be rezoned to only I-H or any successor zone and that the Agreement be terminated, requiring a cessation of the hospital campus use.

WITNESS:

CITY OF PORTLAND

\_\_\_\_\_

By \_\_\_\_\_  
Joseph E. Gray  
City Manager

WITNESS:

MERCY HOSPITAL

\_\_\_\_\_

By \_\_\_\_\_  
Howard Buckley  
President and CEO

STATE OF MAINE  
CUMBERLAND, ss.

Date: \_\_\_\_\_, 2001

Personally appeared before me the above-named Joseph E. Gray, in his capacity as City Manager, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of the City of Portland.

Before me,

\_\_\_\_\_  
Notary Public/Attorney at Law

STATE OF MAINE  
CUMBERLAND, ss.

Date: \_\_\_\_\_, 2001

Personally appeared before me the above-named Howard Buckley, in his capacity as President and CEO, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of Mercy Hospital.

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\_\_\_\_\_  
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# Mercy Hospital Contract Zone Meeting 9-4-01 Agenda

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*mercy would be necessary*

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See Handout

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  - g. Dwellings, hotels, motels, inns, rooming units, and lodging houses for hospital or clinic employees or volunteers and patients' family members.
  - h. Teaching centers.
  - i. Accessory uses, including, but not limited to, parking facilities, utility services, stormwater management systems, and site amenities.
3. The uses on the **PROPERTY** will be within multiple buildings to be constructed in phases, some owned by **MERCY** and some owned by others. The new structures will be a mix of single and multi-level buildings developed in a campus-like setting. The buildings may be freestanding or linked, depending upon the phasing and ultimate development program proposed.
4. The first phase of construction will include a medical office building, which may be built concurrently with an ambulatory care facility. The medical office building, its associated land, and its personal property shall be taxed based on a market value of, at minimum, \$7.5 million dollars.
5. A portion of the **PROPERTY** will be used for the Maine Department of Transportation's ("MDOT's") construction of the proposed Commercial Street Connector roadway.

6. At minimum, the portion of the **PROPERTY** identified as "Open Space" on Attachment 2 shall be reserved as open space. Such open space may be used in the calculation of the impervious surface requirements contained in paragraph 12 of this Agreement. **MERCY** shall cooperate with the City in the creation of a pedestrian trail and bike path..
7. For purposes of calculating impervious surface required in paragraph 12 below, land separated by the MDOT connector road may be included, but any intertidal lands shall not be included in said calculation.
8. Access to the **PROPERTY** via County Way shall be permitted for service vehicles only provided that **MERCY** demonstrates to the **CITY'S** Traffic Engineer that County Way provides an adequate level of service to the **PROPERTY** and **MERCY** provides evidence of its right, title or interest to access said street.
9. For purposes of front yard setbacks, the front yard for each building developed on the **PROPERTY** south of the pond shall have as the front yard the area between the building and the connector. Building facades facing the connector will demonstrate a high degree of design and visual appeal.

~~10. The number of surface lot parking spaces permitted on the whole of the **PROPERTY**, whether or not said **PROPERTY** is subdivided in the future, shall be no greater than six hundred (600). When six hundred (600) surface lot parking spaces have been established **MERCY** shall be obligated to erect a parking structure, whether under existing or proposed buildings or as a stand alone garage structure, capable of handling any additional parking demands at the **PROPERTY**. Unless off-site parking is provided in a parking garage structure, such off-site parking may not satisfy the parking requirements for future development on **PROPERTY**.~~

~~11.~~10. *Development Guidelines.* The **PROPERTY** shall be developed substantially in accordance with the conceptual master plan shown on Attachment 2, provided, however, that each phase of the development shall be subject to site plan review and, if applicable, subdivision review by the Planning Board. The Planning Board may permit deviations from the conceptual master plan, as long as the deviations are consistent with the purposes of this Agreement. In reviewing the site plan submissions, the Planning Board shall consider the following development guidelines:

- a. Promotion of a campus-like atmosphere through the internal arrangement and mix of uses.
- b. Adjacent compatibility within the development.
- c. Consideration of compatibility with existing or potential development of perimeter uses to those adjacent to the **PROPERTY**.

- d. Use of the proposed connector as the primary access to the site.
- e. Uses arranged to provide a high level of user convenience.
- f. A high degree of pedestrian orientation.
- g. A non-highway-oriented design.

11. 12.—Development Standards

- a. *Design relationship to site:* Development proposals shall demonstrate a reasonably unified design of the site, including the architecture, the layout of the buildings, pedestrian and vehicular circulation plan, open space, drainage, and the topography, soil conditions, vegetation, and other natural features of the site. Integration of open spaces and natural features shall be achieved by incorporation of outdoor amenities for the benefit of users of the site, such as jogging and walking trails, gardens, and benches.
- b. *Landscaping:* Development proposals shall include a landscape program. All land areas not covered by structures, parking areas, or circulation facilities shall be landscaped and maintained. In order to soften the visual impact of large expanses of pavement in parking lots, vegetation shall be planted or retained in islands or planting strips where required by article IV (subdivisions) and article V (site plan) of the Land Use Code.
- c. *Sidewalks:* Development proposals shall include internal sidewalks, illustrating the manner in which the developer will provide this amenity to take advantage of the topography and natural features of the site and providing for safe pedestrian access to all buildings.
- d. *Buffers and screens:* Development proposals shall include appropriate measures of a dense and continuous nature in order to buffer parking lot visibility from public roads.
- e. *Preservation of natural features:* Development proposals shall identify the extent to which the developer will preserve natural features including, but not limited to, existing vegetation, flood plains, rock outcroppings, surface water bodies, drainage swales and courses, and wetlands; provided any such program shall consider and be sensitive to the need to preserve such natural features.
- f. *Architectural design:* All buildings shall be designed or approved by a registered architect in the State of Maine. The scale, texture, color, and massing of the buildings shall be coordinated. The full range of high-quality, permanent, and traditional or contemporary building materials and technology may be incorporated in a manner so that the development as a

whole embodies distinguishing attributes that achieve the developer's desired degree of excellence and are in conformance with the architectural guidelines provided in any private development restrictions. Particular emphasis shall be placed on the appearance of building facades from public streets and highways, from driveway and parking areas, and from other nearby buildings. Building elevation drawings shall be submitted which indicate architectural style, exterior finishes and color, building height and scale, and location and scale of window and door openings. Samples of exterior building materials shall also be submitted.

- g. *Signs:* Development proposals shall identify all proposed signage. Signs shall be designed in proportion and character with the building facades. All signs shall be constructed of permanent materials and shall be coordinated with the building and landscaping design through the use of appropriate materials and finishes.

~~h. *Master plan:* Prior to development on the **PROPERTY, MERCY** shall provide a master plan of the campus. The master plan shall include the following: The location of the building(s) on the site; infrastructure of the site; identification of common areas; traffic circulation; architectural character and treatment of the building(s); proposed building envelopes; phasing and timing of the development; private development restrictions; and such other information necessary and sufficient to ensure compliance with the standards in this section.~~

~~12. 13.~~ *Dimensional Requirements.* The following dimensional requirements shall apply to the **PROPERTY** as a whole, and not additionally to individual lots (if any) within the **PROPERTY**:

- a. Maximum impervious surface ratio: Eighty (80) percent;
- b. Maximum building height: Ninety (90) feet;
- c. Minimum front yard: Fifteen (15) feet;
- d. Minimum side yards: Ten (10) feet;
- e. Minimum rear yard: Ten (10) feet;
- f. Pavement setback from lot boundaries: Fifteen (15) feet.

~~13. 14.~~ The provisions of this Agreement, including the permitted uses listed in paragraph 2, are intended to replace the uses and requirements of the underlying I-H zone.

~~14. 15.~~ Pursuant to Code § 14-264(d), all development plans shall include complete information of processes, materials, or methods of storage to be used by the development and shall specify how hazardous impacts to neighboring properties will be prevented.



The above stated restrictions, provisions, and conditions are an essential part of the rezoning, shall run with the **PROPERTY**, shall bind and benefit **MERCY**, its successors and assigns (including, without limitation, Mercy Health System of Maine, Inc.), and any party in possession or occupancy of said **PROPERTY** or any part thereof, and shall inure to the benefit of and be enforceable by the **CITY**, by and through its duly authorized representatives. **MERCY** shall file a copy of this Agreement in the Cumberland County Registry of Deeds, along with a reference to the Book and Page locations of the deeds for the **PROPERTY**.

If any of the restrictions, provisions, conditions, or portions thereof set forth herein is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed as a separate, distinct, and independent provision and such determination shall not affect the validity of the remaining portions hereof.

Except as expressly modified herein, the use and occupancy of the subject premises shall be governed by and comply with the provisions of the Land Use Code of the City of Portland and any applicable amendments thereto or replacement thereof.

In the event that **MERCY** or any successor fails to continue to utilize the **PROPERTY** in accordance with this Agreement, or in the event of a breach of any condition(s) set forth in this Agreement, the Planning Board shall have the authority, after hearing, to resolve the issue resulting in the breach. The resolution may include a recommendation to the City Council that the site be rezoned to only I-H or any successor zone and that the Agreement be terminated, requiring a cessation of the hospital campus use.

WITNESS:

CITY OF PORTLAND

\_\_\_\_\_

By \_\_\_\_\_  
Joseph E. Gray  
City Manager

WITNESS:

MERCY HOSPITAL

\_\_\_\_\_

By \_\_\_\_\_  
Howard Buckley  
President and CEO

STATE OF MAINE  
CUMBERLAND, ss.

Date: \_\_\_\_\_, 2001

Personally appeared before me the above-named Joseph E. Gray, in his capacity as City Manager, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of the City of Portland.

Before me,

\_\_\_\_\_  
Notary Public/Attorney at Law

STATE OF MAINE  
CUMBERLAND, ss.

Date: \_\_\_\_\_, 2001

Personally appeared before me the above-named Howard Buckley, in his capacity as President and CEO, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of Mercy Hospital.

Before me,

\_\_\_\_\_  
Notary Public/Attorney at Law

Steve said → "Master Plan under development"

Hospital Planning Consultants.

Doesn't look like a "campus"

The layout makes little sense.

Open space isn't oriented into campus

→ more like out parcels in wasteland.

Cyrus - buffering around perimeter of site  
Setbacks from connector road for building  
and parking - dimensions

Orlando - what does MDOT need or want?

- more flexible than Cyrus.

- Data won't be available from MDOT

Mark - questions about MDOT's progress

Traffic #s

- urban site - no need for setbacks - maximum amount  
of parking before a garage - doesn't  
want sprawling campus

- Taxes - limit percentage of site to non-taxable  
wants greater substance + reassurance

they say they are limiting their tax  
exempt status - HOW.

CAN we approve the use

and make them come back w/ a master-plan

---

Dev - buildings don't need buffering  
parking does  
- impervious?  
rethink ~~to~~ impervious / permeability  
+ ATEJ

Eric - Mercy's date but not later than  
- ok without the dimensional requirements  
- parking buffering - no real direction

thought → what is to prevent Mercy from developing the  
site solely as a Hospital?

Plotkin - be 10 years before fully out of  
State Street

19019  
19019

# PIERCE ATWOOD

July 10, 2001

MATTHEW D.  
MANAHAN  
  
DIRECT  
207.791.1189  
  
E-MAIL  
MManahan@  
PierceAtwood.com

Sarah Hopkins  
Planning Department  
City of Portland  
Portland City Hall  
Congress Street  
Portland, ME 04101

RE: Mercy Hospital; Fore River Site

Dear Sarah:

I enclose an Application for Zoning Amendment, on behalf of Mercy Hospital, to allow development of a hospital campus on the so-called Fore River site. I also enclose a check for \$800 to cover the application fee. Please let me know if you have any questions about these materials.

Thank you for your assistance in drafting this application. We look forward to working with you in this matter.

Sincerely,



Matthew D. Manahan

MDM/dcu  
Enclosures

cc: Jim Simone (w/enclosure)  
Larry Plotkin (w/enclosure)  
Steve Bushey (w/enclosure)  
George Campbell (w/enclosure)

One Monument  
Square  
Portland, Maine  
04101-1110

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207.791.1100

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207.791.1350

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info@PierceAtwood.com

WEB SITE  
www.PierceAtwood.com

76-A-19

APPLICATION FOR ZONING AMENDMENT  
City of Portland, Maine  
Department of Planning and Urban Development  
Portland Planning Board

1. Applicant Information:  
**Mercy Hospital**  
144 State Street  
Portland, ME 04101  
879-3000  
Fax: 879-3945 (Dr. Steve Hess)

2. Subject Property:  
**On Ogdensburg Street (a paper street)**

Assessor's References

<i>Owner</i>	<i>Tax Map-Block-Lot Number</i>
Merrill Industries, Inc.	73-A-1
Merrill Industries, Inc.	73-B-2
Portland Terminal Co.	74-A-1
Portland Terminal Co.	75-A-3
Portland Terminal Co.	75-A-33

3. Property Owners: \_\_\_\_\_ Applicant    XX Other  
**Portland Terminal Company**  
c/o Guilford Transportation Industries, Inc.  
Iron Horse Park  
North Billerica, MA 01862  
Attn: Roland Theriault, Vice President, Real Estate  
978-663-6939; Fax 978-663-6959

**Merrill Industries, Inc.**  
601A Danforth St.  
Portland, ME 04104  
207-772-3254; Fax 207-761-3782

4. Right, Title, or Interest: Please identify the status of the applicant's right, title, or interest in the subject property:

**Mercy holds options to purchase the two properties; copies of the options are attached.**

Provide documentary evidence, attached to this application, of applicant's right, title, or interest in the subject property. (For example, a deed, option or contract to purchase or lease the subject property.)

There is one single-story wood-framed building and one metal-framed warehouse-type structure in the southeast area of the site. The larger of these two structures is less than 8,000 SF. These structures will be removed as part of the hospital development program.

The site also contains an abandoned gravel pit. Representatives of Guilford Industries have stated that the gravel pit was operated by the railroad as a source of gravel materials for railroad operations since the 1950s and also during the construction of the Veterans Memorial Bridge. The railroad continued to actively mine gravel from the site through the 1970s. Lesser amounts of gravel continued to be excavated from the existing pit area into the mid 1980s. The railroad has ceased any excavation of materials from the site, since around the mid-1980s.

7. Current Zoning Designation(s): I-H

The site is currently zoned I-H. Surrounding zones include IL in the vicinity of the Correctional Center. The north end of St. John Street around Union Station is zoned B-2, and the south end of St. John Street is zoned I-Mb.

8. Proposed Use of Property: Please describe the proposed use of the subject property. If construction or development is proposed, please describe any changes to the physical condition of the property.

**The proposed use is as a hospital and related uses, including: medical office building; ambulatory care center; fitness center; day care centers for children and adults; psychiatric services; medical research; nursing home; assisted living facilities; residences for student doctor residents, relatives of patients, etc.; teaching center; retail and restaurant uses to service the hospital uses; and a helicopter pad.**

These uses will be within multiple buildings to be constructed in phases over perhaps the next ten years. The new structures will be a mix of single and multi-level buildings developed in a campus-like setting. The buildings may be freestanding or linked, depending upon the phasing and ultimate development program proposed. Other ancillary development features include parking facilities, utility services, stormwater management systems, and site amenities. Parking for the campus is likely to be primarily surface lots, although a parking garage may be considered in the future. Approximately 22 to 28 acres of land will be developed for the hospital campus.

A portion of the site will be used for the construction of the proposed Commercial Street Connector roadway. This connector roadway is currently in the MDOT design phase. Construction of the connector is a critical aspect of the development feasibility and Mercy Hospital is coordinating closely with the MDOT and involved parties with regard to the funding and timing of the construction.

The preliminary connector roadway layout includes the extension of the Exit 5 connector between Congress Street and the northbound ramps. The connector will extend easterly across land of Ralph Romano III and Guilford Industries, Inc. The connector will cross the railroad tracks above grade and proceed across the proposed Mercy Hospital property generally along the Fore River frontage. The connector roadway will include significant

Residential Zones	\$350.00	\$400.00	\$450.00	\$500.00
Nonresidential Zones	\$350.00	\$400.00	\$450.00	\$500.00
	0-15,000 sq. ft. or 0-5 acres (which- ever is less)	15,000-30,000 sq. ft. or 6-10 acres (which- ever is less)	30,000-45,000 sq. ft. or 10-15 acres (which- ever is less)	45,000-60,000 sq. ft. or 15-20 acres (which- ever is less)

- Legal Advertisements (one for workshop and one for public hearing) percent of total bill
- Notices (one for workshop and one for public hearing) 40 cents each
- Text Amendments \$300.00

**\$500 + \$300 = \$800** Amount of Fee

12. Signature: The above information is true and accurate to the best of my knowledge.

\_\_\_\_\_  
Date of Filing

\_\_\_\_\_  
Signature of Applicant

Further Information:

Please contact the Planning Office for further information regarding the rezoning process. Applicants are encouraged to make an appointment to discuss their rezoning requests before filing the application.

Applicants are encouraged to include a letter or narrative to accompany the rezoning application which can provide additional background or context information, and describe the proposed rezoning and reasons for the request in a manner that best suits the situation.

**Mercy Hospital has determined that it can no longer meet the long term needs of the community from its 144 State Street location. The current building is cramped for space, has little expansion capabilities and is short on parking. The hospital is located in a neighborhood not well-suited to a hospital. Therefore the Board of Trustees directed that a search be undertaken for a new site for Mercy that can meet the Portland area's long term needs for a state-of-the-art community hospital.**

**The results of the site search found there is only one site (called the Fore River Site) that has all the desired attributes of being on a parcel of land large enough to meet Mercy's long term needs, while being easily accessible and convenient to doctors, public transportation, and the Maine Medical Center. Mercy has been able to secure control of the Fore River Site, and is now seeking the right to build upon it.**



why are hospitals a benefit to the City

PARA 1 A ~~para~~ Description ~ 2 hospitals, related user

PARA 2 B. employment/Economics ↗  
C. Health/welfare/safety ↘

Summary of benefits

PARA 3 Challenged Facility, Mercy

PARA 4 Location Attributes Desired by Mercy

PARA 5 Policy to Accommodate

- land is suitable and well located
- use is compatible w/ context
- adjustment to land use policy to enable campus @ that location

location  
attributes

4.



- 5.
- Policy to accommodate them
  - Land is suitable + well located
  - Use is compatible  
of surrounding
  - Adjustment to land use policy  
to accommodate  
med camp @ this

location in IHB

through suitable zoning  
constraint:

LARRY 775  
3656

Public Policy :

contains

1 The City of Portland provides medical services incorporating the latest technology and capabilities serving the city region and state. These services are provided by two major hospitals (OHSU and Mercy) as well as a large and significant cluster of medical related business offices laboratories and services that have assembled within the city in close proximity to the major hospitals.

employment, health

Summary  
of values elements

2

3

Challenges facing Mercy, landlocked  
w/ no sustains - need to  
adapt to changing conditions  
facing medical industry

Mercy  
Challenges

**From:** Matt Manahan <mmanahan@PierceAtwood.com>  
**To:** 'Jonathan Spence' <JSpence@ci.portland.me.us>  
**Date:** Thu, Aug 9, 2001 11:42 AM  
**Subject:** RE: Revised Contract Zone Agreement

Thanks Jonathan. We appreciate your (and Penny's) comments on this draft. I attach a marked-up version with our comments and changes. As you will see, we have accepted most of your suggested changes, with a couple notable exceptions:

1. In regard to the effective date of the rezoning (in paragraph #1 on page 3), Mercy's contract with Merrill does not allow Mercy to agree to a rezoning that will apply regardless of whether Mercy purchases the Property. I understand Penny's concern about delegation of legislative power, so I reworded this paragraph to make the effective date a mere formality. That is, I changed it from stating that the City SHALL rezone when it receives the statement from Mercy, to stating that the Property IS rezoned, effective when Mercy provides the statement. It is just a condition of the approval of rezoning, which isn't unusual, and because contract zones are developer specific, it makes sense. I wouldn't call it an excessive delegation because the City has already approved the rezoning subject to the condition, and they have gone through all the appropriate analysis in order to do so.
2. In regard to subdivision review, we have simply provided that it is required if applicable. Mercy doesn't want to go through subdivision review if such review is not required, or before such review is required.
3. In regard to the addition of the buffering areas paragraph, that applies primarily to sites adjacent to residential areas, and this Property is not. We don't want there to be any misunderstanding that we need to provide some sort of special buffer for residential areas that are far away. Also, we don't want to be required to screen parking lots and driveways from public view in the manner provided. We think these issues are better left for site plan review. But we have added a provision to address the concern about screening parking lots from public view.
4. In regard to the dimensional requirements, the reason we have referenced the I-Hb requirements as they now exist is simply to avoid having to repeat them in the agreement. If you would prefer that we simply copy the current requirements into the agreement (so that if the I-Hb standards change they won't change for this Property), we can do that instead.
5. In regard to the paragraph about the underlying I-H zone, it probably makes sense, given the increased level of detail we are now dealing with, to simply state that the provisions of this contract replace the underlying uses and requirements of the I-H zone. This would no longer be an industrial use Property, so they don't seem applicable any more.

Please let me know if you have questions about these comments, or further suggested changes.

Thanks,  
Matt

-----Original Message-----

From: Jonathan Spence [mailto:JSpence@ci.portland.me.us]

# Outline and Worksheet for Mercy Hospital Campus Siting Along the Fore River

**Purpose: To review objectives, zoning tools and mechanisms to determine the best possible direction.**

**Applicant's Objective- Create a zoning scheme that will enable the following:**

1. Accommodate the siting of a Medical Center Complex which may include but would not be limited to the following uses:
  - A. Hospitals, Clinics and Medical research facilities.
  - B. Community living arrangements, congregate care facilities, intermediate care facilities, long term or extended care facilities, and sheltered care group homes.
  - C. Office Complexes and professional offices
  - D. Day care facilities and adult day care facilities.
  - E. Exercise and fitness centers and health clubs.
  - F. Personal services, restaurants, and retail establishments of no more than 50,000 square feet per lot.
  - G. Dwellings, hotels, motels, inns, rooming units, and lodging houses for hospital or clinic employees or volunteers and patients' family members.
  - H. Teaching centers.
2. Preserve the underlying industrial zoning to enable industrial development if the medical campus idea does not come to fruition.
3. Create flexibility within the parameters of zoning to allow for a mix of uses.
4. Establish zoning to permit the siting of a medical center complex including ancillary uses with time constraints established as a result of the ongoing due diligence process.

**Public Policy Objective-Proceed through the use of available planning tools to:**

1. Encourage the full development of previously under-developed property that utilizes to the greatest extent possible proposed improved access.
2. Accommodate the growth and development of Mercy Hospital through appropriate means.
3. Ensure that all mixed-use developments are based on rational and compatible land use decisions.

4. Preserve and enhance the City's tax base.

### **Advantages and Disadvantages to Available Zoning Tools**

1. Text Amendment to Industrial Zoning to Allow Non-Industrial Medical Campus Uses. (See attachment 1)
  - A. Advantages
    - i. Preserves the existing industrial zoning
    - ii. Minimum "upfront" work.
    - iii. Quick
    - iv. ?
    - v. ?
  - B. Disadvantages
    - i. Could result in incompatible adjacent uses
    - ii. Lacks vision to create a fully developed, cohesive property.
    - iii. Does not ensure full use of improved access.
    - iv. ?
    - v. ?
2. Zone Change to Existing Zone District that Permits Desired Uses
  - A. Advantages
    - i. Quick
    - ii. ?
    - iii. ?
  - B. Disadvantages
    - i. Does not preserve industrial uses
    - ii. Does not guarantee cohesive development
    - iii. ?
    - iv. ?
3. Contract Zone
  - A. Advantages
    - i. Preserves Underlying Industrial Uses
    - ii. High Degree of Specification
    - iii. Acknowledges the Unique Character of the Proposed Use and the Development Site
    - iv.
    - v. ?
  - B. Disadvantages
    - i. Significant "upfront" work
    - ii. Not Achieved Quickly.
    - iii. Usually Requires Accompanying Master Plan
    - iv. ?

v. ?

4. Create Entirely New Zone District

A. Advantages

- i. High Degree of Specification
- ii. ?
- iii. ?

B. Disadvantages

- i. Challenging
- ii. Time Consuming
- iii. May or May not adequately preserve industrial uses
- iv. ?
- v. ?

**Possible Development Principles to Incorporate**

1. A rationale to the internal arrangement of the mix of uses
2. Adjacent compatibility within the development
3. Development within the property compatible with existing or potential development outside of the property. *Consideration*
4. The Promotion of a campus like atmosphere
5. High degree of pedestrian orientation
6. Uses arranged to provide a high level of user convenience
7. Appropriate signage
8. Non-Highway oriented design
9. Full and complete use of proposed access road
10. *conceptual* Master Plan required prior to commencement of phased development
11. High level of community involvement in the decision-making and review processes.

## **Consolidation of Proposed Text Amendments**

Add “as well as hospital-related uses” to the statement of purpose for the zone district.

Remove the restriction that food prepared in the I-Hb district not be served on the premises.

Add the following uses to the list of permitted uses in the I-Hb zone district.

1. Hospitals, Clinics and Medical research facilities.
2. Community living arrangements, congregate care facilities, intermediate care facilities, long term or extended care facilities, and sheltered care group homes.
3. Office Complexes and professional offices
4. Day care facilities and adult day care facilities.
5. Exercise and fitness centers and health clubs.
6. Personal services, restaurants, and retail establishments of no more than 50,000 square feet per lot.
7. Dwellings, hotels, motels, inns, rooming units, and lodging houses for hospital or clinic employees or volunteers and patients’ family members.
8. Teaching centers.

Remove the prohibitions on residential, office, retail and restaurant uses if the particular use is now included in the list of permitted uses.

Add “drive through facilities” as a prohibited use in the zone district.


Remove the required 10’ pavement setback requirement from the I-Hb district.

## **Conclusions-**





## MEETING MINUTES

**CLIENT:** The Plotkin Company, LLC and Mercy Hospital  
**DATE:** July 11, 2001  
**LOCATION:** MDOT Transportation Building, Augusta, Maine  
**RE:** Commercial Street/I295 Connector Project  
**ATTENDEES:** Larry Plotkin, The Plotkin Company -LP  
George Campbell, Pierce Atwood Strategies -GC  
John Melrose, DOT Commissioner -JM  
Ray Faucher, Project Manager, MDOT -RF  
John Dority, Chief Engineer, MDOT -JD  
Shawn Smith, DOT Utilities -SS  
Harold Sonier (?) MDOT -HS  
~~Joe Gray Jr., City Manager, Portland -JG~~  
Bill Bray, Public Works Director, Portland -BB  
Larry Mead, Assistant City Manager -LM  
Steve Bushey, DeLuca-Hoffman Associates, Inc. SB 

Steve Bushey prepared the following meeting minutes to the best of his understanding. If there are any corrections, please contact this office.

- 1.0 GC provided a brief overview and introduction of the Mercy Hospital project and the schedule, outlining Mercy's desire to complete plans and permitting by no later than May 2002. Mercy has options on the Merrill and Guilford Industries properties through February 2002 with extensions possible to May 2002.
- 2.0 JM and RF passed out the attached meeting agenda as a guideline to the discussion.
- 3.0 GC discussed possible phasing and permitting issues related to the project and the connector.
- 4.0 JM noted that the agenda should include a discussion of the City's matching participation of funding for the Connector; Right of Way acquisition; and increased construction costs for driveway/access requirements to the Mercy project.
- 5.0 JM reviewed the funding and noted that \$6 million is available under the current BTIP. The State representative offices and Senators also appear able to provide at least \$1 million. With other earmarked funds and Advance Construction money it appears that

sufficient funding is available to keep the project on schedule for a 2003/2004 completion.

- 6.0 RF provided an overview of the Connector project using a large-scale plan that depicted the connector layout from the Exit 5 interchange to the Veteran's Bridge interchange. The layout includes a two-lane section with a pedestrian way along the route.
- 7.0 RF stated that the Public Advisory Committee had reviewed multiple alternatives to arrive at the current alignment.
- 8.0 RF briefly reviewed the relative impacts of the alignment including specific impacts to the Barber Foods property. The alignment will likely result in some swapping of land with Barber Foods that ultimately will improve their circulation/deliveries procedures along St. John St. A new bridge structure will be part of the St. John Street/Commercial street interconnection.
- 9.0 RF reviewed the current conceptual layout for three signalized intersections along the alignment on the Veterans Bridge side. Two signalized intersections already exist on the Exit 5 interchange side and these will remain.
- 10.0 RF stated that the EA will be completed later on this year. A draft EA has been reviewed and the consultants are making revisions at this time. RF stated that natural resource impacts have been minimized with the current alignment and that environmental permitting for the connector appears very modest. Ed Hollingshead of Fay, Spoffard and Thorndike is working on the EA. The Public Hearing and Comment period will be this fall at which time the EA will go to the Agencies for review.
- 11.0 JM questioned whether the Mercy Project might negatively impact the permitting schedule for the Connector.
- 12.0 RF noted that the planning process for the connector has included some amount of future buildout for the Mercy Property. *(We note that FST has verbally suggested that 400K SF of warehouse space has been considered during the planning process.)*
- 13.0 JG asked about the EA schedule including timing for the Public Hearing and Comment Periods. It was noted that the options for the project really boil down to a build vs. no-build decision.
- 14.0 JM reiterated his concern regarding the Mercy Hospital process and possible impacts to the Connector EA process.

- 15.0 LP provided a brief overview of the Hospital program including the current considerations for a Medical Office Building (MOB), an Ambulatory Care Center (ACC) and a full Hospital relocation from the Current State Street location. The phasing is likely to go in that sequence.
- 16.0 RF noted that the connector will include an overhead crossing of the Mountain Division Rail line. The crossing must be 22' above grade. The existing ground conditions appear workable to this requirement. Most of the connector will be a fill condition with very little earthwork cut.
- 17.0 The discussion centered around the driveways and how many will be needed for the Hospital. JM stated that one would be nice. To a question from GC, JM responded that funding would not be impacted by the number of driveways. It is likely that two driveways will be necessary for the Hospital project, as well as possibly one for the remaining undeveloped Guilford Land on the west side of the Mountain Line tracks and adjacent the Jail site, as pointed out by BB.
- 18.0 JD noted that it is critical to get a handle on the projected traffic volumes from the Hospital site so that these may be incorporated into the planning and capacity analysis for the connector and signals. BB noted that the traffic impact study to be completed by DeLuca-Hoffman Associates, Inc. should be for a full build-out condition.
- 19.0 To a question, RF responded that the bridge span over the Merrill property coming into the Veterans Bridge intersection has been conceptually designed to allow below grade access between what will be the north and south sides of the connector. This is important to the Hospital since the connector essentially divides off almost two acres of land to the south that may be needed for overflow parking or other development in the future.
- 20.0 LP stated that Mercy Hospital is willing to donate the necessary land for the Connector ROW conditioned on the State funding and completing the necessary access improvements such as left and right turn lanes and signalization at the driveways if necessary.
- 21.0 JM stated his pleasure with this offering and requested that DOT staff review the implications of this to the project's funding needs.
- 22.0 The project funding was discussed including city matching and the effort to close the Veterans Bridge for a period, thus reducing construction cost. Three main assumptions seem relevant. These are: 1) Donation of the ROW by the Hospital; 2) Work through of the number of Driveways and cost for each (assume three); and 3) Closure of the Veterans Bridge.

- 23.0 GC asked if one contract would be the way to go to save money.
- 24.0 The earliest date of completion appears to be the Fall of 2003. It is likely this would only be a portion of the connector from the Exit 5 interchange to about half way across the Mercy land. The Veterans Bridge side would likely be completed no sooner than the Fall of 2004.
- 25.0 SS noted that utility work will be necessary in the vicinity of the Veterans Bridge interchange. A 115KVA CMP line exists along the Guilford line, as does an AT&T communications line. DeLuca-Hoffman Associates, Inc. is to investigate cost for the CMP line as this may be high. DeLuca-Hoffman Associates, Inc. is to identify utility routes into the site.
- 26.0 JM noted that the ROW donation by the Hospital may be considered as part of the Local funding share. JG noted that the City would like a firm assessment of the cost values for the project so that the City can include designated amounts in the upcoming CIP for the project.
- 27.0 JD reiterated the need for the Hospital trip generation, distribution, parking needs, staffing hours, etc. in order to include this as part of the traffic studies.
- 28.0 JM asked about work hours in the City. BB noted that the City can waive the normal 7:00 am to 10:00 pm restrictions if necessary.
- 29.0 JM noted that if the Veterans Bridge is closed there may be some maintenance work completed on the bridge structure at that time to take advantage of the closure.
- 30.0 JM noted that the train station appears to be off the table for consideration at the Hospital site.
- 31.0 BB would like to review concepts for the Hospital project soon.

Distribution: Attendees  
Bill Hoffman  
Peter Hedrich  
Dr. Steve Hess  
File

# I-295 CONNECTOR PROJECT

MDOT, CITY of PORTLAND, and MERCY HOSPITAL  
MEETING AGENDA

July 11, 2001

## I. FUNDING

- Current BTIP
- Earmark funds -
- Advance construction -
- Construction change
  - Veterans Bridge closure
  - Non-phasing
- Other

*\$6 million*

*\$1 million - Allen - House*

*? Collins/snow - Senate*

## II. PERMITTING & CONSTRUCTION SCHEDULE

- Design
- Permits required
- Status
- Other

## III. OTHER RELATED FUNDING ISSUES

- Train
- Waterfront
- Other

August 3, 2001

Matthew D. Manahan  
Pierce Atwood  
One Monument Square  
Portland, ME 04101-1110

Dear Mr. Mahanan:

Thank you for your recent correspondence including the draft contact zone and letter discussing concerns arising from Mercy's tax-exempt status. The City of Portland is very excited about working with Mercy Hospital in the creation of a dynamic hospital campus along the Fore River. This campus will be a tremendous asset to the citizens of Portland and will serve as a model not only for this type of development but also in the cooperative relationship which forms between an applicant and the City. We look forward to the development of this relationship as Mercy moves towards the realization of the Fore River development.

In order to assist in the drafting of the language of the contract zone, it is necessary for the City to understand the vision Mercy Hospital has for the eventual build out of the site. We would like the opportunity to discuss this vision with members of your development team and suggest a meeting on Tuesday, August 7<sup>th</sup> at 11:00 A.M. in conference room on the 4<sup>th</sup> floor of City Hall. If this time is not convenient please call and we will reschedule to a time that works. What follows is a list of questions that will enable the City to better understand the proposed development.

- How many acres of the site will be available for buildable parcels net of the wetlands and the connector road R.O.W.?
- How many square feet does Mercy believe that their new hospital building will consist of?
- What is the estimated order of magnitude at buildout of the combined proposed uses envisioned for the campus?
- How much pavement or parking will be required for this mix of uses?
- What is the maximum building height envisioned in the campus?
- What percentage of the building parcels is expected to be impervious?
- Will the development result in the creation of City accepted streets or will the projects traffic circulation system consist of private drives and ways?
- What type of unified architectural theme does Mercy Hospital anticipate its campus demonstrating?
- What is the possible timing and phasing of the development?
- What possible type of outdoor amenities such as walking trails, open spaces and natural features will the project contain?

- What type of parking management program is anticipated?

Attached please find a copy of the O-P Office Park Zone text from the City's Zoning Ordinance. Although the permitted uses do not correspond to this project, the development standards may be helpful in drafting language for the contract zone. We are eager to meet with you next week to further discuss this exciting project. We recognize that many of these issues are not able to be resolved at this time. Any ranges or estimates of the development program will assist us in working with you to create an appropriate zoning solution.

Sincerely,

Jonathan C. Spence  
Planner

cc. Larry Plotkin  
Steve Bushey  
Joseph Gray, City Manager  
Penny Littell, Associate Corporation Counsel  
Alexander Jaegerman, Chief Planner  
Sarah Hopkins, Development Review Services Manager

**From:** Jeff Schultes  
**To:** Penny Littell  
**Date:** Mon, Aug 6, 2001 10:14 AM  
**Subject:** Re: Mercy on the Fore River

The height should not be a problem. We have had preliminary discussions with FAA on this and the company has filed the paperwork to have it approved from FAA. Actually, the Western Prom is so high that it shields the hospital from height problems. The one thing that I am concerned about is noise. Hospitals and airports really don't go together, so the city should insist upon superior sound insulation. In this part of the country there should not be too many complaints over the extra cost because it is paid back with energy savings (HVAC).

Jeff

>>> Penny Littell 08/06 10:09 AM >>>

Jeff: do you have any idea what the FAA height restrictions are for a building along the St. John Street side of the Fore River where Mercy is looking to build?



**From:** Alex Jaegerman  
**To:** "council2@maine.rr.com"@Portland.gwgwia  
**Date:** Wed, Aug 1, 2001 10:28 AM  
**Subject:** Re: July 27 PPH article

From the entire discussion with the Planning Board, this article singles out one comment that was not the primary focus of discussion. The tax issue is not central to the Board's discussion, and it may be outside their purview vis-a-vis contract zoning. That is the response of Manahan, anyway. We will check with Penny Littell for her legal opinion. Finally, there will be taxable value in the development, and Mercy will be able to demonstrate that in their development plans, which should go a long way to resolve the policy issue. Even if it is not a Planning Board concern, it will likely arise at the Council level, so we should be prepared to address it.

Mercy has asked to be on the August 14 and Sept. 11 Planning Board workshops, with public hearing Oct. 9.

>>> "K Geraghty" <council2@maine.rr.com> 08/01 9:19 AM >>>

Joe and Alex,

I just read an article from the PPH about Mark Malone saying Mercy must have a PILOT in order to get a contract zone recommendation. He said it was "outrageous" that we would allow a non-profit to develop that land. How in the world is this related to the purview of the Planning Board? I would like to have an explanation. Thanks,  
Karen

**CC:** Penny Littell

IDEAS

Contract B-2, remove user from contract  
nearest residential is R-4 or R-6

6/27/02



CITY OF PORTLAND

42 acres  
7 acres roadways

Joseph E. Gray Jr.  
Director

Land ownership...  
Common areas,

Access points

35 acres  
2  
33

2-3 acres open shore front  
2.5 pond  
3.4 acres wet. 30.5

August 3, 2001

Matthew D. Mahanan  
Pierce Atwood  
One Monument Square  
Portland, ME 04101-1110

Ph 1 120,000 MOB/Amb care ctr.  
60K 60K  
say 500 pkg spaces.

Ph 2 hospital - adj. to Amb. care ctr.  
300,000 SF 700 spaces...  
4 Floors 2-4 story each.

Dear Mr. Mahanan:

Thank you for your recent correspondence including the draft contact zone and letter discussing concerns arising from Mercy's tax-exempt status. The City of Portland is very excited about working with Mercy Hospital in the creation of a dynamic hospital campus along the Fore River. This campus will be a tremendous asset to the citizens of Portland and will serve as a model not only for this type of development but also in the cooperative relationship which forms between an applicant and the City. We look forward to the development of this relationship as Mercy moves towards the realization of the Fore River development.

2 more MOB's  
Daycare

In order to assist in the drafting of the language of the contract zone, it is necessary for the City to understand the vision Mercy Hospital has for the eventual build out of the site. We would like the opportunity to discuss this vision with members of your development team and suggest a meeting on Tuesday, August 7th at 11:00 A.M. in conference room on the 4th floor of City Hall. If this time is not convenient please call and we will reschedule to a time that works. What follows is a list of questions that will enable the City to better understand the proposed development.

or other use.  
Ronald MacDon.  
Lodging  
teaching  
- Auditorium

- How many acres of the site will be available for buildable parcels net of the wetlands and the connector road R.O.W.?
- How many square feet does Mercy believe that their new hospital building will consist of? 300,000 Food restaurant
- What is the estimated order of magnitude at buildout of the combined proposed uses Ph1 120,000 Ph2
- How much pavement or parking will be required for this mix of uses?
- What is the maximum building height envisioned in the campus? 75' 5 stories / 90'
- What percentage of the building parcels is expected to be impervious?
- Will the development result in the creation of City accepted streets or will the projects traffic circulation system consist of private drives and ways? (connector public others private) Fitness/Physical Therapy
- What type of unified architectural theme does Mercy Hospital anticipate its campus demonstrating?
- What is the possible timing and phasing of the development?
- What possible type of outdoor amenities such as walking trails, open spaces and natural features will the project contain?

Phase map.

85%

Ph 1-2-3

Pond open space

"architectural units"

Matt Mahan.

self buffering from existing or potential

Medical Complex Overlay Zone

objective

Hospital Campus - unified master plan

overlay w/ sunset provision

Applicants Objective

- a. accommodate hospital
- b. preserve industrial
- c. create flexibility → D. Time constraint due diligence

~~City's Objective~~ Public Policy Objectives

- a. access, utilize roadway
- b. fully developed
- c. accommodate mercy's growth + development
- b. rationality, compatibility
- e. Preserve + Enhance Tax Base

Development Principles in ~~the~~ lie of Master Plan

## Pros / Cons

1. IHB
2. Zone Change to existing district
3. Contract zone
4. ~~Overlay~~ Zone Create new zone district

## Development Principles

internal rationale / mix of uses

adjacent compatibility

adjacent district compatibility

campus environs - OP zone

Pedestrian Friendly

User Convenience

Signage

Non-Highway Oriented

Master plan - Institutional Use

- Required Prior to Phase I

Community Involvement

**CONTRACT ZONE AGREEMENT  
BETWEEN  
CITY OF PORTLAND  
AND  
MERCY HOSPITAL**

**AGREEMENT** made this \_\_\_\_ day of \_\_\_\_\_, 2001 by and between the **CITY OF PORTLAND**, a body corporate and politic, located in Cumberland County and State of Maine (hereinafter the "**CITY**") and **MERCY HOSPITAL**, a nonprofit corporation located in the City of Portland (hereinafter "**MERCY**").

**W I T N E S S E T H**

**WHEREAS, MERCY** has determined that it can no longer meet the long term needs of the community from its 144 State Street location ~~because the current building is cramped for space, has little expansion capabilities, is short on parking, and is located in a neighborhood not well-suited to a hospital; and~~

**WHEREAS, MERCY'S** Board of Trustees directed that a search be undertaken for a new site for **MERCY** that can meet the Portland area's long term needs for a state-of-the-art community hospital; and

**WHEREAS,** the results of the site search found there is only one site (called the Fore River Site) that has all the desired attributes of being on a parcel of land large enough to meet **MERCY'S** long term needs, while being easily accessible and convenient to doctors, public transportation, and the Maine Medical Center; and

~~**WHEREAS, MERCY** has been able to secure control of the Fore River Site, and is now seeking the right to build on it; and~~

**WHEREAS, MERCY** requested a rezoning of the Fore River Site (also referred to herein as the “Property”), which is located on Ogdensburg Street, in Portland (Map 73, Block A, Lot 1; Map 73, Block B, Lot 2; Map 74, Block A, Lot 1; Map 75, Block A, Lot 3; and Map 75, Block A, Lot 33) in order to permit the establishment and operation of a hospital campus on up to 42 acres of land; and

**WHEREAS**, the Planning Board of the City of Portland, pursuant to 30-A M.R.S.A. § 4352(8) and Portland City Code §§ 14-60 to 14-62 and 14-264, and after notice and hearing and due deliberation thereon, recommended the rezoning of the Property as aforesaid, subject, however, to certain conditions; and

**WHEREAS**, the **CITY** by and through its City Council has determined that said rezoning would be and is pursuant to and consistent with the **CITY’S** comprehensive land use plan and consistent with the existing and permitted uses within the original zone (~~such as low impact industrial uses, research and development facilities, wholesale trade, repair services, and food preparation~~); and

**WHEREAS**, the **CITY** has determined that the proposed development is consistent with the purposes of the I-H zone; and

**WHEREAS**, the **CITY** has determined that the proposed development is designed and operated so that it will prevent undue adverse environmental impacts, substantial diminution of the value or utility of neighboring structures, or significant hazards to the health or safety of neighboring residents by controlling noise levels, emissions, traffic, lighting, odors, and any other potential negative impacts of the proposal; and

**WHEREAS**, the **CITY** has determined that because of the unusual nature and unique location of the proposed development it is necessary and appropriate to impose by agreement the following conditions and restrictions in order to ensure that the rezoning is consistent with the **CITY'S** comprehensive land use plan; and

**WHEREAS**, the **CITY** authorized the execution of this Agreement on \_\_\_\_\_, 2001;

**NOW, THEREFORE**, in consideration of the mutual promises made by each party to the other, the parties covenant and agree as follows:

1. Effective upon receipt of a statement from **MERCY** that **MERCY** has purchased the Property, the **CITY** hereby amends the Zoning Map of the City of Portland, dated March 1958, as amended and on file in the Department of Planning and Urban Development, and incorporated by reference into the Zoning Ordinance by § 14-49 of the Portland City Code, by adopting the map change amendment shown on Attachment 1, and by designating the Property a Helistop Overlay Zone.
2. *Permitted Uses.* **MERCY** shall be authorized to establish and maintain the following uses on the Property:
  - a. Hospitals, clinics, and medical research facilities.
  - b. Community living arrangements, congregate care facilities, intermediate care facilities, long term or extended care facilities, and sheltered care group homes.
  - c. Office complexes and professional offices.
  - d. Day care facilities and adult day care facilities.
  - e. Exercise and fitness centers and health clubs.
  - f. Personal services, restaurants, and retail establishments of no more than 50,000 square feet, except that there shall be no drive through facilities.
  - g. Dwellings, hotels, motels, inns, rooming units, and lodging houses for hospital or clinic employees or volunteers and patients' family members.
  - h. Teaching centers.

- i. Accessory uses, including, but not limited to, parking facilities, utility services, stormwater management systems, and site amenities. ~~Parking for the campus is likely to be primarily surface lots, although a parking garage may be considered in the future.~~

The uses on the Property will be within multiple buildings to be constructed in phases, some owned by **MERCY** and some owned by others. The new structures will be a mix of single and multi-level buildings developed in a campus-like setting. The buildings may be freestanding or linked, depending upon the phasing and ultimate development program proposed. A portion of the Property will be used for the construction by the Maine Department of Transportation of the proposed Commercial Street Connector roadway. ~~The connector will cross the railroad tracks above grade and proceed across the Property generally along the Fore River frontage. The connector plan calls for a pedestrian walkway/bikeway along the Fore River frontage. It is anticipated that two separate access drives to the hospital campus will be provided off the connector. Additional service access likely will be provided off County Way, the access road for the Correctional Center.~~

3. *Development Guidelines.* The Property shall be developed substantially in accordance with the conceptual site plan shown on Attachment 2, provided, however, that each phase of the development shall be subject to site plan review and, if applicable, subdivision review by the Planning Board. The Planning Board may permit deviations from the conceptual site plan, as long as the deviations are consistent with the purposes of this Agreement. In reviewing the site plan submissions, the Planning Board shall consider the following development guidelines:

- a. Promotion of a campus-like atmosphere through appropriate green spaces and building orientations.
- b. A rationale for the internal arrangement and mix of uses.
- c. Adjacent compatibility within the development.
- d. Consideration of compatibility with existing or potential development of perimeter uses to those adjacent to the Property.
- e. Use of the proposed connector as the primary access to the site, ~~though no more than two driveways will be provided off the connector.~~
- f. Uses arranged to provide a high level of user convenience.
- g. A high degree of pedestrian orientation.
- h. A non-highway-oriented design.



~~i.~~ Appropriate signage.

~~j.i.~~ Inclusion of the neighborhood in the planning process, to the extent reasonable.

#### 4. *Development Standards*

- a. *Design relationship to site:* Development proposals shall demonstrate a reasonably unified design of the site, including the architecture, the layout of the buildings, pedestrian and vehicular circulation plan, open space, drainage, and the topography, soil conditions, vegetation, and other natural features of the site. Integration of open spaces and natural features shall be achieved by incorporation of outdoor amenities for the benefit of users of the site, such as jogging and walking trails, gardens, and benches.
- b. *Landscaping:* Development proposals shall include a landscape program. All land areas not covered by structures, parking areas, or circulation facilities shall be landscaped and maintained. In order to soften the visual impact of large expanses of pavement in parking lots, vegetation shall be planted or retained in islands or planting strips where required by article IV (subdivisions) and article V (site plan) of the Land Use Code.
- c. *Sidewalks:* Development proposals shall include internal sidewalks, illustrating the manner in which the developer will provide this amenity to take advantage of the topography and natural features of the site.
- d. *Buffers and screens:* Development proposals shall include appropriate measures to reasonably reduce parking lot visibility from public roads.
- e. *Preservation of natural features:* Development proposals shall identify the extent to which the developer will preserve natural features including, but not limited to, existing vegetation, flood plains, rock outcroppings, surface water bodies, drainage swales and courses, and wetlands; provided any such program shall consider and be sensitive to the need to preserve such natural features.
- ~~d.f.~~ *Architectural design:* All buildings shall be designed or approved by a registered architect in the State of Maine. The scale, texture, color, and massing of the buildings shall be coordinated. The full range of high-quality, permanent, and traditional or contemporary building materials and technology may be incorporated in a manner so that the development as a whole embodies distinguishing attributes that achieve the developer's desired degree of excellence and are in conformance with the architectural guidelines provided in any private development restrictions. Particular emphasis shall be placed on the appearance of building facades from public streets, from driveway and parking areas, and from other nearby

buildings. Building elevation drawings shall be submitted which indicate architectural style, exterior finishes and color, building height and scale, and location and scale of window and door openings. Samples of exterior building materials shall also be submitted.

e.g. *Lighting*: Development proposals shall identify the location and style of lighting to be used in the development. All light fixtures shall be hooded or shielded to that the light shines downward.

f.h. *Signs*: Development proposals shall identify all proposed signage. Signs shall be designed in proportion and character with the building facades. All signs shall be constructed of permanent materials and shall be coordinated with the building and landscaping design through the use of appropriate materials and finishes.

5. *Dimensional Requirements*. Dimensional requirements on the Property shall be the same as those in the I-Hb zone (as they now exist), except that the maximum impervious surface ratio shall be eighty-five (85) percent and the maximum building height shall be ninety (90) feet.
6. The provisions of this Agreement, including the permitted uses listed in paragraph 2, are intended to ~~be supplemental to~~ replace the uses and requirements of the underlying I-H zone ~~(as they now exist), which remain in place except as provided herein.~~
7. Pursuant to Code § 14-264(d), all development plans shall include complete information of processes, materials, or methods of storage to be used by the development and shall specify how hazardous impacts to neighboring properties will be prevented.

The above stated restrictions, provisions, and conditions are an essential part of the rezoning, shall run with the Property, shall bind and benefit **MERCY**, its successors and assigns (including, without limitation, Mercy Health System of Maine, Inc.), and any party in possession or occupancy of said Property or any part thereof, and shall inure to the benefit of and be enforceable by the **CITY**, by and through its duly authorized representatives. **MERCY** shall file a copy of this Agreement in the Cumberland County Registry of Deeds, along with a reference to the Book and Page locations of the deeds for the Property.

If any of the restrictions, provisions, conditions, or portions thereof set forth herein is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed as a separate, distinct, and independent provision and such determination shall not affect the validity of the remaining portions hereof.

Except as expressly modified herein, the use and occupancy of the subject premises shall be governed by and comply with the provisions of the Land Use Code of the City of Portland and any applicable amendments thereto or replacement thereof.

In the event that **MERCY** or any successor fails to continue to utilize the Property in accordance with this Agreement, or in the event of a breach of any condition(s) set forth in this Agreement, the Planning Board shall have the authority, after hearing, to resolve the issue resulting in the breach. The resolution may include a recommendation to the City Council that the site be rezoned to only I-H or any successor zone and that the Agreement be terminated, requiring a cessation of the hospital campus use.

~~This Agreement shall expire if **MERCY** does not purchase the Property before August 1, 2003.~~

**WITNESS:**

\_\_\_\_\_

**CITY OF PORTLAND**

By \_\_\_\_\_

Joseph E. Gray  
City Manager

**WITNESS:**

\_\_\_\_\_

**MERCY HOSPITAL**

By \_\_\_\_\_

Howard Buckley

President and CEO

STATE OF MAINE  
CUMBERLAND, ss.

Date: \_\_\_\_\_, 2001

Personally appeared before me the above-named Joseph E. Gray, in his capacity as City Manager, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of the City of Portland.

Before me,

\_\_\_\_\_  
Notary Public/Attorney at Law

STATE OF MAINE  
CUMBERLAND, ss.

Date: \_\_\_\_\_, 2001

Personally appeared before me the above-named Howard Buckley, in his capacity as President and CEO, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of Mercy Hospital.

Before me,

\_\_\_\_\_  
Notary Public/Attorney at Law

- f. *Signs:* Development proposals shall identify all proposed signage. Signs shall be designed in proportion and character with the building facades. All signs shall be constructed of permanent materials and shall be coordinated with the building and landscaping design through the use of appropriate materials and finishes.
5. *Dimensional Requirements.* Dimensional requirements on the Property shall be the same as those in the I-Hb zone (~~as they now exist~~), except that the maximum impervious surface ratio shall be eighty-five (85) percent and the maximum building height shall be ninety (90) feet. *As listed in paragraph 2*
6. The provisions of this Agreement, including the permitted uses, are intended to be ~~supplemental to the uses and requirements of the underlying I-H zone (as they now exist), which remain in place except as provided herein.~~ *replace* *supplement the ~~the~~ all other* *needs to be added*
7. Pursuant to Code § 14-264(d), all development plans shall include complete information of processes, materials, or methods of storage to be used by the development and shall specify how hazardous impacts to neighboring properties will be prevented.

The above stated restrictions, provisions, and conditions are an essential part of the rezoning, shall run with the Property, shall bind and benefit **MERCY**, its successors and assigns (including, without limitation, Mercy Health System of Maine, Inc.), and any party in possession or occupancy of said Property or any part thereof, and shall inure to the benefit of and be enforceable by the **CITY**, by and through its duly authorized representatives. **MERCY** shall file a copy of this Agreement in the Cumberland County Registry of Deeds, along with a reference to the Book and Page locations of the deeds for the Property.

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**WHEREAS, MERCY** requested a rezoning of the Fore River Site (also referred to herein as the “Property”), which is located on Ogdensburg Street, in Portland (Map 73, Block A, Lot 1; Map 73, Block B, Lot 2; Map 74, Block A, Lot 1; Map 75, Block A, Lot 3; and Map 75, Block A, Lot 33) in order to permit the establishment and operation of a hospital campus on up to 42 acres of land; and

**WHEREAS,** the Planning Board of the City of Portland, pursuant to 30-A M.R.S.A. § 4352(8) and Portland City Code §§ 14-60 to 14-62 and 14-264, and after notice and hearing and due deliberation thereon, recommended the rezoning of the Property as aforesaid, subject, however, to certain conditions; and

**WHEREAS,** the **CITY** by and through its City Council has determined that said rezoning would be and is pursuant to and consistent with the **CITY’S** comprehensive land use plan and consistent with the existing and permitted uses within the original zone (such as low impact industrial uses, research and development facilities, wholesale trade, repair services, and food preparation); and

**WHEREAS,** the **CITY** has determined that the proposed development is consistent with the purposes of the I-H zone; and

**WHEREAS,** the **CITY** has determined that the proposed development is designed and operated so that it will prevent undue adverse environmental impacts, substantial diminution of the value or utility of neighboring structures, or significant hazards to the health or safety of neighboring residents by controlling noise levels, emissions, traffic, lighting, odors, and any other potential negative impacts of the proposal; and

- a. Hospitals, clinics, and medical research facilities.
- b. Community living arrangements, congregate care facilities, intermediate care facilities, long term or extended care facilities, and sheltered care group homes.
- c. Office complexes and professional offices.
- d. Day care facilities and adult day care facilities.
- e. Exercise and fitness centers and health clubs.
- f. Personal services, restaurants, and retail establishments of no more than 50,000 square feet, except that there shall be no drive through facilities.
- g. Dwellings, hotels, motels, inns, rooming units, and lodging houses for hospital or clinic employees or volunteers and patients' family members.
- h. Teaching centers.

2. *Permitted Uses.* **MERCY** shall be authorized to establish and maintain the following uses on the Property:

1. Effective upon receipt of a statement from **MERCY** that **MERCY** has purchased the Property, the **CITY** hereby amends the Zoning Map of the City of Portland, dated March 1958, as amended and on file in the Department of Planning and Urban Development, and incorporated by reference into the Zoning Ordinance by § 14-49 of the Portland City Code, by adopting the map change amendment shown on Attachment 1, and by designating the Property a Helistop Overlay Zone.

*DATE certain?*

party to the other, the parties covenant and agree as follows:

**NOW, THEREFORE**, in consideration of the mutual promises made by each

\_\_\_\_\_, 2001;

**WHEREAS**, the **CITY** authorized the execution of this Agreement on

consistent with the **CITY'S** comprehensive land use plan; and

agreement the following conditions and restrictions in order to ensure that the rezoning is

unique location of the proposed development it is necessary and appropriate to impose by

**WHEREAS**, the **CITY** has determined that because of the unusual nature and

- i. Accessory uses, including, but not limited to, parking facilities, utility services, stormwater management systems, and site amenities. Parking for the campus is likely to be primarily surface lots, although a parking garage may be considered in the future.
- 3. *Development Guidelines.* The Property shall be developed substantially in accordance with the conceptual site plan shown on Attachment 2, provided, however, that each phase of the development shall be subject to site plan review by the Planning Board. The Planning Board may permit deviations from the conceptual site plan, as long as the deviations are consistent with the purposes of this Agreement. In reviewing the site plan submissions, the Planning Board shall consider the following development guidelines:
  - a. Promotion of a campus-like atmosphere through appropriate green spaces and building orientations.
  - b. A rationale for the internal arrangement and mix of uses.
  - c. Adjacent compatibility within the development.
  - d. Consideration of compatibility with existing or potential development of perimeter uses to those adjacent to the Property.
  - e. Use of the proposed connector as the primary access to the site, though no more than two driveways will be provided off the connector.
  - f. Uses arranged to provide a high level of user convenience.
  - g. A high degree of pedestrian orientation.
  - h. A non-highway-oriented design.

*Submissions*



**CONTRACT ZONE AGREEMENT  
BETWEEN  
CITY OF PORTLAND  
AND  
MERCY HOSPITAL**

**AGREEMENT** made this \_\_\_\_ day of \_\_\_\_\_, 2001 by and between the **CITY OF PORTLAND**, a body corporate and politic, located in Cumberland County and State of Maine (hereinafter the "**CITY**") and **MERCY HOSPITAL**, a nonprofit corporation located in the City of Portland (hereinafter "**MERCY**").

**W I T N E S S E T H**

**WHEREAS, MERCY** has determined that it can no longer meet the long term needs of the community from its 144 State Street location because the current building is cramped for space, has little expansion capabilities, is short on parking, and is located in a neighborhood not well-suited to a hospital; and

*Trim*

**WHEREAS, MERCY'S** Board of Trustees directed that a search be undertaken for a new site for **MERCY** that can meet the Portland area's long term needs for a state-of-the-art community hospital; and

**WHEREAS,** the results of the site search found there is only one site (called the Fore River Site) that has all the desired attributes of being on a parcel of land large enough to meet **MERCY'S** long term needs, while being easily accessible and convenient to doctors, public transportation, and the Maine Medical Center; and

**WHEREAS, MERCY** has been able to secure control of the Fore River Site, and is now seeking the right to build on it; and

*) delete*

**CONTRACT ZONE AGREEMENT  
BETWEEN  
CITY OF PORTLAND  
AND  
MERCY HOSPITAL**

**AGREEMENT** made this \_\_\_\_ day of \_\_\_\_\_, 2001 by and between the **CITY OF PORTLAND**, a body corporate and politic, located in Cumberland County and State of Maine (hereinafter the “**CITY**”) and **MERCY HOSPITAL**, a nonprofit corporation located in the City of Portland (hereinafter “**MERCY**”).

**W I T N E S S E T H**

**WHEREAS, MERCY** has determined that it can no longer meet the long term needs of the community from its 144 State Street location; and

**WHEREAS, MERCY’S** Board of Trustees directed that a search be undertaken for a new site for **MERCY** that can meet the Portland area’s long term needs for a state-of-the-art community hospital; and

**WHEREAS,** the results of the site search found there is only one site (called the Fore River Site) that has all the desired attributes of being on a parcel of land large enough to meet **MERCY’S** long term needs, while being easily accessible and convenient to doctors, public transportation, and the Maine Medical Center; and

**WHEREAS, MERCY** requested a rezoning of the Fore River Site (also referred to herein as the “Property”), which is located on Ogdensburg Street, in Portland (Map 73, Block A, Lot 1; Map 73, Block B, Lot 2; Map 74, Block A, Lot 1; Map 75, Block A, Lot 3; and Map 75, Block A, Lot 33) in order to permit the establishment and operation of a hospital campus on up to 42 acres of land; and

**WHEREAS**, the Planning Board of the City of Portland, pursuant to 30-A M.R.S.A. § 4352(8) and Portland City Code §§ 14-60 to 14-62 and 14-264, and after notice and hearing and due deliberation thereon, recommended the rezoning of the Property as aforesaid, subject, however, to certain conditions; and

**WHEREAS**, the **CITY** by and through its City Council has determined that said rezoning would be and is pursuant to and consistent with the **CITY'S** comprehensive land use plan and consistent with the existing and permitted uses within the original zone; and

**WHEREAS**, the **CITY** has determined that the proposed development is consistent with the purposes of the I-H zone; and

**WHEREAS**, the **CITY** has determined that the proposed development is designed and operated so that it will prevent undue adverse environmental impacts, substantial diminution of the value or utility of neighboring structures, or significant hazards to the health or safety of neighboring residents by controlling noise levels, emissions, traffic, lighting, odors, and any other potential negative impacts of the proposal; and

**WHEREAS**, the **CITY** has determined that because of the unusual nature and unique location of the proposed development it is necessary and appropriate to impose by agreement the following conditions and restrictions in order to ensure that the rezoning is consistent with the **CITY'S** comprehensive land use plan; and

**WHEREAS**, the **CITY** authorized the execution of this Agreement on \_\_\_\_\_, 2001;