

[Text of signed Agreement, updated to reflect minor word change made in June 2002]

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

AGREEMENT made this 3rd day of December, 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 its existing and permitted uses; 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 December 3, 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 limited to a single helistop; 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 **MERCY** fails to acquire said **PROPERTY** before 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, and 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.

The uses listed in subparagraphs e, f, and g 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. The hospital shall be built in either the first or second phase of construction.
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. Upon its purchase of the **PROPERTY**, **MERCY** shall record in the Cumberland County Registry of Deeds a deed granting to the **CITY** an easement in perpetuity over the portion of the PROPOERT identified as "Open space" on Attachment 2, which easement shall grant to the public access to such Open Space for recreational activities during daylight hours.

Such open space may be used in the calculation of the impervious surface requirements contained in paragraph 11 of this Agreement.

In addition, **MERCY** shall cooperate with the City in the creation of a pedestrian trail and bike path at least along the perimeter of the **PROPERTY** as shown, generally, on Attachment 2. Once the location of the pedestrian trail and bike path is determined, **MERCY** shall record in the Cumberland County Registry of Deeds a deed granting to the **CITY** an easement in perpetuity for the benefit of the public, which easement shall grant access along and over such path and trail for recreational activities during daylight hours and when trails are customarily available to the public for such use, covering all portions of such path and trail located on land not owned by MDOT.

These easements shall be subject to the review and approval of the Corporation Counsel's Office.

7. For purposes of calculating impervious surface required in paragraph 11 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** shall have as the front yard the area between the building and the **CONNECTOR**.

The **PROPERTY** shall be developed substantially in accordance with the conceptual master plan shown on Attachment 2, provided, however, that each 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.

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 buildings and uses shall demonstrate compatibility between the buildings and other site features within the site. Consideration shall be given to compatibility of proposed perimeter on-site development with the existing and future uses off-site but adjacent to the **PROPERTY**.
 - 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. *Pedestrian Orientation:* Development proposals shall include an integrated pedestrian circulation system, including internal sidewalks, 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 developed portions of the site without additional driving. The pedestrian circulation system shall 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 or two access points and a slip lane from the **CONNECTOR** as may be further developed or modified by joint agreement of the City, MDOT and the applicant.

Vehicular circulation through internal driveways and roadways will provide safe and orderly access to all developed 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.
- f. *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.
- g. *Architectural design:* All buildings shall be designed or approved by a registered architect in the State of Maine. The scale, texture, colors, 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.
- h. *Signs:* Signage shall be focused internally to the site or to the **CONNECTOR** and shall not be oriented or scaled to address Route 1 or Interstate 295, with the exception of the hospital and major office buildings. 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.
- i. *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.

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: Twenty (20) feet from the edge of the **CONNECTOR** right-of-way shall be in the form of a landscaped buffer provided, however, that the area within such buffer may include a retaining wall, walkway, trail, or pathway but no buildings, roadways, parking areas, or other expanses of pavement;
 - d. Minimum side yards: Ten (10) feet;
 - e. Minimum rear yard: Ten (10) feet;
 - f. Pavement setback from lot boundaries: Fifteen (15) feet.
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.
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.

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.

MERCY agrees not to challenge the legality of the provisions contained within paragraph 4 of this contract.

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

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