

Public Works Development Agreement
ProHealth Waukesha Memorial Hospital
Madison Street Entrance

Parcel ID Numbers: WAKC 1306 001, WAKC 1306 002, WAKC 1306 003,
WAKC 1306 004, WAKC 1306 019, WAKC 1306 020,
WAKC 1306 021, WAKC 1306 022, WAKC 1306 023,
WAKC 1306 024, WAKC 1306 025, WAKC 1306 380,
WAKC 1306 381, WAKC 1306 382, WAKC 1306 383,
WAKC 1306 384, WAKC 1306 387, WAKC 1306 389,
WAKC 1306 390, WAKC 1306 391

After recording return to:
City of Waukesha
Dept. of Public Works
201 Delafield St.
Waukesha WI 53188

This Development Agreement, referred to herein as the Agreement, is entered into by and between the **City of Waukesha**, a Wisconsin municipal corporation, referred to herein as the City; and **ProHealth Waukesha Memorial Hospital, Inc.**, a Wisconsin non-stock corporation, referred to herein as the Developer. The lands subject to this Agreement are legally described on attached Exhibit A, and is referred to herein as the Real Property.

In consideration of the mutual covenants contained herein, the City and the Developer agree and contract as follows:

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- 1. Developer.** The Developer is ProHealth Waukesha Memorial Hospital, Inc.
 - 2. The Development.** The term Development, as used herein, refers to the Developer's construction of a private driveway, abandonment and installation of public sanitary sewer, and all associated improvements, all as shown on Development Plans submitted to and approved by the City. The portion of construction of within Lawndale Avenue includes the installation of a new sanitary sewer. The Development will be completed in one phase.
 - 3. Expenses of Development.** All expenses of the Development and compliance with the terms and conditions of this Agreement shall be paid solely by the Developer. The City shall make no contribution to the costs of the Development.
 - 4. Development Plans.** The Developer shall deliver to the City complete, accurate and sufficiently-detailed plans of the Development, which are referred to herein as the Development Plans. The Development Plans shall include the following:
 - a. Right-of-way vacation documents for Fairview Avenue.
 - b. Certified Survey Map showing the locations of all lots, outlots, easements, public rights-of-way, and all other improvements to the Real Property.
 - c. Construction drawings of all improvements to the Real Property, showing the locations of all streets, sidewalks, utilities, storm water facilities, storm sewers, sanitary sewers, signs, pavement markings, elevations, grading, and all other plans and drawings for the Development;
 - 5. Compliance with Development Plans.** The Developer shall construct the Development in substantial compliance with the Development Plans as modified, conditioned and approved by the City Public Works Department, and any substantial deviation from them must be approved in writing by the City, in advance.
 - 6. Construction Requirements.** The following improvements as shown in the Development Plans are specifically required by the City, and the construction of them shall be secured by the performance bond or letter of credit required by section 9 of this Agreement:
 - a. Site landscaping.
 - b. Public sanitary sewer.
 - d. Storm water management plan and storm water management practice maintenance agreement and all addenda.
 - e. Project specifications.
 - f. Landscape and turf restoration plans.
 - g. Master grading and erosion-control plans.
 - h. Vehicle and pedestrian traffic-control plans.
 - i. Street signage, and street lighting plans.

c. A digital as-built of all sanitary sewer, storm sewer, and storm water facilities in the Development. A televising video of all sanitary sewer main, sanitary sewer laterals, and storm sewer in the Development.

7. Time for Performance. Developer shall complete the construction of all improvements listed in section 6 no later than the date 12 months after the date this Agreement is executed. Construction of improvements shall be deemed complete when the improvements are substantially constructed according to the terms of this Agreement, and City delivers a written acceptance of these improvements to Developer, which shall not be unreasonably withheld, conditioned or delayed by City.

8. Construction Standards.

a. **Contractor Qualification.** For any work in the public right of way, Developer shall identify all contractors that will provide materials or labor to the Development to the City Engineering Department, and all contractors must be approved by the City Engineering Department or they shall not be allowed to perform any work.

b. **Work Standards.** Developer shall construct all improvements in the Development in a good and workmanlike manner, according to accepted practices within the trades and in compliance with all applicable laws and codes. Developer shall obtain all required permits from the Wisconsin Department of Resources. All streets, curbs, sidewalks, sanitary and storm sewers constructed by Developer in connection with the Development shall be constructed according to the City Department of Public Work's published street, sidewalk and utility construction standards, City Standard Specifications and Development Handbook; the approved storm water management plan; and the Development Plans. City staff will mark any areas requiring repair and replacement, and Developer shall repair or replace, as indicated, all marked areas. All construction work shall be subject to inspection by City staff for compliance with the terms of this Agreement, and Developer shall perform all corrective work required by the City after inspection.

9. Security for Performance. The Developer shall, at Developer's sole expense, obtain and deliver to the City either a surety bond or irrevocable letter of credit, naming the City as beneficiary, to secure full performance of Developer's obligations under sections 6, 7, and 8. The letter of credit or surety bond must be delivered to the City before any construction takes place, or at such other time as the City agrees in writing. If the letter of credit or bond is not delivered to the City on time, then all construction must cease until the letter of credit or bond is delivered and accepted by the City. The choice of surety bond or letter of

credit is the Developer's option. The bond or letter of credit shall meet the following requirements:

a. **Surety Bond Requirements.** The bond shall be issued by a surety listed on the U.S. Department of the Treasury's Department Circular 570-Listing of Approved Sureties in a form satisfactory to the City Attorney.

b. **Letter of Credit Requirements.** The letter of credit shall be irrevocable, shall be issued by a commercial bank licensed to conduct business in Wisconsin in a form satisfactory to the City Attorney.

c. **Security Amount.** Subject to adjustment pursuant to subsection 9.d, the amount of the bond or letter of credit shall be \$_____.

Developer shall take whatever actions are necessary, at Developer's sole expense, to ensure that after any partial draws are made, there shall remain 120% of the remaining estimated costs of completion of the improvements listed in section 6 available for the City to draw upon.

d. **Reduction of Security Amount.** Pursuant to Wis. Stats. §236.13(2)(a)(1), on the date 14 months after the binder coat is installed on all roads to be dedicated to the City, or, if no roads are to be dedicated to the City, on the date 14 months after 90% by cost of the public improvements to be installed by Developer are completed, the security amount required by this section shall be reduced to the amount equal to the cost to complete any unfinished public improvements plus 10% of the total cost of the finished public improvements.

e. **Condition of Payment.** The condition of payment under the bond or letter of credit shall be the completion by Developer of the required improvements listed in section 6, in compliance with the standards in section 8, no later than the date stated in section 7. This shall be established by an affidavit by the City. Time is of the essence. Upon Developer's failure to do so, the City shall provide notice to Developer of such default and provide Developer with a reasonable opportunity to cure the same prior to making any demand for payment.

f. **Remedy Not Exclusive.** Application of the bond or letter of credit proceeds by the City shall not relieve the Developer of its obligations under this Agreement, and demand by the City on the bond or letter of credit shall not be a waiver by the City of any other rights or remedies.

10. Construction Start. Construction shall not start until:

a. The storm water maintenance agreement for the Development, with Exhibits A, B, C, D, E, F, and

G and all addenda, have been reviewed and approved by the City and have been recorded by the Waukesha County Register of Deeds.

b. All easement documents needed by City for development shall be approved and recorded. Digital recorded copies of easements to be provided to City.

c. All street vacation documents needed by City for development shall be approved and recorded. Digital recorded copies of easements to be provided to City.

d. Security as required by section 9 is received by the City Engineering Division.

e. All application review fees have been received by the City Engineering Division.

f. The City Storm Water Permit has been issued, and any permits for grading have been issued by the Wisconsin Department of Natural Resources, with copies of the permits provided to City Engineering.

11. Pavement Warranty. All asphalt and concrete pavement that will be installed are part of the project shall be warranted by the Developer for materials and workmanship for a period of 2 years from the date of delivery of written acceptance of street construction pursuant to section 7. Pavement deficiencies identified by the City within the 2-year warranty period shall be addressed at Developer's sole expense as follows:

a. All paving joints (longitudinal and transverse) that open shall be routed and crack sealed to the satisfaction of the City Engineer.

b. All premature cracks shall be crack sealed or routed and crack sealed to the satisfaction of the City Engineer.

c. Any other pavement irregularities shall be addressed in a method approved by the City Engineer.

d. If deficiencies are discovered within the 2-year warranty period, the pavement warranty as to the affected area will be extended by one year from the latest date the deficiencies are corrected.

12. Dedication. The sanitary sewer to be installed within the Lawndale Avenue right-of-way pursuant to the Development Plans shall upon completion and acceptance by the City be dedicated and conveyed to the City in fee simple, free and clear of all liens and encumbrances. No dedication shall be effective until all review and inspection fees relating to the improvements have been paid in full, all contractors who performed work on the improvements have been paid in full and have provided construction lien waivers, and the City accepts the dedications in writing.

13. Landscaping Warranty. All landscape restoration within the Lawndale Avenue right-of-way shall be warranted for a period of one year after final completion.

14. Sewer Warranty. All sewer mains and laterals, and all associated equipment, that will be dedicated to the City pursuant to this Agreement shall be warranted by the Developer for materials and workmanship for a period of 1 year from the date of delivery of written acceptance of sewer construction pursuant to section 7. Sewer deficiencies identified by the City within the 1-year warranty period shall be corrected to the City Engineer's satisfaction, and any damage caused by deficient materials or workmanship restored, at Developer's sole expense.

15. City May Correct Deficiencies. If the Developer fails, after reasonable written notice from the City, with reasonable opportunity to cure any defaults of the terms of this Agreement, including all warranties, the City may cure the defaults. The Developer shall then reimburse the City for all reasonable expenses incurred by the City, and the City may charge such expenses against the Development as a special charge under Wis. Stats. §66.0627.

16. Construction Compliance Inspections, Deposit. The City of Waukesha contracts with private consultants to perform compliance inspections of public construction projects, who are referred to as Construction Site Representatives, or CSRs. The cost of inspections by CSRs is borne by project developers, who are required to maintain a deposit with the City to cover that cost. Therefore, the Developer shall deposit with the City an amount equal to 120% of the estimated cost of providing a CSR for the Development, as determined by the City. The City shall draw upon this deposit to pay the costs of the CSR's inspections. If the deposit is drawn down to less than 25% of the original deposit amount, then Developer shall deposit additional amounts as necessary to maintain the deposit at no less than 25% of the original amount at all times. If the deposit amount falls below 25% of the original estimated amount at any time, the City may order that all building and construction permits be suspended and all work on the Development cease until the deposit amount is restored to at least 25% of the original amount. Deposits shall be held by the City in its general funds but shall be accounted for separately. The City shall not pay interest on any deposits. The City shall return the deposit balance upon acceptance of public improvements directly to the developer.

17. Inspection Access. Developer shall allow the City and its CSRs access to the Development as reasonably required to perform inspections of the Development. If Developer fails to give adequate access for inspections, the City may order that all building and construction permits be suspended and all work on the Development cease until adequate access has been given for inspections and the inspections reveal that the Development is in compliance

with all codes, permits, and the terms of this Agreement. A preconstruction meeting shall be held with Developer, Contractors, and City representatives prior to commencement of construction.

18. Indemnification. Developer shall indemnify and hold the City harmless from any and all claims, demands, causes of action, lawsuits, judgments, penalties, and other liabilities of any kind arising out of, or connected in any way with, the Developer's construction of the Development, including court costs and actual attorney fees. Indemnification shall not extend to claims arising out of the negligent or intentional acts or omissions of the City, its officers, agents, employees or independent contractors.

19. Insurance. Developer shall maintain, or require its contractors to maintain, insurance of the following kinds and for not less than the following limits, at Developer's sole expense, at all times during the construction of the Development. Policies shall be occurrence, and not claims-made, policies. Developer shall obtain an endorsement making the City an additional insured, and such insurance shall be primary, not excess, and non-contributory. All policies shall be from insurers licensed to issue such policies in Wisconsin. Prior to commencement of construction, Developer shall deliver a certificate of insurance to City showing that all requirements of this section are met.

- a. Commercial general liability, including products-completed operations, \$1,000,000 per occurrence, \$2,000,000 aggregate per project.
- b. Automobile liability, \$1,000,000 bodily injury, \$1,000,000 property damage.
- c. Builders risk, the value of the improvements required by section 6.
- d. Excess liability-Umbrella, \$5,000,000.
- e. Worker compensation, statutory requirements.

20. Recording. The City will record this Agreement with the Register of Deeds, and the cost of recording shall be reimbursed to the City by the Developer.

21. Governmental Immunities and Notice Requirements Preserved. Nothing in this Agreement shall be construed to be a waiver or modification of the immunities or notice requirements imposed by Wis. Stats. §893.80 or any other law.

22. Parties Are Independent Contractors. Nothing in this Agreement shall be construed to create any relationship between the Parties other than independent contractors. Unless specifically provided in this Agreement, the Parties are not agents for one another, have no authority to bind the other to contracts, and have no vicarious liability for the other's acts or omissions.

23. Corporate Authorization. The individuals executing this Agreement on behalf of the Developer represent that they are duly authorized to bind the Developer contractually. The Developer represents that the execution of this Agreement is not prohibited by its articles of incorporation, by-laws, operating agreement, partnership agreement, limited-partnership agreement, or other internal operating orders, or by any applicable law, regulation or court order.

24. Assistance of Counsel, Voluntary Contract. The Developer acknowledges that it has either had the assistance of legal counsel in the review and execution of this Agreement, or has voluntarily waived the opportunity to do so; that it has read and understands each of this Agreement's terms, conditions and provisions, and their effects; and that this Agreement is executed freely and not under conditions of duress.

25. Adequacy of Consideration. The Parties acknowledge that the consideration expressed in this Agreement is adequate and sufficient to make the obligations contained in this Agreement binding upon the Parties.

26. Integration. This Agreement and any documents which are executed pursuant to express provisions in this Agreement embody the entire agreement of the Parties with respect to the subject matter expressed herein. All other inconsistent agreements and understandings of the Parties with respect only to the subject matter expressed herein are superseded and are unenforceable.

27. Amendments. No amendments, additions, or changes of any kind to this Agreement will be valid unless in writing and signed by all the Parties to this Agreement.

28. Severability. If any term of this Agreement is held unenforceable by a court having jurisdiction, then to the extent the unenforceable term can be severed from the remainder of this Agreement without affecting the enforceability of the remainder of this Agreement or substantially frustrating its purpose, it will be so severed, and the remainder of this Agreement will remain in effect and enforceable.

29. Governing Law and Jurisdiction. This Agreement shall be construed and enforced according to the laws of Wisconsin. The Parties agree that if a lawsuit is necessary with respect to this Agreement, it will be filed in the state Circuit Court for Waukesha County, Wisconsin. The Parties consent to personal and subject-matter jurisdiction in Wisconsin and waive all jurisdictional defenses.

30. Force Majeure. Neither Party shall be deemed to be in default of this Agreement if the failure to perform is the result of unforeseeable causes beyond the Party's control, including but not limited to civil disorder, war, acts of enemies, strikes, fires, floods, adverse weather conditions,

legally-required environmental remedial actions, industry-wide shortages of materials, acts of God, Governmental restrictions, and pandemics, provided the Party has used reasonable diligence in attempting to anticipate and avoid

such causes and resumes performance in good faith as soon as reasonably possible. Time for performance shall be extended by the period of delayed performance.

Developer: ProHealth Waukesha Memorial Hospital, Inc.

(sign above)
(print name) _____
Title: _____
Date: _____

State of Wisconsin }
 } ss.
Waukesha County }

_____ known to me to be the _____ of ProHealth Waukesha Memorial Hospital, Inc., personally came before me the _____ day of May, 2022, signed this Development Agreement in my presence, and acknowledged the same.

Name: _____
Notary Public, Waukesha County, Wisconsin
My commission (is permanent) (expires _____)

City of Waukesha

By Shawn N. Reilly, Mayor
Date: _____

Attest: Gina L. Kozlik, City Clerk-Treasurer
Date: _____

State of Wisconsin }
 } ss.
Waukesha County }

Shawn N. Reilly and Gina L. Kozlik, known to me to be the Mayor and City Clerk, respectively, of the City of Waukesha, personally came before me the _____ day of _____, 2022, signed this Agreement in my presence, and acknowledged the same.

Name: _____
Notary Public, Waukesha County, Wisconsin
My commission (is permanent) (expires _____)

This instrument was drafted by City of Waukesha Department of Public Works.

Exhibit A

Legal description of Real Property: