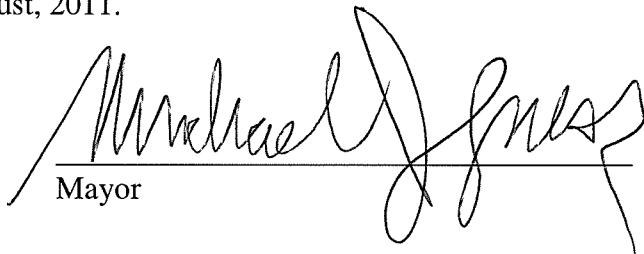


RESOLUTION R-52-11

**A RESOLUTION AUTHORIZING THE EXECUTION  
OF AN INTERGOVERNMENTAL AGREEMENT  
FOR THE CONVEYANCE OF SANITARY SEWERS AND EASEMENTS  
BETWEEN THE WHEATON SANITARY DISTRICT  
AND THE CITY OF WHEATON**

**BE IT AND IT IS HEREBY RESOLVED** by the Mayor and City Council of the City of Wheaton, Illinois, that the Mayor is authorized to sign an Intergovernmental Agreement for the Conveyance of Sanitary Sewers and Easements between the Wheaton Sanitary District and the City of Wheaton; and the City Clerk is authorized to attest to the signature of the Mayor.

**ADOPTED** this 15<sup>th</sup> day of August, 2011.



\_\_\_\_\_  
Michael Gresk  
Mayor

ATTEST:



\_\_\_\_\_  
Karen Bennett Hagan  
City Clerk

ROLL CALL VOTE

Ayes:	Councilman Rutledge Mayor Gresk Councilwoman Pacino Sanguinetti Councilman Scalzo Councilman Suess Councilwoman Ives Councilman Mouhelis
Nays:	None
Absent:	None

Motion Carried Unanimously

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**INTERGOVERNMENTAL AGREEMENT CONCERNING THE SOUTHSIDE  
INTERCEPTOR SEWER PROJECT AND FOR THE COVEYANCE OF  
SANITARY SEWERS AND EASEMENTS BETWEEN THE  
WHEATON SANITARY DISTRICT AND THE CITY OF WHEATON**

This intergovernmental agreement ("Agreement"), by and between Wheaton Sanitary District (hereinafter "District"), a body politic and corporate of DuPage County, Illinois, and the City of Wheaton (hereinafter "City"), an Illinois home rule municipality, DuPage County, Illinois, is made this 15th day of August, 2011.

**WHEREAS**, Article VII, Section 10 of the Illinois Constitution and the Illinois Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq., authorize and encourage units of local government to enter into intergovernmental agreements with one another; and

**WHEREAS**, the District is in the process of completing the installation of a new interceptor sewer from Roosevelt Road to the District treatment plant to serve the south side of District's service area and to minimize the sanitary sewer overflows which may occasionally occur, ("District Project"); and,

**WHEREAS**, the City has requested that the District, by the District's contractor, perform additional work to replace certain curbing on the East Side of Main Street during the construction of the District Project; and

**WHEREAS**, the District holds certain easement rights described in Exhibit A for the old south side interceptor sewer; and

**WHEREAS**, the City holds certain easement rights and rights-of-way described in Exhibit B ("City Easements") in the location of the new south side interceptor sewer; and

**WHEREAS**, the District desires to transfer its rights in the District Easements and in the old sewers located in the District Easements to City; and

**WHEREAS**, the City desires to grant easements to the District for new sewer interceptor pipes and appurtenances; and

**WHEREAS**, the District has coordinated the design of the sanitary sewer with City to facilitate certain sewer construction by District; and

**WHEREAS**, the District and the City have determined that it is in the best interest of public health, safety and welfare enter into this Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants and provisions recited herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Recitals:** The foregoing recitals are incorporated herein as substantive provisions and as representing the intent of the parties as if fully set forth.
2. **Main Street Curbing:**
  - a. Subject to the terms and conditions of this Agreement, and without warranties of any kind from the District to the City, the District hereby agrees to have its contractor remove and replace existing curbing on the east side of Main Street in connection with the District Project depicted and described on the plans attached hereto and incorporated herein as Exhibit C, hereinafter (the "City Work") and further subject to the terms and conditions hereinafter set forth. The District's contract with its contractor provides the District with a warranty for the City Work. The District shall enforce or assign to the City its enforcement rights under that warranty for the City Work should it be violated by the District's contractor. Nothing in this Agreement shall be interpreted to relieve the District's contractor of its warranty for the City Work.
  - b. The City shall immediately upon execution of this Agreement and within the existing bill payment cycle of the City, but no later than 30 days, pay to the District \$54,300.00 for the construction of the Main Street curbing and for engineering performed by the District's engineer as part of the Main Street curbing work. Prior to payment to its contractor for the City Work, the District shall secure lien waivers for the City Work consistent with the Illinois mechanics lien law.
  - c. The City and District mutually agree to defend, hold harmless, and indemnify the other to the extent of their respective percentage of liability under Illinois law, as may be qualified by any tort immunity, for claims, actions, costs, including reasonable attorney's fees and expert witness fees, only based upon legally cognizable injuries to third persons or property resulting from the City Work or District Project. This provision shall not be interpreted to grant rights of any kind to third persons or waive any common law or statutory tort immunities of the City or District.
  - d. The District shall cooperate with the City in enforcing, on the City's behalf, the "defend, hold harmless, indemnification and insurance provisions" of the District's contract with the District's contractor as those provisions apply to the City Work. The applicable paragraphs of the contract are attached hereto as Exhibit D.

3. Easement Transfers and Sewer Transfers:

- a. Subject to the terms and conditions of this Agreement, and without warranties of any kind, the District hereby agrees to grant to the City, its agents, successors and assigns the right to install, construct, operate, remove, renew and maintain sanitary sewer pipes, manholes and appurtenances in and under the District Easements described on Exhibit A, attached hereto and incorporated herein.
- b. The District grant shall be made by a document substantially similar to that attached hereto as Exhibit E and incorporated herein.
- c. Subject to the terms and conditions of this Agreement, and without warranties of any kind, the City hereby agrees to grant to District, its agents, successors and assigns the right to install, construct, operate, remove, renew and maintain sanitary sewer pipes, manholes and appurtenances in and under the City Easements described on Exhibit B, attached hereto and incorporated herein.
- d. The City grant shall be made by a document substantially similar to that attached hereto as Exhibit F and incorporated herein.
- e. The District further agrees to convey and the City agrees to accept "as-is", the sewers, pipes, manholes and all other appurtenances located in the District Easements as of the date of conveyance. The conveyance shall be by Bill of Sale in a form substantially similar to that attached as Exhibit G.

4. Timing of Transfers: The transfer of sewers and easement shall occur no later than December 1, 2011.

5. Permits for Future Work in City Easements: The District agrees to obtain City permits for work in the City Easements and to provide the City with reasonable notice prior to such work; provided that in the event of an emergency, notice to the City as soon as practical shall be sufficient.

6. Permit Fee Waiver: The City agrees to waive all City permit fees for the District Project in consideration for the sewers to be transferred to the City and for the increased sewer capacity provided by the District Project.

7. Restoration of City Easements: The District agrees to restore the City Easements including, but not limited, to the surface of the streets, impacted by the District Project, in accordance with the plans and specifications approved by the City for the District Project prior to this Agreement.

8. Entire Agreement: This Agreement is the entire agreement between the parties, there being no prior written or oral promises or representations not incorporated herein. No amendments or modifications to the terms of this Agreement shall be binding upon either party unless in writing, approved by the parties' corporate authorities and executed in conformance with law.

9. **Non-Assignability:** This Agreement shall binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, provided; however that it may be assigned by either party without the prior written consent of the other.
10. **Non-Waiver:** Either party may delay or forgo enforcing any of its rights or remedies under this Agreement without losing or waiving them.
11. **Severability:** If any part of this Agreement shall be held to be invalid or unenforceable under applicable law, such part shall be ineffective to the extent of such validity or enforceability only, without in any way affecting the remaining parts of this Agreement.

In Witness Whereof, the Parties have executed and cause this instrument to be executed by their proper officers duly authorized to execute the same.

WHEATON SANITARY DISTRICT

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President, Board of Trustees

ATTEST:

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Secretary, Board of Trustees

CITY OF WHEATON

Mayor



ATTEST:



Mandi Boettcher  
City Clerk

## SCHEDULE OF EXHIBITS

- Exhibit A - District Easement Description and Depiction
- Exhibit B - City Easement and Right of Way Description and Depiction
- Exhibit C - Curb Plans
- Exhibit D - District Project Contract Provisions Applicable to City Work
- Exhibit E - Grant of District Rights
- Exhibit F - Grant of City Rights to District
- Exhibit G - Bill of Sale – Transfer of Sewers to City

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