

RESOLUTION R-2019-104

A RESOLUTION AUTHORIZING THE EXECUTION  
OF AN INTERGOVERNMENTAL AGREEMENT  
BETWEEN THE WHEATON SANITARY DISTRICT AND THE CITY OF WHEATON  
FOR THE NORTHSIDE INTERCEPTOR SEWER PROJECT

IT IS HEREBY RESOLVED that the Mayor is hereby authorized to sign, and the City Clerk is directed to attest to the Intergovernmental Agreement with the Wheaton Sanitary District for the Northside Interceptor Sewer Project, attached hereto as Exhibit 1; and

Staff is hereby authorized and directed to undertake any and all acts reasonably necessary to effectuate the Intergovernmental Agreement.

ADOPTED this 18<sup>th</sup> day of November 2019.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk

Ayes: Roll Call Vote  
Councilwoman Fitch  
Mayor Suess  
Councilwoman Robbins  
Councilman Rutledge  
Councilman Zaruba  
Councilman Barbier  
Councilwoman Bray-Parker

Nays: None  
Absent: None

Motion Carried Unanimously

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE  
WHEATON SANITARY DISTRICT AND THE CITY OF WHEATON**

**Relates to the Sanitary District's Northside Interceptor Sewer Project**

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 effective December 1, 2019.

**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 has embarked on the installation of a new interceptor sewer from Community Park in Carol Stream to the District's treatment plant to serve the north side of the District's service area and to minimize sanitary sewer overflows which may occasionally occur ("NSI Project"); and

**WHEREAS**, as part of the NSI Project, the District desires to transfer to the City the District's ownership rights with respect to certain sewers and manholes; and

**WHEREAS**, the City holds certain easement rights and rights-of-way along or proximate to the route of the NSI Project; and

**WHEREAS**, the City desires to grant to the District the right to use certain City easements and rights-of-way for the NSI Project; and

**WHEREAS**, the District has coordinated the design of the NSI Project with the City to facilitate the District's construction of the NSI Project; 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. **District Transfer of Sewers and Manholes and Grant of Easements Rights:** Subject to the terms and conditions of this Agreement, and without warranties of any kind, the District hereby conveys to the City, its agents, successors and assigns all ownership rights to the District's sanitary sewers and manholes and appurtenances described on the attached Exhibit A. The District shall formalize the transfer to the City by Bill of Sale acceptable by the City Attorney. The District also grants 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 all District

easements related or pertaining in any way to the District's sanitary sewers and manholes and appurtenances described on the attached Exhibit A. The District shall formalize said grant to the City by a written instrument acceptable to the City Attorney.

3. **District's Use of City's Easements and Rights-of-Way:** Subject to the terms and conditions of this Agreement, and without warranties of any kind, the City hereby grants to the District, its agents, successors and assigns the right to install, construct, operate, remove, renew and maintain sanitary sewer pipes, manholes and appurtenances relative to the City's easements and rights-of-way depicted on the attached Exhibit B.
4. **Permits for Work in City Easements and Rights-of-Way:** The District shall obtain City permits for work in the City easements and rights-of-way and 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.
5. **Permit Fee Waiver:** The City agrees to waive all City permit fees for the NSI Project in consideration for the sewers and manholes transferred to the City and for the increased sewer capacity provided by the NSI Project.
6. **Restoration of City Easements and Rights-of-Way:** The District shall restore the City easements and rights-of-way in accordance with the plans and specifications approved by the City.
7. **Indemnification and Hold Harmless.** To the greatest extent permitted by law the District hereby agrees to defend, indemnify, protect and hold harmless the City, its elected officials, officers and employees from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, all costs and clean up actions of any kind, all costs and expenses incurred in connection therewith, including but not limited to attorney's fees incurred as a result of the District retaining defense attorneys on behalf of the City, expert witness fees, and costs of defense, proximately resulting from the District, its officers, employees, agents or assigns, or the District contractor's acts or omissions related to the Work or use of and work on its NSI Project system upon completion. The District shall secure on behalf of the City a signed indemnification agreement from its contractor(s) providing the City with an identical indemnification/hold harmless prior to the contractor(s) commencing any Work. This indemnification and hold harmless shall survive termination of this Agreement until all potentially applicable statutes of limitation and repose have expired or which have been adjudicated as having expired.
8. **Insurance.** Prior to commencing Work and at all times during Work, the District shall obtain and maintain by self-insurance, governmental insurance risk pool or a commercial carrier general liability insurance in an amount not less than three million dollars (\$3,000,000.00) per occurrence (combined single limit) including bodily injury and property damage and in an amount not less than five million dollars (\$5,000,000.00) annual aggregate per each additional personal injury and products completed operations; employers liability insurance in an amount not less than one million dollars (\$1,000,000.00) per occurrence; and general commercial automobile liability insurance in an amount not less than one million dollars (\$1,000,000.00) annual aggregate per personal liability. The insurance shall include coverage for

collapse or underground failure. Any contractor(s) hired by the District to perform work under terms of this Agreement shall obtain and maintain at all times during the construction process similar coverages as well as products completed operations coverage and an umbrella liability policy in the amount of \$2,000,000.00. All insurance shall be subject to the reasonable approval of the City. All insurance policies shall name the City and the District as an additional insured, in respect to all coverage. Coverage shall be on a per occurrence basis and in accordance with limits and provisions specified herein. Claims made policies are unacceptable. All insurance shall provide that it will not be cancelled or materially changed to reduce the policy limits until the City and the District have received at least thirty (30) days written notice prior to the cancellation or change. If at any time insurance coverage is cancelled or materially altered, all work shall cease, except that work which may be necessary to provide temporary safety measures may be done, until such time as it is restored or approved to the satisfaction of the City:

9. **Additional Insurance Requirements.** The required original certificates of insurance and endorsements shall clearly state the following:

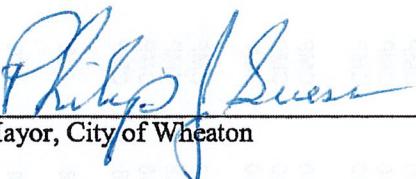
- a. The policy number; name of company; name and address of the agent or authorized representative; name, address, and telephone number of the insured; project name and address; policy expiration date; and specific coverage amounts; and
- b. That the District's and the District's contractor's insurance are primary in respect to any other valid or collectible insurance that City may possess, including any self-insured retentions that City may have; and
- c. Any other insurance the City possesses shall be considered excess insurance only and shall not be required to contribute with the District's or District's contractor's insurance;
- d. The District and/or its contractor(s) shall obtain and maintain prior to commencing and at all times during the performance of the Work and/or repair and maintenance of the services lines during the term of this Agreement statutory Workman Compensation insurance in amounts not less than that required under Illinois law and shall furnish the City with a certificate showing proof of such coverage;
- e. All insurance carriers providing coverage under this Agreement shall be authorized to do business in the State of Illinois and shall be rated at least A:X in A.M. Best and Companies Insurance Guide. Insurance policies and certificates issued by non-admitted insurance companies are unacceptable;
- f. Any deductibles or self-insured retention shall be stated on the certificates of insurance provided to the City;
- g. All policies shall waive subrogation claims against the City;

- h. Contractor's certificates of insurance with required endorsements shall be provided to the City prior to commencement of any work.
- 10. District's Contracts. At the City's request, the District shall provide the City with all contracts for the NSI Project.
- 11. Miscellaneous Engineering Costs. Should the City, in its sole discretion, retain an outside engineer during or after the NSI Project for compliance with applicable laws and regulations, the District shall reimburse the City the actual cost of the engineer's services. The fees for outside engineers shall be consistent with customary engineering fees charged in the market place for similar work. Before retaining an outside engineer, the City will make reasonable efforts to confer with the District as to the City's need for an outside engineer.
- 12. Inspection Easement. The District hereby grants the City a perpetual inspection easement, during regular business hours, to inspect any and all portions of the NSI Project. The City will make reasonable efforts to conduct any inspections in a manner which does not unreasonably interfere with work on the NSI Project.
- 13. Immunities. Nothing in this Agreement shall be interpreted to waive or release any common law or statutory privileges or immunities which are all reserved by the City and District to the greatest extent permitted by law. There are no third party beneficiaries to this Agreement.
- 14. Miscellaneous.
  - a. Each party hereby warrants and represents to the other that all appropriate action has been taken to authorize entry into this Agreement and execution of this Agreement by each of the parties and by the person signing below has been authorized in conformance with law by their respective board or council.
  - b. This Agreement may only be amended in writing and executed by all the parties as authorized by the parties' respective boards or councils.
  - c. This Agreement may be executed in one or more counterparts each of which so executed and delivered shall be deemed an original, but all of which shall be taken to the other and shall constitute one in the same instrument.
  - d. All notices related to this Agreement shall be delivered as follows:

City of Wheaton  
City Manager  
303 W. Wesley Street  
Wheaton, Illinois 60187

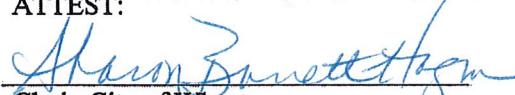
City Clerk  
303 W. Wesley  
Street Wheaton,  
Illinois 60187

City Attorney  
Walsh, Knippen, Pollock & Cetina, Chartered  
2150 Manchester Road, Suite 200  
Wheaton, Illinois 60187

  
\_\_\_\_\_  
Mayor, City of Wheaton

Date signed: 11-21-19

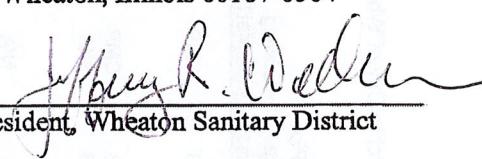
ATTEST:

  
\_\_\_\_\_  
Clerk, City of Wheaton

Date signed: 11-21-19

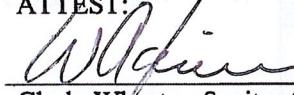
Wheaton Sanitary District  
Executive Director  
1S649 Shaffner Road  
PO Box 626  
Wheaton, Illinois 60187-0626

District Attorney  
Peregrine, Stime, Newman,  
Ritzman & Bruckner, Ltd.  
221 E. Illinois Street, P.O. Box 564  
Wheaton, Illinois 60187-0564

  
\_\_\_\_\_  
President, Wheaton Sanitary District

Date signed: 11-13-19

ATTEST:

  
\_\_\_\_\_  
Clerk, Wheaton Sanitary District

Date signed: 11-13-19

Wheaton Sanitary District  
Northside Interceptor Replacement

**SEWERS**

10/30/2019

Sewers to be Transferred from Wheaton Sanitary District to City of Wheaton

Location	Pipe ID	Upstream Manhole	Downstream Manhole	Length (feet)	Existing Pipe Size (Inches)	New Pipe Size (Inches)	Existing Pipe Matl	Proposed Pipe Matl	Pipe Condition	Easement (Existing/Needed) [E/N]	Needs to be Rehabilitated or Replaced? (Y/N)
Northside Park	1A006:158A	1A006	158A	71	E	36	10	CMP	PVC	New	Y
Dorchester Avenue	2C4:227 227:127	2C4 227	227 NSI 127	16 390	E E	36 N/A	18 18	CMP N/A	PVC PVC	Existing New	ROW ROW
Sunnybrook Lane	2B40:224 224:124	2B040 224	224 NSI-124	68 366	E E	N/A N/A	8 10	N/A N/A	PVC PVC	New	ROW ROW
Williams Street	2A017:2A016 2A016:2A015 2A015:2A014 2A014:118	2A017 2A016 2A015 2A014	2A016 2A015 2A014 NSI-118	210 47 287 176	E E E E	36 36 36 36	8 10 10 10	CMP CMP CMP CMP	PVC PVC PVC PVC	Existing Existing Existing Existing	E E E E
Wimfield Creek	2C2:2C1 2C1:2A21 2A21:224	2C2 2C1 2A21	2C1 2A21 224	339 149 26	E E E	36 36 N/A	10 10 10	CMP CMP N/A	PVC PVC PVC	Existing Existing New	E E E
	2C7:2C6 2C6:2C5 2C5:2C4 2C3:227	2C7 2C6 2C5 2C3	2C6 2C5 2C4 227	163 221 169 174	E E E E	36 36 36 36	18 18 18 8	CMP CMP CMP CMP	PVC PVC PVC PVC	Existing Existing Existing Existing	E E E E
Hazelton Avenue	2A103:NSI MH	2A103	NSI 119	19	E	N/A	8	N/A	PVC	New	ROW
Stonebridge Trail	2A35A:NSI MH	2A35A	NSI-105	29	E	N/A	8	N/A	PVC	New	ROW
	Total Length (feet)			2,920							N
	Total number of lines			18							N

**Exhibit A - Intergovernmental Agreement Between  
the Wheaton Sanitary District and the City of  
Wheaton Relates to the Sanitary District's Northside  
Interceptor Sewer Project Page 1 of 2**

Wheaton Sanitary District  
Northside Interceptor Replacement

10/30/2019

**MANHOLES**

Manholes to be Transferred from Wheaton Sanitary District to City of Wheaton

Location	NSI Naming Convention	Manhole	Diameter (feet)	Depth (feet)	Manhole Material	Manhole Condition	Easement (Existing/Needed) (E/N)	Needs to be Rehabilitated or Replaced? (Y/N)
Northside Park	1A006	1A006	6	11.03	CMP	Existing	E	Y
Dorchester Avenue	2C4 227	2C4 227	4	12.32 12.49	CMP Pre-Cast	Existing New	ROW ROW	Y N
Sunnybrook Lane	2B40	2B40	4	11.21	CMP	Existing	E	Y
	224	224	4	11.88	Pre-Cast	Existing	ROW	N
Williams Street	2A17 2A16 2A15 2A14	2A17 2A16 2A15 2A14	4	11.68 11.52 13.21 13.05	CMP CMP CMP CMP	Existing Existing Existing Existing	E ROW ROW ROW	Y Y Y Y
Winfield Creek	2C2 2C1 2A21	2C2 2C1 2A21	4	10.84 10.5 11.8	CMP CMP CMP	Existing Existing Existing	E E E	Y Y Y
	2C7 2C6 2C5 2C3	2C7 2C6 2C5 2C3	4	12.94 12.79 11.67 9.86	CMP CMP CMP CMP	Existing Existing Existing Existing	E ROW E E	Y Y Y Y
Stonebridge Trail	COW - 205	2A35A	4	10.9	Pre-Cast	New	ROW	N
		Total Depth (feet)		200				
		Total number of manholes		17				

Exhibit A - Intergovernmental Agreement Between  
the Wheaton Sanitary District and the City of  
Wheaton Relates to the Sanitary District's Northside  
Interceptor Sewer Project Page 2 of 2

CITY OF WHEATON R.O.W. & EASEMENT EXHIBIT

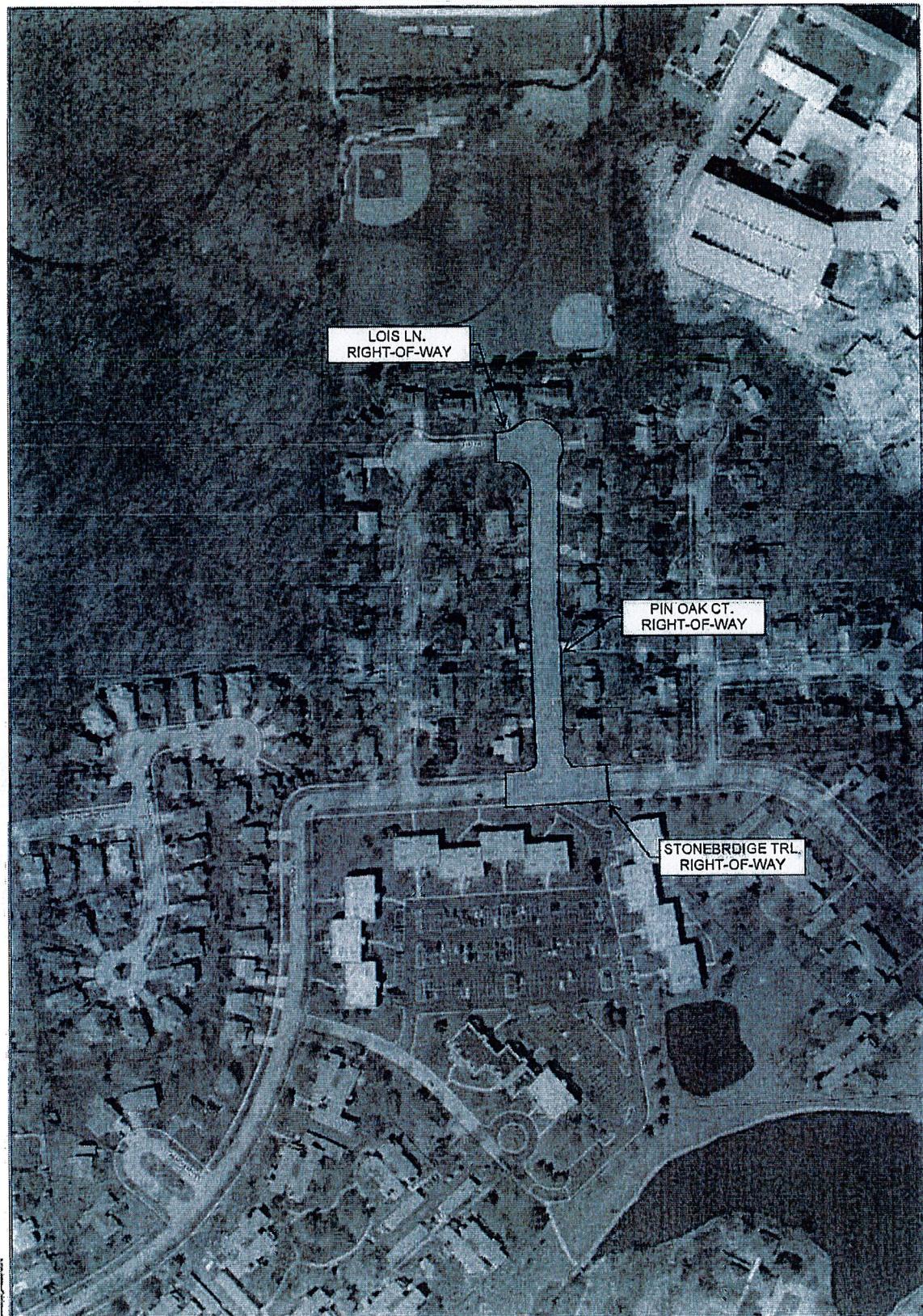
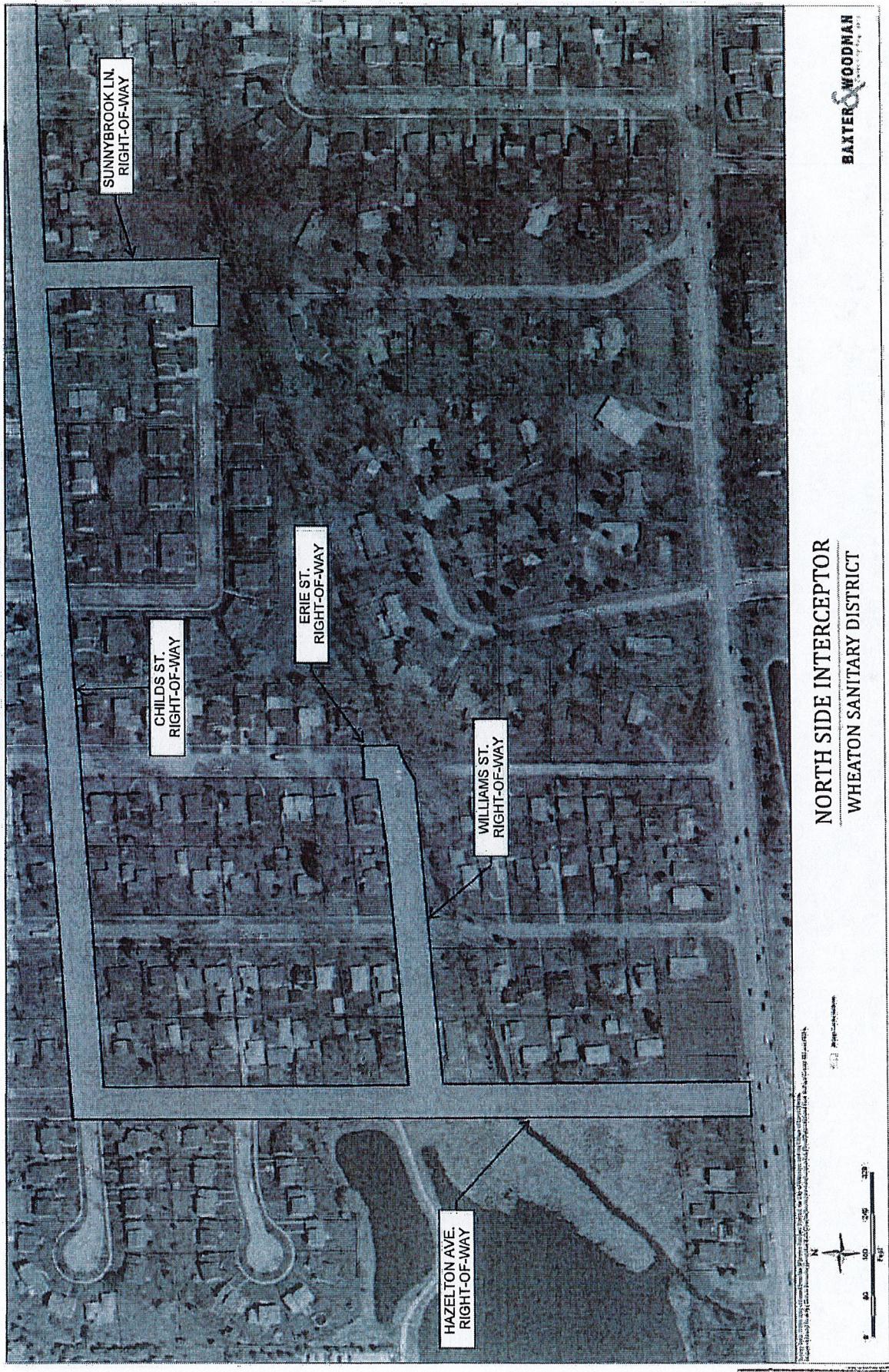


Exhibit B - Intergovernmental Agreement Between  
the Wheaton Sanitary District and the City of  
Wheaton Relates to the Sanitary District's Northside  
Interceptor Sewer Project Page 1 of 5

NORTH SIDE INTERCEPTOR  
WHEATON SANITARY DISTRICT

BAXTER & WOODMAN

**CITY OF WHEATON R.O.W. & EASEMENT EXHIBIT**



**Exhibit B - Intergovernmental Agreement Between  
the Wheaton Sanitary District and the City of  
Wheaton Relating to the Sanitary District's Northside  
Interceptor Sewer Project** Page 2 of 5

CITY OF WHEATON R.O.W. & EASEMENT EXHIBIT

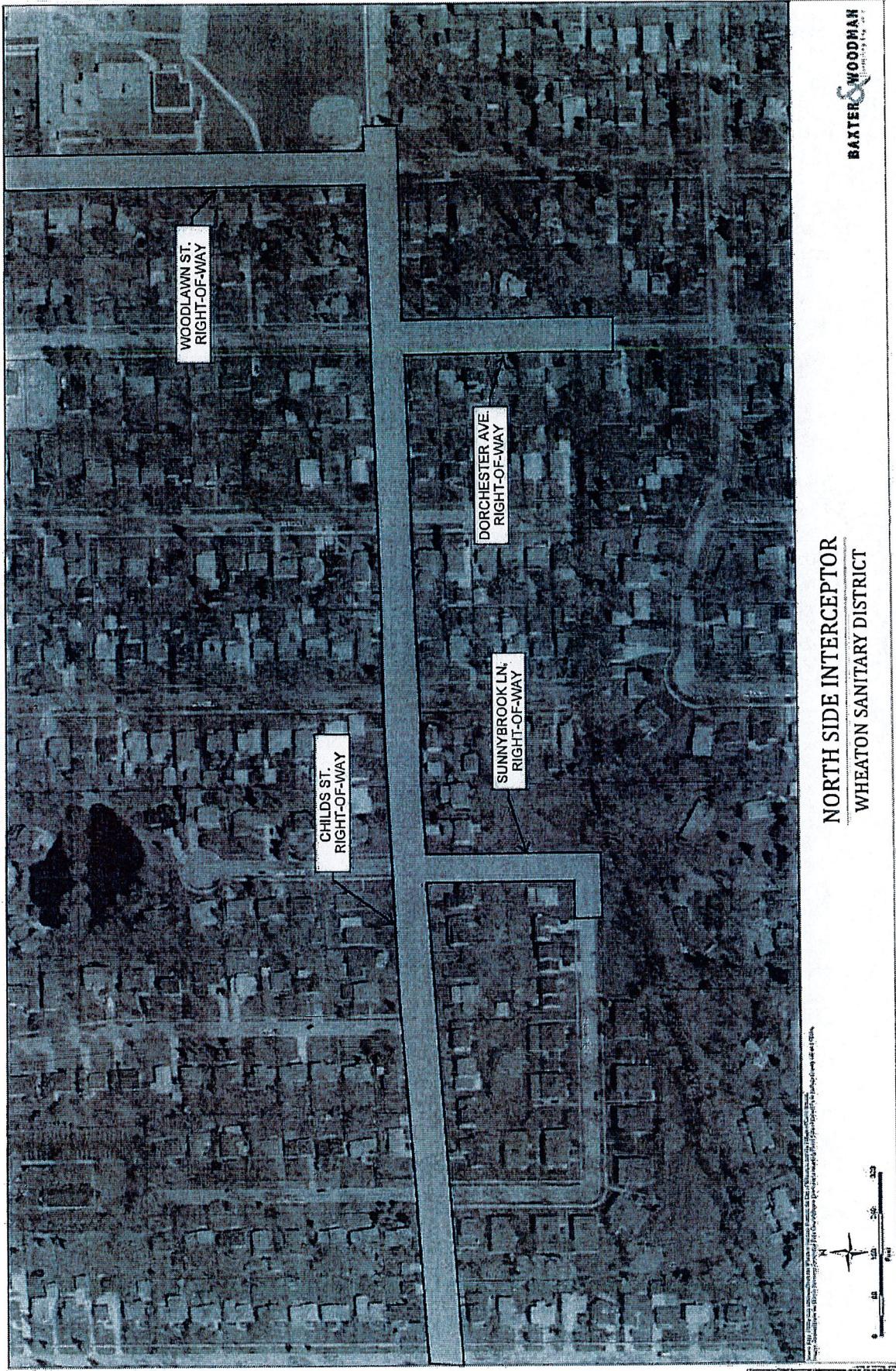


Exhibit B - Intergovernmental Agreement Between  
the Wheaton Sanitary District and the City of  
Wheaton Relating to the Sanitary District's Northside  
Interceptor Sewer Project Page 3 of 5

BAXTER & WOODMAN

CITY OF WHEATON R.O.W. & EASEMENT EXHIBIT

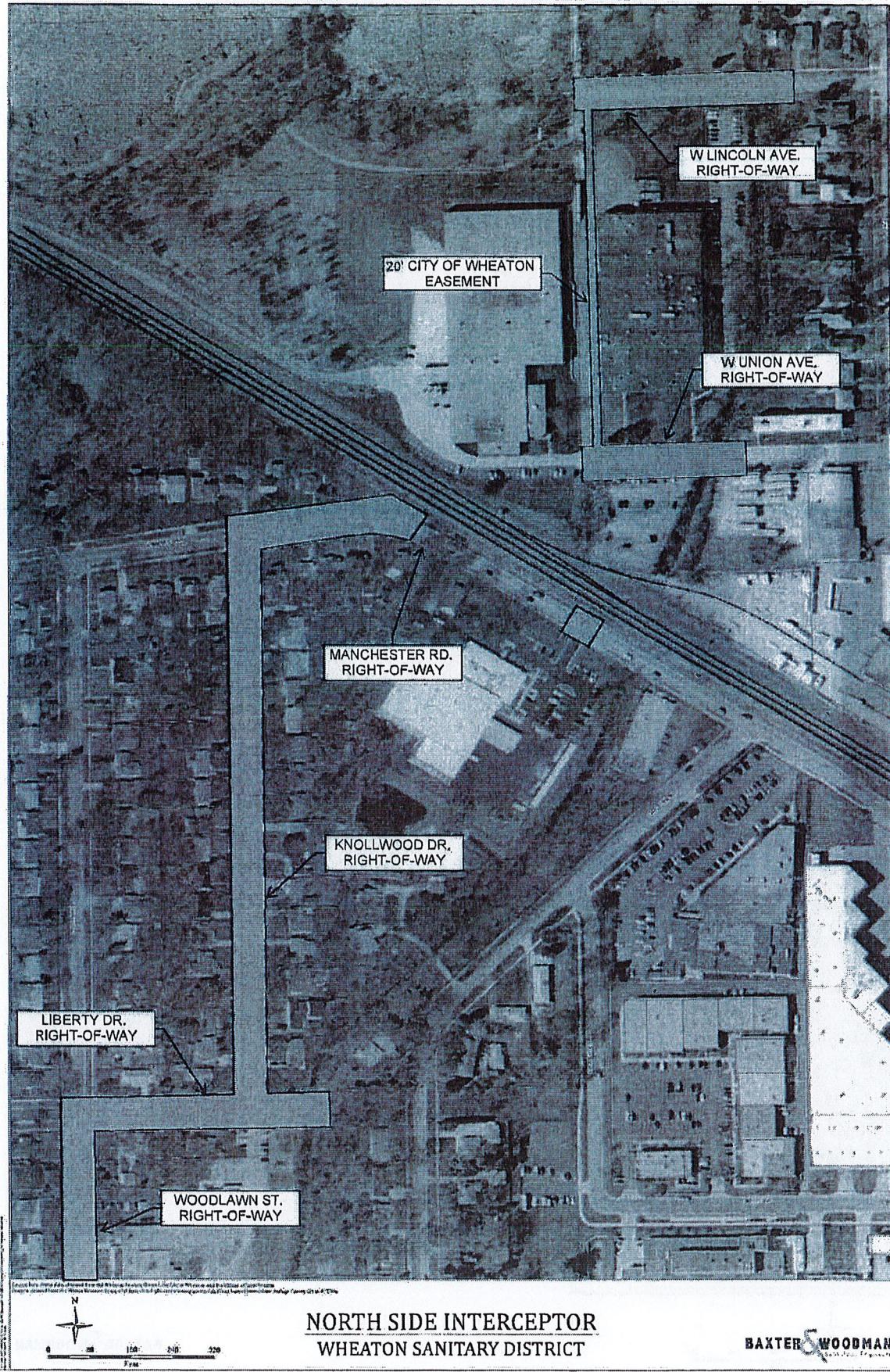


Exhibit B - Intergovernmental Agreement Between  
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Wheaton Relates to the Sanitary District's Northside  
Interceptor Sewer Project Page 4 of 5

CITY OF WHEATON R.O.W. & EASEMENT EXHIBIT

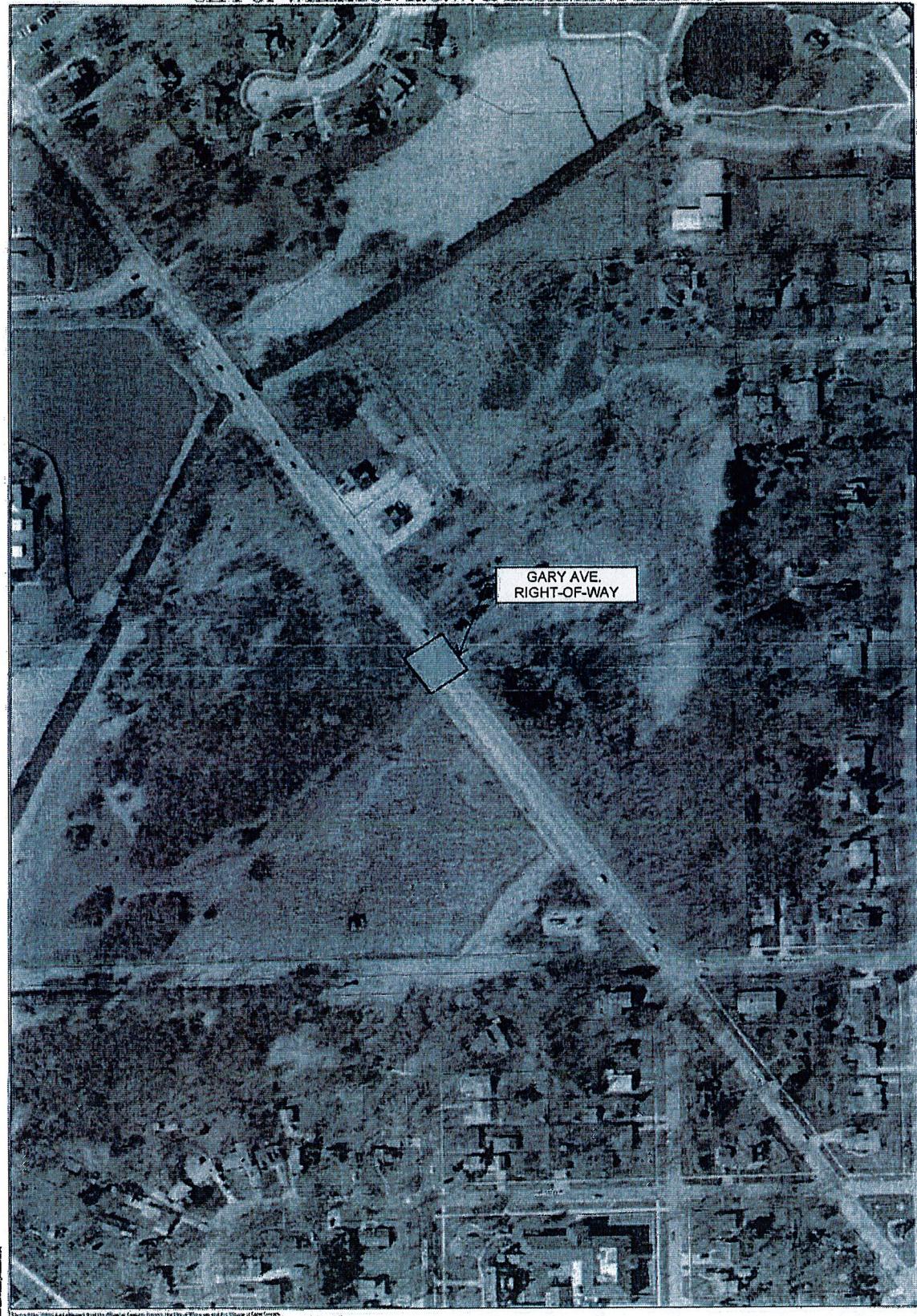


Exhibit B - Intergovernmental Agreement Between  
the Wheaton Sanitary District and the City of  
Wheaton Relates to the Sanitary District's Northside  
Interceptor Sewer Project Page 5 of 5