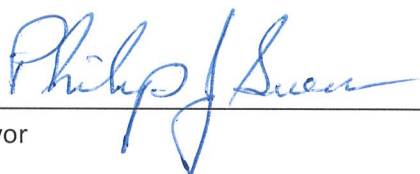


RESOLUTION R-2022 –20

**A RESOLUTION AUTHORIZING THE EXECUTION OF A SIDE LETTER AGREEMENT AND 3<sup>RD</sup> AMENDMENT TO INTERGOVERNMENTAL AGREEMENT BETWEEN THE WHEATON SANITARY DISTRICT AND THE CITY OF WHEATON FOR THE CONSTRUCTION OF A WATER MAIN RELATED TO THE SANITARY DISTRICT'S NORTH SIDE INTERCEPTOR SEWER PROJECT**

**IT IS HEREBY RESOLVED** that the City Manager is hereby authorized to sign, and the City Clerk is directed to attest to the Side Letter Agreement, attached hereto as Exhibit 1, with the Wheaton Sanitary District for a water main to be constructed along Pin Oak Court and that the City Manager is hereby authorized and directed to undertake any and all acts reasonably necessary to effectuate the Side Letter.

**Adopted** this 7<sup>th</sup> day of March 2022.

  
\_\_\_\_\_  
Mayor

ATTEST:

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

Roll Call Vote:

Ayes: Councilwoman Fitch  
Councilwoman Robbins  
Councilman Weller  
Councilman Barbier  
Councilwoman Bray-Parker  
Mayor Suess

Nays: None

Absent: Councilman Brown

Motion Carried Unanimously



**SIDE LETTER AGREEMENT  
AND ADDENDUM TO AN INTERGOVERNMENTAL AGREEMENT  
BETWEEN THE WHEATON SANITARY DISTRICT AND THE CITY OF WHEATON  
RELATED TO THE SANITARY DISTRICT'S  
NORTH SIDE INTERCEPTOR SEWER PROJECT**

**WHEREAS**, the City of Wheaton (hereinafter "the City") and the Wheaton Sanitary District (hereinafter "the District") on an effective date of December 1, 2019, entered into an Intergovernmental Agreement (hereinafter "Initial IGA") whereby the Sanitary District 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 (hereinafter "NSI"); and

**WHEREAS**, the Initial IGA was amended May 13, 2020, and July 20, 2020; and

**WHEREAS**, the District has a contract with Benchmark Construction Company, Incorporated (hereinafter "Benchmark") to perform the NSI (hereinafter "Prime Contract"); and

**WHEREAS**, A copy of the Prime Contract is on file with the Wheaton City Clerk and incorporated herein as if fully set forth as Exhibit A; and

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

**WHEREAS**, work performed by the District in the City's easements and rights-of-way by the District for the NSI project is sometimes in close proximity to various Wheaton utilities, including potable water lines; and

**WHEREAS**, during construction of a portion of the NSI near Pin Oak Drive in Wheaton, the City and the District learned the sections of a City water main needed replacement (hereinafter "WMR"); and

**WHEREAS**, Benchmark is competent to perform the installation of the City water main on Pin Oak Drive which is in need of replacement; and

**WHEREAS**, the City and the District have determined that there are substantial economies to be realized for the City by having Benchmark do the WMR while performing the NSI work near Pin Oak Drive, which include: the City not having to pay mobilization fees; a favorable per lineal foot cost for the installation of the WMR as submitted by Benchmark and reviewed by the Wheaton Engineering Department; the elimination of the need to reopen the ground and close the ground in the WMR replacement and any attendant restoration; and

**WHEREAS**, the District has secured a change order between itself and Benchmark Construction Company, Incorporated, for the WMR; and

**WHEREAS**, the estimated maximum cost of the WMR is \$234,000.00; and

**WHEREAS**, the District shall pay Benchmark for the WMR work in an amount not to exceed \$234,000.00 so long as the work is performed in conformance with the WMR specifications and this Addendum. Any amounts to be reimbursed to the District above \$234,000.00 must be approved by the City as follows:

1. For amounts less than \$23,400.00 (10% contingency), the approval of the City Manager is required;
2. For amounts more than \$23,400.00, the approval of the Corporate Authorities of the City is required; and

**WHEREAS**, the Corporate Authorities of the City have determined that it is in the best interests of the City to achieve a prompt replacement of the water main with new water main at an estimated cost not to exceed \$234,000.00 through a change order between the District and Benchmark Construction.

**NOW, THEREFORE**, based on good and valuable consideration as described herein, the City and District agree as follows:

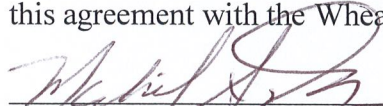
1. That the foregoing recitals are incorporated herein as representing the intent of the parties and as substantive provisions as if fully set forth.
2. That the District, for the benefit of the City, shall enter into a change order for the Prime Contract with Benchmark to perform the WMR subject to the following terms and conditions:
  - A. For purposes of the WMR, the change order shall specify that the City of Wheaton is a third-party beneficiary of that change order between the District and Benchmark.
  - B. The District shall contract with Benchmark to perform the WMR work, in conformance with the Baxter & Woodman schematics pages 1 and 2, revised per City comments on January 17, 2022, and this addendum. Those engineering schematics are attached hereto and incorporated herein as if fully set forth as GROUP EXHIBIT B.
  - C. That the terms and conditions of the Prime Contract between Benchmark and the District, that will apply for and benefit the City shall be:
    - i. General terms and conditions of the Prime Contract between Benchmark and the District, related to work parameters, workmanship, performance and warranties; and
    - ii. All provisions in the prime contract between the District and Benchmark construction related to indemnification, hold harmless, and insurance coverage running from Benchmark to the District shall apply

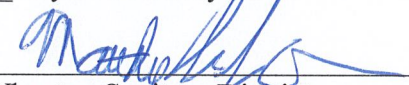


to the WMR change order for the benefit of the District and the City;  
and

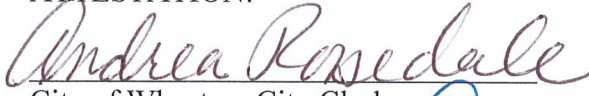
- iii. That the District shall inspect, by and through its NSI Project Engineers, the work performed by Benchmark on the WMR to confirm that it is being performed: in conformance with quality and performance conditions in the Prime Contract between the District and Benchmark, the WMR specifications prepared by Baxter & Woodman, and this addendum; and
  - iv. To allow the City's Engineering Department to inspect Benchmark's work on the WMR and assert through the District any issues the City identifies regarding Benchmark's work on WMR. In this circumstance, the District shall cooperate with the City Engineering Department in addressing and, when necessary, to undertake those acts ensuring the performance of Benchmark's work on the WMR.
3. The change order and this addendum to the Intergovernmental Agreement between the City and District may not be amended, modified or changed, except by mutual written agreement between the parties.
  4. By executing a copy of the same Benchmark acknowledges that the City is a third-party beneficiary of this addendum.

IN WITNESS WHEREOF, the City of Wheaton, by its City Manager, has entered into this agreement with the Wheaton Sanitary District this \_\_\_\_\_ day of February 2022.

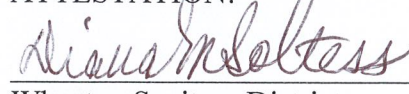
  
City of Wheaton Manager, Michael Dzugan

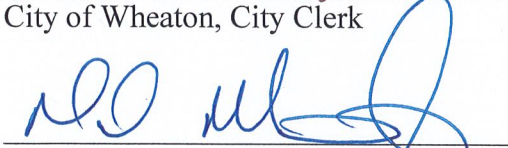
  
Wheaton Sanitary District  
by its Authorized Representative

ATTESTATION:

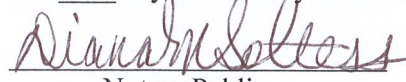
  
City of Wheaton, City Clerk

ATTESTATION:

  
Wheaton Sanitary District  
Secretary

  
Benchmark Construction Company, Inc.  
By its Authorized Representative

Subscribed and sworn to before me  
this 15th day of February 2022.

  
Notary Public



RAR:jmd 2/10/22 [https://psnrbcom.sharepoint.com/sites/PS/shared documents/general/WheatonSanitaryDistrict/side letter agreement btw city of wheaton and WSD](https://psnrbcom.sharepoint.com/sites/PS/shared%20documents/general/WheatonSanitaryDistrict/side%20letter%20agreement%20btw%20city%20of%20wheaton%20and%20WSD)

2/9/22 (R)

**WHEATON SANITARY DISTRICT RESOLUTION R-01-2022  
APPROVING CHANGE ORDER FOR WATERMAIN REPAIRS**

**Resolution Approving Change Order to Contract  
With Benchmark Construction Co., Inc.  
For Northside Interceptor**

**WHEREAS**, the Wheaton Sanitary District (the District) entered into a contract ("Contract") with Benchmark Construction Co., Inc. (Benchmark) for replacement of the District's Northside Interceptor Sewer ("the NSI"); and

**WHEREAS**, during construction of a portion of the NSI near Pin Oak Drive in the City of Wheaton (City), the City and the District learned that sections of the City's watermain needed repair or replacement (Watermain Project); and

**WHEREAS**, the City and the District determined that there were economies to be realized by the City from having Benchmark do the Watermain Project; and

**WHEREAS**, the City and the District agree to have Benchmark do the Watermain Project; and

**WHEREAS**, to implement the agreement of the City and the District, the District will pay Benchmark for the Watermain Project and the City will reimburse the District such that the cost of the Watermain Project will be borne by the City; and

**WHEREAS**, the scope of the Watermain Project is described on the attached Exhibit A; and

**WHEREAS**, the estimated cost of the Watermain Project is \$234,000; and

**WHEREAS**, the change in the District's Contract may be referred to prospectively as Change Order For The Watermain Project; and



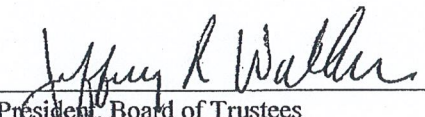
**WHEREAS**, under the circumstances described, the District finds:

1. The Change Order For The Watermain Project is yet another example of intergovernmental cooperation between the City and the District;
2. The circumstances described were not reasonably foreseeable when the District's Contract was signed;
3. This Change Order For The Watermain Project is germane to the District's Contract;
4. This Change Order For The Watermain Project is in the best interest of the District and the City and residents served by the City and the District.

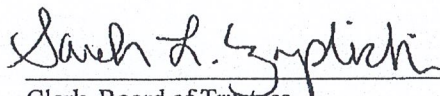
NOW, THEREFORE, BE IT RESOLVED as follows:

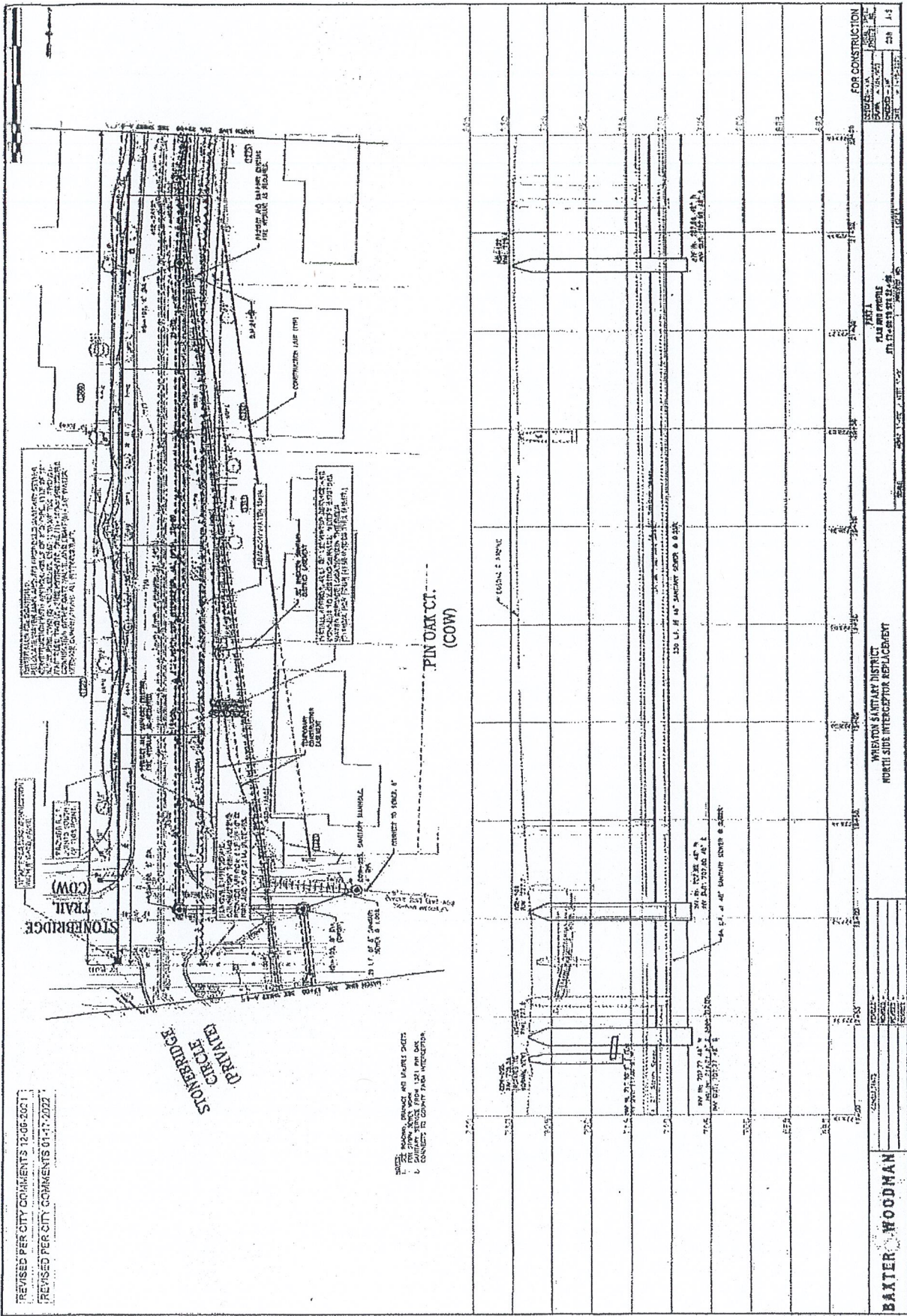
- a. The District's Board President and/or the District's Executive Director are authorized to sign all documents reasonably necessary to implement this Change Order For The Watermain Project;
- b. This Resolution is effective immediately upon passage.

Passed February 9, 2022

  
\_\_\_\_\_  
President, Board of Trustees  
Wheaton Sanitary District

ATTEST:

  
\_\_\_\_\_  
Clerk, Board of Trustees  
Wheaton Sanitary District





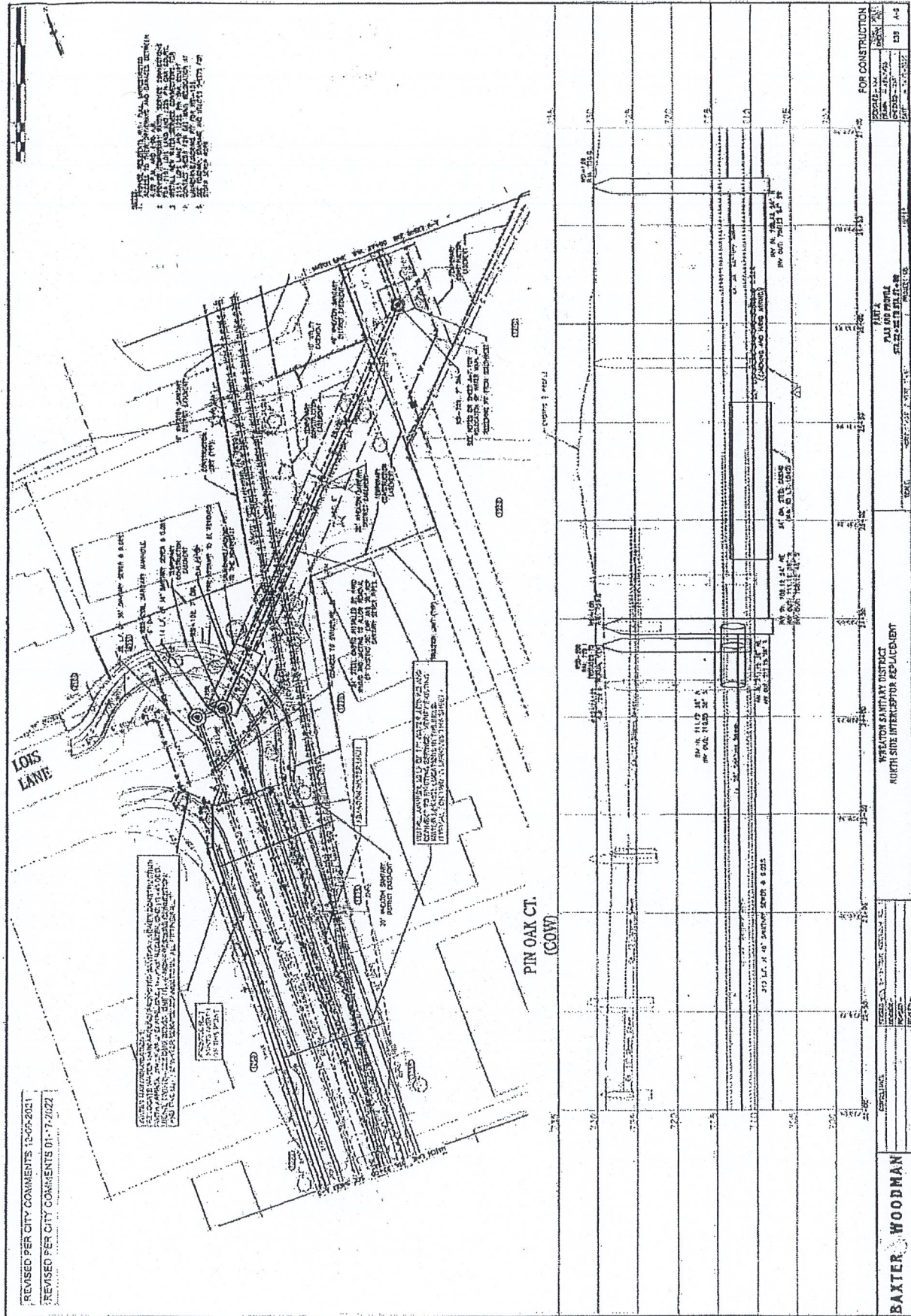


Exhibit A to Resolution Approving Change Order For Watermain Repairs