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RESOLUTION NO. R-51- 04

**RESOLUTION AUTHORIZING EXECUTION OF THE ARROWHEAD WATER
SERVICE AGREEMENT**

WHEREAS, the City of Wheaton is an Illinois Home Rule Municipality and operates a water system; and

WHEREAS, the Park District operates a facility commonly known as the Arrowhead Golf Club; and

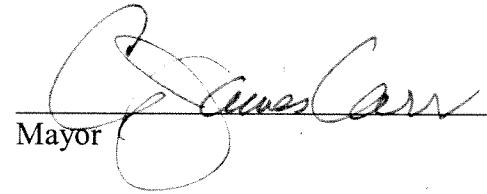
WHEREAS, the Wheaton Park District has requested that the City of Wheaton allow the District to tap into a Wheaton City Water Main to provide potable water service to the Arrowhead Golf Club; and

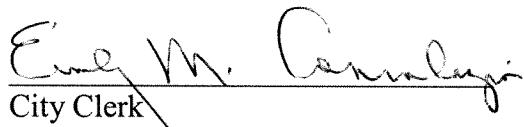
WHEREAS, the Corporate Authorities of the City of Wheaton pursuant to the grants of authority found in the Illinois Constitution, Article VII, Section X and the Intergovernmental Agreement Act 5ILCS220/1 et seq. deem it reasonable and appropriate to enter into an Intergovernmental Agreement to provide water to the Wheaton Park District at its Arrowhead Golf Club.

NOW, THEREFORE, be it resolved by the Mayor and City Council of the City of Wheaton, DuPage County, Illinois, that the Mayor is hereby authorized to sign, and the City Clerk is hereby directed to attest to that certain "Intergovernmental Agreement" for the provision of water between the City of Wheaton and the Wheaton Park District attached hereto and incorporated herein as a fully set forth as Group Exhibit A. The Mayor is further authorized to sign and the City Clerk is directed to attest to any and all additional documents necessary to effectuate the terms and conditions of the Intergovernmental Agreement.

ADOPTED this 19th day of July, 2004.

ATTEST:


Mayor


Emily M. Cavanaugh
City Clerk

Roll Call Vote:

Ayes:

Councilman Mouhelis
Councilman Bolds
Councilwoman Corry
Councilman Johnson
Mayor Carr
Councilwoman Johnson
Councilman Mork

Nays:

None

Absent:

None

Motion Carried Unanimously

INTERGOVERNMENTAL AGREEMENT FOR PROVISION OF WATERRECITALS

WHEREAS, the City of Wheaton, (hereinafter "City") an Illinois Home Rule Municipal Corporation operates a Water System; and

WHEREAS, the Wheaton Park District (hereinafter "District"), operates a facility commonly known as the Arrowhead Golf Club (hereinafter "Arrowhead"), which is located on the south side of Butterfield Road and which prior to this Agreement has secured its water from underground wells; and

WHEREAS, the City's Water Main (hereinafter "Watermain") runs in a generally east and west direction along the north side of Butterfield Road; and

WHEREAS, the District has requested that the City allow the District to tap into the Watermain; and

WHEREAS, pursuant to the grants of authority found in the Illinois Constitution, Article VII, Section 10 and the Intergovernmental Agreement Act 5 ILCS 220/1 et seq., authorizes the City and District to enter into this Agreement.

NOW THEREFORE, in consideration of the foregoing Recitals, mutual promises and other considerations as recited herein, the City and the District agree as follows:

1. INCORPORATION. The foregoing recitals are incorporated into this Agreement as representing the intent of the parties and as substantive provisions.

2. PROVISION OF WATER. The City shall permit and allow the District to tap into the Watermain and thereafter provide Arrowhead with a supply of water in the same manner that the City provides water to its other potable water customers. The City shall not require annexation of Arrowhead as a precondition of providing water pursuant to the terms and conditions of this Agreement.

3. TERM OF AGREEMENT. The City's obligations under this Agreement shall be for a period of twenty (20) years from the date Wheaton City Council approves this Agreement. At the end of the twenty (20) year term either the City or the District may terminate this Agreement upon written notice to the other. The termination shall be effective ninety (90) days from mailing of the written notice in conformance with paragraph 8f. Nothing in this agreement shall be interpreted to require the City to provide water to the District beyond the term of this Agreement or outside of the terms, covenants and condition contained herein. After twenty (20) years this Agreement shall automatically renew for periods of one (1) year from the twenty (20) year anniversary date unless the ninety (90) day termination notice described herein is exercised by either party.

4. **PARK DISTRICT'S OBLIGATIONS.** As a condition of the tap on to the City's water main and the City's provision of water under this Agreement, the District shall:

- a. Engineer, excavate and construct any and all elements of the connection to the watermain and service lines (hereinafter "Work") at its sole cost and expense. The Work shall be done and completed in a good, workmanlike and safe manner;
- b. At its sole cost and expense restore the work site to its pre-work condition;
- c. Pay the City a recapture fee of fifty six thousand seven hundred dollars (\$56,700.00). The fee shall be paid from the District to the City at the time of permitting; and
- d. Submit to the City any and all engineering plans and drawings necessary to effectuate the Work. The plans and drawings shall be in conformance with any and all laws, rules, ordinances and regulations of the City as well as good engineering practices. Upon approval of the engineering drawings by the City Engineer, such documents shall be incorporated into this agreement as Group Exhibit A; and
- e. Pay to the City, in conformance with City Ordinances any and other fees normally and routinely required for connection; and
- f. Secure at its own costs and expense any and all easements, temporary easements, licenses, approvals, permits or inspections required by any other unit or agency of government; and
- g. Upon connection to pay to the City any and all normal and customary amounts for water usage as any other customer of the City.

5. **SERVICE LINE.** For purposes of this Agreement the term "service lines" shall mean that point beginning at the point the connecting valve intersects to the watermain and the terminus of any water supply fixture within the Arrowhead facility. After completion of construction, the District shall be responsible at its sole cost and expense for any and all repairs and maintenance of the service lines.

6. **WAIVER AND RELEASE.** To the greatest extent permitted by the laws of the State of Illinois, the District hereby forever waives, release, relinquishes and discharges the City, its elected officials, officers, employees and agents, from any and all claims of every nature whatsoever, the District may have against the City for personal injury or property damage sustained or incurred by the Park District or any person claiming by, through or under the Park District, related directly or indirectly to the Work, except when such claim is a result of the sole negligent act or omission of the City, its elected officials, officers, employees or agents. Nothing

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in this paragraph shall be interpreted to waive any and all statutory or common law privileges and/or immunities of either the District or the City.

6. **INDEMNIFICATION AND HOLD HARMLESS.** To the greatest extent permitted under Illinois 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, all costs and clean-up actions of any kinds, and all costs and expenses incurred in connection therewith, including but not limited to attorney's fees, expert witness fees and costs of defense, proximately resulting from the District or the District's contractor's acts or omissions related to the Work to be performed, and which may be performed in the future to the service lines. The District shall secure on behalf of the City a signed Indemnification Agreement from its contractor or contractors providing the City with an identical promise to hold the City harmless and to indemnify the City prior to the contractor or contractor's commencing Work.

7. **INSURANCE.** Prior to commencing Work on the Watermain and at all times during and all work associated with the construction and/or repair of the Watermain, 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 one million dollars (\$1,000,000.00) per occurrence (combined single limit) including bodily injury and property damage and in an amount not less than one million dollars (\$1,000,000.00) annual aggregate per each additional personal injury and products completed operations; and general commercial automobile liability insurance protecting the District 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 or contractors hired by the District to perform work under the 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 excess liability policy in the amount of \$2,000,000.00. All insurance policies shall name the City, and in the case of contractors' insurance policies also the District, as an additional insured as respects 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 be cancelled or materially altered to reduce the policy limits until the City, and in the case of contractors' insurance also the District, has received at least thirty (30) written notice of such cancellation or change. If at any time work is being performed under the terms of this Agreement coverage is cancelled or materially altered, all work on the line shall cease until such time as insurance coverage is restored to the satisfaction of the City and the District except that work which may be necessary to temporarily secure safety.

The required original certificates of insurance and endorsements shall clearly state the following:

- a. The policy number; name of insurance 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 City shall receive thirty (30) days written notices prior to cancellations or alterations reducing the policy limits; and
- c. That the District's insurance is primary as respects any other valid or collectible insurance that City may possess, including any self-insured retentions that Wheaton may have; and
- d. Any other insurance the City does not possess shall be considered excess insurance only and shall not be required to contribute with the District's insurance;
- e. The District and/or its contractor or contractors shall obtain and maintain prior to commencing and at all times during the performance of the Work and/or repair and maintenance of the service lines during the term of this agreement statutory workman's compensation and employer's liability insurance in amounts not less than that required under Illinois law and shall furnish the City with a certificate showing proof of such coverage.
- f. 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.
- g. Any deductibles or self-insured retention shall be stated on the certificates of insurance provided to the City.

8. MISCELLANEOUS.

- a. This Agreement maybe amended only by a writing executed by all of the party's subsequent to the date hereof and authorized by the parties respective Boards or Counsels.
- b. This Agreement shall be governed by and construed under the laws of the State of Illinois.
- c. Each of the parties hereby warrants and represents to the other that all appropriate action of the governing Board or Council has been taken to authorized entry into and execution of this Agreement by each of the parties, by the person signing below, and each of the parties shall provide proof thereof on the request of the other party.
- d. Nothing in this Agreement, or any of the exhibits attached hereto, shall be interpreted to waive or release any common law or statutory privileges or immunities. There are no intended third-party beneficiaries of this Agreement or any of the exhibits attached hereto.

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e. 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 taken to the other shall constitute but one and the same instrument.

f. All notices related to this Agreement shall be delivered as follows:

To the City of Wheaton:

City Manager

Don Rose

303 West Wesley

Wheaton, Illinois 60187

To the Park District:

Executive Director

Wheaton Park District

666 S. Main Street

Wheaton, IL 60187

City Clerk

Emily Consolazio

303 West Wesley

Wheaton, Illinois 60187

Secretary of the Board of Park

Commissioners

Wheaton Park District

666 S. Main Street

Wheaton, IL 60187

City Attorney

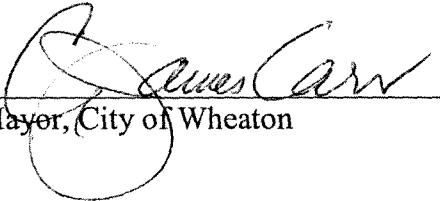
James H. Knippen, II

Walsh, Knippen, Knight & Diamond, Chtd.

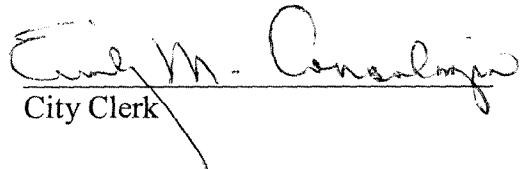
601 West Liberty Street

Wheaton, Illinois 60187

By:


James H. Knippen
Mayer, City of Wheaton

President, Wheaton Park District


Emily M. Consolazio
City Clerk

Secretary, Wheaton Park District