

RESOLUTION R-30-05

A RESOLUTION AUTHORIZING THE EXECUTION OF AMENDMENT No. 2 TO THE AGREEMENT BETWEEN THE CITY OF WHEATON AND WHEATON FRANCISCAN SISTERS CORPORATION FOR WATER SERVICE TO THE FRANCISCAN CAMPUS (27 W. 171 ROOSEVELT ROAD)

WHEREAS, the Wheaton Franciscan Sisters Corporation and the Wheaton City Council are desirous of executing a second amendment to a water service agreement for the Franciscan Sisters Campus located at 26W171 Roosevelt Road; part of the Northeast Quarter of Section 19, Township 39 North, Range 10 East of the Third Principal Meridian, in DuPage County, Illinois.

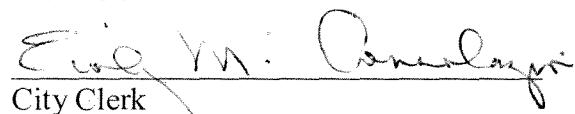
NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council, of the City of Wheaton, Illinois, that the Mayor is authorized to execute Amendment No. 2 for the Water Service Agreement for the Franciscan Campus between the City of Wheaton and Wheaton Franciscan Sisters Corporation dated May 2, 2005.

Adopted this 2nd day of May 2005.



Mayor Carr

ATTEST:



Eve M. Donalayko
City Clerk

Ayes:

Roll Call Vote

Councilman Mouhelis
Councilman Suess
Councilman Bolds
Councilwoman Corry
Councilman Johnson
Mayor Carr
Councilman Levine

Nays:

None

Absent:

None

Motion Carried Unanimously

R-30-55
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**AMENDMENT No. 2 TO THE AGREEMENT BETWEEN THE CITY OF WHEATON
AND THE WHEATON FRANCISCAN SISTERS CORPORATION
FOR WATER SERVICE TO THE FRANCISCAN CAMPUS**

THIS AMENDMENT No. 2 is made and entered into between the City of Wheaton, an Illinois municipal corporation, 303 West Wesley Street, Wheaton, IL (60187) ("City"), and the Wheaton Franciscan Sisters Corporation, 26 W 171 Roosevelt Road, P.O. Box 667, Wheaton, IL 60189-0667 ("Owner"), this 2nd day of May, 2005.

WHEREAS, the City and the Owner have entered into an agreement for water service to be provided to the Franciscan Campus, the legal description of which is set forth in Exhibit A attached hereto and incorporated herein ("Subject Property"); and

WHEREAS, the Owner is permitting a lessee of a portion of the Subject Property to construct a new facility and, in part, construct new and/or relocate existing watermain on the Subject Property; and

WHEREAS, the City has requested a second amendment to the Water Service Agreement as attached hereto as Exhibit B and incorporated herein to clarify additional obligations imposed by the City on the Owner.

NOW, THEREFORE, in consideration of the foregoing recitals and mutual promises as hereinafter set forth, it is agreed by and between the parties as follows:

1. The foregoing Recitals are incorporated herein as if fully set forth.
2. The Water Service Agreement is amended by adding the following as a new Section 8:

"8. CITY'S OBLIGATIONS. The City agrees as follows:

- (a) To approve a revised plat of easement to allow relocation and installation of new watermain for the Subject Property;
- (b) To continue to provide water service as set forth in the Water Service Agreement dated August 7, 1995, and recorded as Document Number R95 110712 in DuPage County, Illinois ("Water Service Agreement);

- (c) To properly maintain the watermain up to and including the main service valve within the easement premises. Individual services for each building shall be maintained by the Owner.
- (d) At its sole expense, to backfill all areas in which it has performed work with appropriate materials.
- (e) The City shall provide the Owner with a written notice of any proposed repairs, and the estimated costs of such repairs, of the watermain and the steel casing pipe between Valve #3 and Valve #4, which includes the portion of the watermain and steel casing pipe under the courtyard area of the Subject Property as depicted in the plans of Compass, Ltd. dated December 12, 2003. Such notice shall not be required in the case of an emergency."

3. The Water Service Agreement is amended by adding the following as a new Section 9:

"9. OWNER'S OBLIGATIONS. The Owner agrees as follows:

- (a) To file an revised plat of easement for the watermain as relocated or installed on the Subject Property subject to the reasonable approval of the City;
- (b) To be responsible for the maintenance and restoration of landscaping and improvements on the surface of the easement area;
- (c) To be responsible for the restoration of pavement, curb and gutter, sidewalk, landscaping, and other improvements which may be on the surface of the easement area, if such improvements are disturbed by City maintenance of the watermain;

R-30-55

(d) To reimburse the City for reasonable expense in repair or replacement of the watermain between Valve #3 and Valve #4 which includes the portion of the watermain within the steel casing under the courtyard area of the Subject Property as depicted in the plans proposed by Compass, Ltd. dated December 12, 2003.

(e) To reimburse the City for the actual costs it incurs using outside contractors for the repairs referred to in subsection (d) above (including labor, materials and equipment). "

4. Except as amended herein, the Water Service Agreement shall continue to be binding on the parties and shall remain in full force and effect.

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City of Wheaton, an Illinois municipal corporation

By: John Edward Ann Mayor

Attest: Paul M. Connolly
City Clerk

STATE OF ILLINOIS)
) ss
COUNTY OF DUPAGE)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that _____, Mayor, and _____, City Clerk, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that as such Mayor and City Clerk, they signed, sealed and delivered the said instrument as Mayor and City Clerk of the City of Wheaton, Illinois, a municipal corporation, and caused the corporate seal of said municipality to be affixed thereto, pursuant to authority, given by City Council of said municipality, as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal,
this day of , 200

(Seal)

Notary Public

Wheaton Franciscan Sisters Corporation, Owner:

By: Margaret Zelaski OT
President

Attest:

Dr. Pat C. Stanton

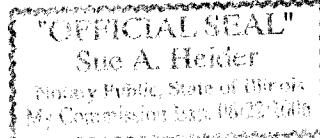
Secretary

STATE OF ILLINOIS)
) ss
COUNTY OF DUPAGE)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that Sr. MARGARET ZWASZKI, personally known to me to be the President of Wheaton Franciscan Sisters and Sr. PAT NORTON, personally known to me to be the Secretary of said corporation, and personally known to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such President and Secretary, they signed and delivered the said instrument and caused the corporate seal of said corporation to be affixed thereto, pursuant to the authority given by the Board of Directors of said corporation, as their free and voluntary act and deed of said corporation, for the uses and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and official seal,
this 8TH day of APRIL, 2005.

(Seal)



See J. & Heider

Notary Public

Exhibit "A"
FRANCISCAN CAMPUS - LEGAL DESCRIPTION

"Parcel No. 1:

That part of the north east quarter of section nineteen (19), township thirty nine (39) north, range ten (10), east of the third Principal Meridian, described as follows: Commencing at the north east corner of said section and running thence south eighty five (85) degrees, sixteen (16) minutes west along the north line of said section, eight hundred thirty and twenty five one hundredths (830.25) feet for a place of beginning; thence south zero degrees seven (7) minutes east, one thousand four hundred sixty and sixteen one hundredths (1460.16) feet; thence south thirty four (34) degrees thirty nine (39) minutes west one hundred eighty two and fifty four one hundredths (182.54) feet; thence south eighty six (86) degrees eight (08) minutes west one thousand four hundred fifty and sixty five one hundredths (1450.65) feet; thence north zero degrees seven (7) minutes west, one thousand five hundred seventy nine and seventy five one hundredths (1579.75) feet to the north line of section nineteen (19) aforesaid; thence north eighty five (85) degrees sixteen (16) minutes east along said north line, one thousand five hundred fifty six and thirty one one hundredths (1556.31) feet to the place of beginning; (excepting therefrom that part of Lot 1 of Marian Park Assessment Plat recorded in the Office of the Recorder of Deeds of DuPage County as Document R73-60791 falling therein);

PIN: 05-19-200-008 and 05-19-201-002

"Parcel No. 2:

That part of section nineteen (19), township thirty nine (39) north, range ten (10), east of the third Principal Meridian, described as follows: Commencing at the south west corner of a certain tract of land known as tract "D" of the partition plat of the estate of Edward N. Hurley as filed in the Recorder's Office of DuPage County, Illinois in Book 20 of Plats on Page 51 as Document 355699 and running thence north eighty six (86) degrees fifty seven (57) minutes east along the south line of said tract "D" five hundred seventy and eleven one hundredths (570.11) feet to a point in line with the westerly line extended south of tract "C" of said partition plat for a place of beginning; thence north zero degrees seven (7) minutes west in line with said west line extended south, one thousand twenty eight and seven one hundredths (1028.07) feet to the south west corner of said tract "C"; thence north eighty six (86) degrees eight (8) minutes east along the south line of said tract "C", one thousand four hundred fifty and sixty five one hundredths (1450.65) feet to a corner of said tract "C" which corner is also a common corner with tract "D" aforesaid; thence south zero degrees

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Exhibit "A"
Franciscan Campus
Legal Description / Page 2

seven (7) minutes east along the easterly line of said tract "D" one thousand forty eight and nine tenths (1048.9) feet to the south east corner of said tract "D"; thence south eighty six (86) degrees fifty seven (57) minutes west along the southerly line of said tract "D" one thousand four hundred forty nine and thirty nine one hundredths (1449.39) feet to the place of beginning, containing 34.50 acres." (excepting therefrom that part of Lot 1 of Marian Park Assessment Plat recorded in the office of the Recorder of Deeds of DuPage County as Document R73-60791 falling therein; and also excepting therefrom the following:

That part of Section 19, Township 39 North, Range 10, East of the Third Principal Meridian, described by commencing at the Southeast corner of R.A. Faganel's St. Francis Oaks (as recorded July 26, 1977 as Document R77-62568) said point also being the Southwest corner of that part of Tract "D" of the Partition Plat of the Estate of Edward N. Hurley (as recorded in Book 20 of Plats, Page 51 as Document 355699), which lies easterly of the West line extended South of Tract "C" of said Partition Plat and running thence North 00° 05' 06" East along the East line of said R.A. Faganel's St. Francis Oaks and the West line, extended South of Tract "C" of said partition plat a distance of 696.36 feet; thence North 45° 05' 06" East a distance of 135.90 feet; thence South 89° 54' 54" East a distance of 140.00 feet; thence South 30° 10' 17" East a distance of 138.93 feet; thence South 00° 05' 06" West a distance of 350.00 feet; thence North 87° 08' 22" East a distance of 241.00 feet; thence South 47° 51' 38" East a distance of 127.28 feet; thence South 2° 51' 38" West a distance of 130.00 feet; thence South 42° 08' 22" West a distance of 127.28 feet to a point on the South line of Tract "D" of said Partition Plat and the North line of the Streams Unit One (as recorded on October 29, 1969 as Document R69-47226); thence South 87° 08' 22" West along said South line of said Tract "D" and said North line of said The Streams Unit One and the North line of Stonebridge Trail as dedicated on May 12, 1971 by Document R71-19898, a distance of 567.36 feet to the point of commencing, in DuPage County, Illinois;

And

An additional exception to the premises described as Parcel No. 2, which additional exception is described as follows:

Commencing at the Northeast corner of said Section 19 and running thence Westerly along the North line of said Section 19, 830.25 feet to the West line of Tract "B" in said Plat; thence Southerly along said West line 1460.16 feet to an angle in said

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Exhibit "A"
Franciscan Campus
Legal Description / Page 3

West line; thence South $34^{\circ} 39'$ West along the Westerly line of said Tract "B" 182.54 feet to an angle point; thence South $0^{\circ} 07'$ East along the Southernmost West line of said Tract "B" 122.47 feet to an iron stake for a place of beginning; thence continuing South $0^{\circ} 07'$ East along said Southernmost West line 919.73 feet to an old fence line marking the boundary between the Durfee Farm and the former Hurley Farm; thence South $87^{\circ} 57'$ West along said old fence line 92.6 feet to an iron stake; thence North $0^{\circ} 58'$ West 778.35 feet to an iron stake; thence North $35^{\circ} 25'$ East, 179.7 feet to an iron stake on the East line of said Lot "D" and the place of beginning, in Township 39 North, Range 10, East of the Third Principal Meridian, in DuPage County, Illinois.

And

An additional exception to the premises described as Parcel No. 2, which additional exception is described as follows:

Except Lot 2 of Marian Park Assessment Plat in the Northeast Quarter of Section 19, Township 39 North, Range 10, East of the Third Principal Meridian as recorded on September 24, 1973 as Document No. R73-60791, in DuPage County, Illinois.

P.I.N. 05-19-200-012 and 05-19-203-010

R95-110712

AGREEMENT BETWEEN THE CITY OF WHEATON,
AN ILLINOIS MUNICIPAL CORPORATION, AND
THE WHEATON FRANCISCAN SISTERS
PERTAINING TO EXTENSION OF WATER SERVICE TO FRANCISCAN CAMPUS

THIS AGREEMENT is made and entered between the City of Wheaton, an Illinois municipal corporation, 303 West Wesley Street, Wheaton, IL 60187 ("City"), and the Wheaton Franciscan Sisters Corporation, 26 West 171 Roosevelt Road, Wheaton, IL 60187 ("Owner") this 7th day of August, 1995.

WHEREAS, Section 26-15 of the Wheaton City Code provides, among other things, that the City may furnish water supply to any building or premises outside the corporate limits of the City, whether contiguous or not contiguous to the corporate limits of the City, upon authorization of the City Council; and

WHEREAS, Section 26-15 of the Wheaton City Code also provides that there shall be a one-hundred percent (100%) surcharge added to the bill rendered to each user of water service located outside the corporate limits of the City; and

WHEREAS, Owner is the record owner of that certain unincorporated real estate commonly known as Franciscan Sisters/Marianjoy, 26 West 171 Roosevelt Road, the legal description of which is set forth on Exhibit "A", which is attached to and made a part of this agreement ("subject property"); and

WHEREAS, Owner has requested authorization from the City to enable the subject property, which is outside the corporate boundaries to the City, to be connected to the City's water supply system; and

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WHEREAS, there is a City water main located in close proximity to the subject property which can be utilized for connection to the City water system; and

WHEREAS, the City has determined that furnishing water supply to the subject property, as provided for in this agreement, without annexation of property to the City will promote the health, safety, and general welfare of the City and residents of the subject property.

NOW, THEREFORE, in consideration of the foregoing preambles and the covenants recited in this agreement, together with other good and valuable consideration, the receipt of which is acknowledged, the City and Owner agree as follows:

1. **COST AND CONSTRUCTION OF WATER SERVICE.** Owner shall be responsible for the construction and cost of all water service utility components necessary to provide water service to the subject property; all water service utility components and construction shall be performed pursuant to the requirements of the City engineering standards. The customary City construction permits shall be a condition precedent to beginning construction of the water utility service.

2. **WATER SERVICE.** Upon completion of the water utility service construction and its approval by the City, the City shall furnish water supply to the subject property, strictly in accordance with the terms of this agreement.

3. **COST OF CITY WATER.** Owner shall pay to the City the cost for all water furnished to the subject property pursuant to

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the rates customarily in full force and effect in the City for water, together with a one-hundred percent (100%) surcharge in addition to the customary rate, all pursuant to the provisions of Section 26-15 of the Wheaton City Code. Owner acknowledges the appropriateness of the water cost and surcharge and understands that payment of the water cost and surcharge as provided for in this agreement is a condition precedent to being provided with water from the City.

4. **PERMIT FEES.** The amount of the permit, license, tap-on or connection fees imposed by the City which are applicable to or required to be paid by the Owner shall be the amount or rate of these fees in effect at the time of application for same.

5. **TERMINATION.** This agreement may be terminated by City or Owner by providing written notice to the non-terminating party; the notice shall be in writing, certified mail, return receipt requested. The termination of the agreement shall be effective six (6) months following the date of the termination notice. Notices shall be given to the parties as follows:

City: City Manager, City of Wheaton, 303 West Wesley Street, Wheaton, IL 60187.

Owner: Wheaton Franciscan Sisters Corporation, P.O. Box 667, Wheaton, IL 60189-0667

6. **BINDING EFFECT.** This agreement shall be binding upon the City and the Owners and each of their successors, assigns, and future council members.

7. **RECORDING.** This agreement shall be recorded in the Office of the Recorder of Deeds, DuPage County, at the expense of

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the Owner.

City of Wheaton, an Illinois municipal corporation

By

C. James Carr
C. James Carr, Mayor

Attest:

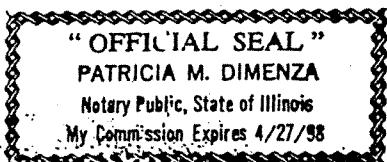
Emily M. Consolazio
Emily M. Consolazio, City Clerk

STATE OF ILLINOIS, COUNTY OF DU PAGE ss. I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that C. JAMES CARR, Mayor, and EMILY M. CONSOLAZIO, City Clerk, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that as such Mayor and City Clerk, they signed, sealed and delivered the said instrument as Mayor and City Clerk of the City of Wheaton, Illinois, a municipal corporation, and caused the corporate seal of said municipality to be affixed thereto, pursuant to authority, given by City Council of said municipality, as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal,
this 8th day of August, 1995.

(Seal)

Patricia M. Dimenza
Notary Public



Wheaton Franciscan Sisters Corporation, Owner:

By S. Mary Ellen McAliese, OSF
President

ATTEST:

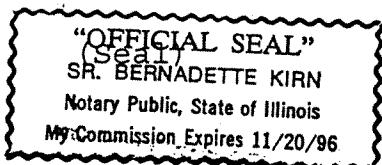
S. Pat Norton
Secretary

State of Illinois, County of Du Page. I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that S. Mary Ellen McAliese, personally known to me to be the President of Wheaton Franciscan Sisters and S. Pat Norton, personally known to me to be the Secretary of said corporation, and personally known to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such President and Secretary, they signed and delivered the

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said instrument and caused the corporate seal of said corporation to be affixed thereto, pursuant to the authority given by the Board of Directors of said corporation, as their free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and official seal, this 14th day of August, 1995.



Sr Bernadette Kirn
Notary Public

This instrument prepared by: Edward J. Walsh, Jr., WALSH, KNIPPEN, KNIGHT & DIAMOND, CHARTERED, 601 West Liberty Drive, P.O. Box 999, Wheaton, IL 60189, 312/462-1980.

RECORDER OF DU PAGE COUNTY: Mail this document to: City Manager, CITY OF WHEATON, 303 West Wesley Street, Wheaton, IL 60187.

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A-33-05

Exhibit "A"
FRANCISCAN CAMPUS - LEGAL DESCRIPTION

"Parcel No. 1:

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PIN: 05-19-200-008 and 05-19-201-002

"Parcel No. 2:

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Exhibit "A"
Franciscan Campus
Legal Description / Page 2

seven (7) minutes east along the easterly line of said tract "D" one thousand forty eight and nine tenths (1048.9) feet to the south east corner of said tract "D"; thence south eighty six (86) degrees fifty seven (57) minutes west along the southerly line of said tract "D" one thousand four hundred forty nine and thirty nine one hundredths (1449.39) feet to the place of beginning, containing 34.50 acres." (excepting therefrom that part of Lot 1 of Marian Park Assessment Plat recorded in the office of the Recorder of Deeds of DuPage County as Document R73-60791 falling therein; and also excepting therefrom the following:

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And

An additional exception to the premises described as Parcel No. 2, which additional exception is described as follows:

Commencing at the Northeast corner of said Section 19 and running thence Westerly along the North line of said Section 19, 830.25 feet to the West line of Tract "B" in said Plat; thence Southerly along said West line 1460.16 feet to an angle in said

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Exhibit "A"
Franciscan Campus
Legal Description / Page 3

West line; thence South $34^{\circ} 39'$ West along the Westerly line of said Tract "B" 182.54 feet to an angle point; thence South $0^{\circ} 07'$ East along the Southernmost West line of said Tract "B" 122.47 feet to an iron stake for a place of beginning; thence continuing South $0^{\circ} 07'$ East along said Southernmost West line 919.73 feet to an old fence line marking the boundary between the Durfee Farm and the former Hurley Farm; thence South $87^{\circ} 57'$ West along said old fence line 92.6 feet to an iron stake; thence North $0^{\circ} 58'$ West 778.35 feet to an iron stake; thence North $35^{\circ} 25'$ East, 179.7 feet to an iron stake on the East line of said Lot "D" and the place of beginning, in Township 39 North, Range 10, East of the Third Principal Meridian, in DuPage County, Illinois.

And

An additional exception to the premises described as Parcel No. 2, which additional exception is described as follows:

Except Lot 2 of Marian Park Assessment Plat in the Northeast Quarter of Section 19, Township 39 North, Range 10, East of the Third Principal Meridian as recorded on September 24, 1973 as Document No. R73-60791, in DuPage County, Illinois.

P.I.N. 05-19-200-012 and 05-19-203-010

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