

THIS AGREEMENT, By and between Wheaton Franciscan Healthcare, hereinafter known as "Wheaton", and the City of Milwaukee, a municipal corporation, hereinafter known as "City";

WITNESSETH:

IN CONSIDERATION of the sum of One Dollar (\$1.00) to each party in hand paid by the other, receipt whereof is hereby acknowledged, and in further consideration of the covenants and agreements hereinafter contained.

WHEREAS, One of the Wheaton's facilities known as St. Francis Hospital and hereinafter referred to as "Hospital" is located on the parcel of land bound by vacated S. 18th Street, W. Ohio Avenue, S. 16th Street, and W. Euclid Avenue, said parcel being slightly over 8 acres in size. The Hospital site is more particularly described by Exhibit "A"; and

WHEREAS, Wheaton has requested an agreement that provides for abandonment of an existing storm sewer that traverses the Hospital site and its replacement with a new storm sewer to be located along the site's perimeter; and

Whereas, The relocation of the storm sewer will allow expansion of Hospital; and

WHEREAS, Abandonment of the existing storm sewer and construction of the replacement sewer could be accomplished under the terms of an out-of-program agreement upon condition that title to the new storm sewer shall vest in the City of Milwaukee subject to conditions more fully hereinafter stated.

NOW, THEREFORE, In consideration of these premises and the mutual benefits herein accruing and for other good and valuable considerations,

IT IS AGREED, By and between the parties hereto that:

1. Funding Obligation

Wheaton agrees to provide all funds necessary for design, construction, and inspection of the new storm sewer as well as for abandonment of the existing sewer along with any new easements or easement modifications necessitated by the project.

2. Design

City shall design the storm sewer alterations necessitated by the Hospital expansion project. City shall consult with Wheaton during design to ensure that the sewer relocation plan accommodates the proposed Hospital expansion in the most cost effective way that also meets City engineering standards.

3. Construction Option

Wheaton and the Commissioner of Public Works have agreed that Wheaton may let and administer the construction contract for the storm sewer relocation covered by this Agreement. If Wheaton intends to manage the sewer contract, Wheaton shall formally notify the Commissioner in writing of its intent. In the event Wheaton chooses to manage the sewer contract, City shall perform its normal

inspections during the course of construction. In addition, Wheaton agrees to make a good faith effort to comply with and administer on behalf of the City, all applicable City rules and requirements pertaining to Emerging Business Enterprise and local resident involvement in the construction contract.

Wheaton shall not authorize any changes in improvement plans without the prior approval of the Commissioner of Public Works. All payments to contractors must be pre-approved by the Commissioner.

4. Sewer Improvements

Existing public storm sewer that runs east to west through the Hospital site will be abandoned and conveyed to the Hospital. Approximately 550 feet of new, 30-inch diameter public storm sewer will be installed to replace the abandoned sewer. The new sewer will be located in S. 16th Street right-of-way and in easement parallel to and immediately south of W. Euclid Avenue. The estimated cost for plan preparation for the new storm sewer is \$10,000. The estimated costs to construct and inspect the sewer improvements are as follows:

Construction	\$ 178,000
Inspection (including as-built drawings)	\$ 12,000

5. Utility Laterals

If one or more laterals will be connected to the new storm sewer in conjunction with the Hospital expansion project, those laterals may be included in the storm sewer construction contract if that contract is managed by the City. If Wheaton administers the storm sewer construction contract, it may install any related laterals under permit from the City's Department of Neighborhood Services. Under the latter option, the Neighborhood Services Department would inspect the work. The cost of laterals is not included in the preceding sewer estimates. If installed by the City, Wheaton shall provide funding therefore.

6. Other Improvements

Wheaton agrees that any utility and access improvements necessary to serve the site in addition to those listed above shall be its responsibility and shall be undertaken by Wheaton at its sole expense. Wheaton further agrees that the City shall review and approve plans for any work to occur in the public right-of-way. Permits necessary for any such work shall be obtained by Wheaton or other responsible parties.

7. Easements

Wheaton agrees to provide, where necessary and at no cost to the City, all easements and other property rights required to construct, operate and maintain the public improvements described herein.

8. Private Utilities

Wheaton agrees that all private utility lines necessary to provide telephone, communications, electrical, and gas services to the Hospital expansion shall be installed underground, except where the City Plan Commission finds that such underground installations are not feasible.

9. Design Engineering Deposit

Wheaton shall provide the \$10,000 deposit for design of the storm sewer in the form of a check made out to the City of Milwaukee prior to commencement of any design work.

10. Funding Guarantee for Construction

Wheaton shall submit an irrevocable Letter of Credit or other funding guarantee, satisfactory in format to the City Attorney, in an amount equal to the estimated construction contract cost (i.e. \$178,000) for the public infrastructure improvements that will be constructed by third party contractors prior to the award of any contracts, whether privately or publicly let. At the request of Wheaton, the actual contract amount for the various improvements may be substituted for the estimated costs. In addition, the amount of the LOC may be reduced periodically to reflect payments made to contractors. Any

such reductions shall be approved by the Commissioner of Public Works.

Any and all irrevocable Letters of Credit shall guarantee that Wheaton's bank or savings and loan will provide the required funds to cover the contract cost of installing the applicable infrastructure improvements and will, upon simple request by the Commissioner of Public Works and the City Treasurer, release same to City as required, all such funds to be furnished interest free. The Letter of Credit or other funding guarantee shall be submitted to the City prior to the City or Wheaton entering into any contracts for installation of public improvements.

11. City Force Work Costs

The estimated cost for City inspection during construction of the storm sewer improvements and related services including the cost to prepare as-built drawings is \$12,000. This amount must be deposited in the form of a check made out to the City of Milwaukee prior to commencement of construction work on the storm sewer.

12. Payments

In the event the City lets the public improvement construction contract, the contract costs for the public improvements will be billed to Wheaton upon determination that such costs have been incurred by City. Wheaton shall provide the City with funds to make contract payments. If such funds are not provided within 30 days of being

requested, City may draw against the funding guarantee referenced in paragraph 10. It shall be further understood and agreed that where Wheaton funded work covered under the terms of this Agreement does not proceed to the bid or contract stage, the City shall still retain a sufficient amount of the Wheaton's engineering fund deposit to cover expenses incurred by the City for plan review work commenced by the City at the Wheaton's request.

13. Refunds

Upon completion of the public improvements and all associated City work, City shall return any unspent portions of Wheaton's cash deposits (i.e. the Engineering Design Deposit and the Construction Engineering Deposit).

14. Inspections

Both parties agree that all materials furnished and all work performed hereunder shall conform to all regulations and specifications of the City of Milwaukee and its Commissioner of Public Works and shall be subject to inspection by the Department of Public Works. All engineering and inspection costs incidental to the installation of the public improvements covered by this Agreement shall be subject to the terms of this Agreement, the cost of such service when furnished by City being established as the wages of the person or persons engaged in such work plus all costs of overhead.

15. Ownership of Public Improvements

It is understood and agreed by both parties hereto that upon satisfactory completion to the storm sewer improvements installed under the terms of this Agreement, title to such improvements shall vest in the City of Milwaukee and that the City will accept the obligation of operation and maintenance in accordance with its standard practice.

16. Termination of Existing Storm Sewer Easement

In connection with the storm sewer improvements described in paragraph 4 above, an existing, recorded storm sewer easement, a copy of which is attached hereto as Exhibit "B", will be vacated by the City and the section of storm sewer located therein will be abandoned. The City shall record such termination of the easement upon execution of this agreement and upon provision by Wheaton of the deposits and funding guarantees listed in paragraphs 9, 10, and 11.

17. Building Permits

It is understood and agreed by both parties hereto that building permits for the Hospital expansion shall not be issued until (1) Wheaton has provided the City with design funds, a funding guarantee, and a deposit for City Force Work and (2) easements, if any, required to construct and maintain underground improvements have been provided to the City.

18. Occupancy Permit

It is understood and agreed by both parties hereto that an occupancy permit for the Hospital expansion will not be issued until the public improvements as outlined herein have been sufficiently completed so essential public utility services are provided to the structure. (Note: The Commissioner of Neighborhood Services for the City will base issuance of an occupancy permit on a variety of issues and code requirements in addition to the completion status of the required public improvements.)

19. City Ordinances and Regulations

City warrants that all work shall be undertaken in accord with City standard and customary public works contracting procedures unless such work is to be undertaken by City Forces or by Wheaton per paragraph 3. It is further understood and agreed that this Agreement is subject to all City ordinances and regulations and nothing herein shall be deemed to waive or supersede such requirements.

THIS AGREEMENT, drafted by the City of Milwaukee, shall be binding upon Wheaton Franciscan Healthcare, its lessees, successors and assigns, and upon the City, its successors and assigns.

WHEATON FRANCISCAN HEALTHCARE

IN WITNESS WHEREOF, Wheaton has caused this document to be signed and sealed this ____ day of _____, 2007.

Wheaton Franciscan Healthcare

In Presence Of: _____

STATE OF WISCONSIN)
) SS.
MILWAUKEE COUNTY)

Personally came before me this ____ day of _____, 2007,
who executed the foregoing instrument, and acknowledged that they executed the same.

Notary Public, State of Wisconsin
My Commission expires: _____

IN WITNESS WHEREOF, the proper City Officers have caused this document to be signed and the City's seal to be affixed this ____ day of _____, 2007.

CITY OF MILWAUKEE

In Presence Of:

Tom Barrett, Mayor

City Clerk

COUNTERSIGNED

Comptroller

STATE OF WISCONSIN)
) SS.
MILWAUKEE COUNTY)

Personally came before me this ____ day of _____, 2007, Tom Barrett, Mayor of the City of Milwaukee, a municipal corporation, to me known to be the person who executed the foregoing instrument and to me known to be such Mayor of said municipal corporation, and acknowledged that he executed the foregoing instrument as such officer as the deed of said municipal corporation, its authority, and pursuant to Resolution File No. _____ adopted _____, 2007.

Notary Public, State of Wisconsin

My Commission expires: _____

