RESOLUTION R-2022-58

A RESOLUTION AUTHORIZING THE EXECUTION OF AGREEMENT NO. 315 WITH CHICAGO METROPOLITAN FIRE PREVENTION FOR WIRELESS RADIO ALARM NETWORK MANAGEMENT, MAINTENANCE, AND SERVICING FOR A THREE-YEAR TERM AND A TOTAL AMOUNT NOT TO EXCEED $158,652 (ANNUALLY $52,884)

WHEREAS, the City of Wheaton, Illinois, ("City") is an Illinois Home Rule Municipality pursuant to the provisions of Article VII, Section 6, of the Illinois Constitution of 1970; and as such the City may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, Section 22-209 of the Wheaton City Code establishes performance standards to maximize the efficiency, and therefore public safety of the City's wireless radio alarm network, by requiring the most prompt direct transmission of alarms to DuComm; and

WHEREAS, proper management and maintenance by a qualified contractor to maintain the City's wireless alarm equipment is an essential element of achieving those performance standards; and

WHEREAS, the City conducted a Request for Proposal in 2017 for Radio Alarm Network On-going Management, Maintenance, and Service of the City's existing Keltron wireless radio alarm network ("Alarm Network") and contracted with Chicago Metropolitan Fire Prevention to provide the requested services as they are a highly qualified Contractor capable of managing, maintaining, and servicing the City's Alarm Network to meet the City's required performance standards; and

WHEREAS, the City still requires maintenance of its existing Keltron wireless radio alarm network and Chicago Metropolitan Fire Prevention has proposed to continue providing the requested services for a three-year term at the same prices ($52,884 annually) and under the same terms and conditions as the agreement entered into in 2017, with an option to extend the agreement for one additional one-year term; and

WHEREAS, the City budgeted funds in the CY2022 General Fund-Wireless Alarm Network account in the amount of $57,283; and

WHEREAS, management, maintenance, and servicing of the City's Alarm Network by Chicago Metropolitan Fire Prevention will maintain continuity of service for the City's Alarm Network and prevent potential service disruption; and

WHEREAS, the corporate authorities of the City of Wheaton, DuPage County, Illinois find it reasonable and appropriate to enter into an agreement with Chicago Metropolitan Fire Prevention located at 820 N. Addison Avenue, Elmhurst, Illinois, 60126 for management, maintenance, and servicing of the City's existing Keltron wireless radio alarm network.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois, that:

The Mayor is hereby authorized to execute, and the City Clerk is hereby directed to attest to City of Wheaton Agreement No. 315 with Chicago Metropolitan Fire Prevention for wireless radio alarm network management, maintenance, and servicing; a copy of that Agreement is on file with the City Clerk's office, and is incorporated herein as if fully set forth as Exhibit A.

ADOPTED this 18th day of July 2022.

Mayor

ATTEST:

City Clerk

Roll Call Vote:

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

Nays: None
Absent: None
Motion Carried Unanimously

EXHIBIT 1

This number must appear on the face of all invoices and documents related to this Agreement No. **315**

CITY OF WHEATON, ILLINOIS
RADIO ALARM NETWORK EQUIPMENT INSTALLATION AND ON-GOING MANAGEMENT, MAINTENANCE AND SERVICE AGREEMENT

THIS AGREEMENT is made and entered into this 18th day of July 2022 by and between the **CITY OF WHEATON**, an Illinois municipal corporation ("**City**"), located at 303 W. Wesley Street, Wheaton, Illinois, 60187 and **Chicago Metropolitan Fire Prevention Co.**, ("**Contractor**"), located at 820 N. Addison Avenue, Elmhurst, Illinois 60126.

WHEREAS, the City has determined that it is reasonable and appropriate to engage the Contractor to continue managing, maintaining and servicing the City's existing Keltron Wireless Radio Alarm Network (**"Network"**), which includes equipment previously installed by Contractor under City Agreement C36961, consistent with the City's Radio Fire Alarm Monitoring Network specifications included in the RFP for City Agreement C36961, which is attached hereto and incorporated herein as if fully set forth as **Group Exhibit A**; and

WHEREAS, Contractor submitted a cost proposal and a qualifications and capabilities proposal in response to the RFP associated with City Agreement C36961 to manage, maintain and service the Network, a copy of which is attached hereto and incorporated herein as if fully set forth as **Group Exhibit B,** and represents that it has the necessary expertise and experience to manage, maintain and service the Network, upon the terms and conditions set forth herein below; and

WHEREAS, Section 22-209 of the Wheaton City Code establishes performance standards to maximize the efficiency, and therefore public safety of the Network, by requiring the most prompt direct transmission of alarms to DuComm; and

WHEREAS, proper maintenance, by a qualified contractor to maintain the City's alarm equipment is an essential element of achieving those performance standards; and

WHEREAS, Contractor is qualified and has provided maintenance to achieve the City's performance standards for twelve years; and

WHEREAS, the City's alarm equipment is already deployed throughout the City and the Contractor has numerous years of experience with the equipment and interacting with City staff; and

WHEREAS, the Contractor has maintained identical contract terms, and the same fees for managing, maintaining, and servicing the City's wireless radio fire alarm network.

NOW, THEREFORE, in consideration of the recitals and the mutual covenants, agreements, and conditions set forth in the Agreement, the parties agree as follows:

SECTION 1. SCOPE OF SERVICES.

A. **Recitals.** The recitals set forth above, including Group Exhibits A and Group Exhibit B, are incorporated herein as substantive terms and conditions of this Agreement and represent the intent of the parties. Any inconsistency between the services as stated by the City in Group Exhibit A and the services as proposed by the

Contractor in Group Exhibit B shall be controlled by the services as stated by the City in Group Exhibit A, unless specifically waived in writing in the contrary to this Subsection 1A. Where this Agreement is inconsistent with any provision of Group Exhibit A or Group Exhibit B, this Agreement shall control.

B. Retention and Services. The City retains the Contractor to perform, all necessary services and work in connection with the project services identified below, collectively referred to hereinafter as "**Services**", which Services the Contractor shall provide pursuant to the terms and conditions of this Agreement:

Radio Alarm Network Equipment Management, Maintenance and Service Services as more fully described in the attached proposal, Group Exhibit B, which shall be considered contractual requirements that must be met by Contractor.

Contractor shall furnish all labor, materials, and equipment to provide and perform the Services.

C. Contract Administration.

(i) A "Work May Proceed" order will be issued by the City's Procurement department upon confirmation of a properly executed Agreement.

(ii) Once the "Work May Proceed" order is issued, the Contractor's primary contact with the City will become the Project Manager.

(iii) The Project Manager's primary responsibility is to assure that the City receives the equipment and services in accordance with the terms and conditions and requirements of this Agreement. The Project Manager will but is not limited to oversee the entire project from kick-off activities through close out and payment of final invoice; monitor project progress; address any quality issues and change orders; review and approve deliverables.

D. Reporting. The Contractor shall regularly report to the City's Fire Chief, or his designee, regarding the progress of the Services during the term of this Agreement, which shall include, but not be limited to, updates on the work completed, assumptions, and problems encountered.

E. Time Of Performance. The Contractor shall perform the Services as indicated in the attached proposal, Group Exhibit B.

F. Additional Services. The Contractor shall provide only the Services specified in this Agreement and its attached Exhibits. Additional services that are not part of the Services of this Agreement may be assigned subject to prior written approval or direction of the City. Payment for additional services shall be as mutually agreed upon by the parties before the commencement of any additional services. Any additional services shall be subject to the terms and conditions of this Agreement.

G. Change Orders.

(i) The City reserves the right to make changes to the Scope of Services by altering, adding to, or deducting from the Services, without invalidating this Agreement. All such changes shall be executed under the conditions of the original Agreement.

(ii) Should the Contractor consider that a change in the Scope of Services, the contract sum, or any delivery date is required, then the Contractor shall initiate a change order and submit it to the Project Manager for documented approval before proceeding with the work.

(iii) Issuance of an oral statement, or verbal approval, is not to be considered a Change Order and is not an authorization to proceed.

(iv) Approved Change Orders will be numbered in sequence and dated.

(v) Approved Change Orders are required with any/all changes in, the Scope of Work, the contract sum, the time for completion, or any combination thereof.

(vi) Change Orders will describe the change or changes, will refer to the proposal(s) involved, and will be signed by the City and the Contractor prior to implementing the change.

(vii) All Change Orders shall clearly identify the impact of cost and the effect on time required to perform the work associated with the proposal. If the proposal is found to be satisfactory and in proper order, and both parties agree upon cost or credit for the change, the City will authorize the documented Change Order which will be confirmed as a contract amendment.

H. Contractor Use of Premises. Contractor shall confine its operations to areas permitted by all laws, ordinances, and permits, as well as this Agreement. Contractor shall conduct its operations in the locations required by this Agreement in a manner that avoids interference with use of the building and building operations at those locations and in a manner which protects persons and property. Contractor shall maintain all areas where Services are provided free from accumulation of waste, debris, and rubbish caused by its operations. Cleaning and disposal operations shall comply with Federal, State, and local ordinances and anti-pollution laws. Upon completion of Services, Contractor shall sweep its work areas broom clean; remove waste materials, rubbish, tools, equipment, machinery, materials, and surplus equipment; clean the area and leave it ready for use. Contractor shall touch-up and otherwise repair and restore marred exposed finishes and surfaces. If utility shut-down is required, Contractor shall provide the City Fire Chief two (2) days advanced warning and an estimation of the duration of the required utility shut-down.

SECTION 2. COMPENSATON AND METHOD OF PAYMENT.

A. Agreement Amount. The total amount billed by the Contractor for the Services performed under this Agreement shall not exceed **$158,652 (Annually $52,884, Monthly $4,407),** including reimbursable expenses, without the prior express written authorization of the City.

B. Invoices and Payments. The Contractor shall be paid as provided in Group Exhibit B. Authorization of payment requires the following: receipt by the City of invoices from the Contractor containing sufficient detail of the Services performed to enable the City to properly evaluate the payout request; acceptance by the City of the Services, including equipment; and receipt of other paperwork required by this Agreement. The City shall pay Contractor in accordance with the Illinois Local Government Prompt Payment Act. Payment will be made to the Contractor either through the City's Purchasing Card Program, MasterCard, in which payment will occur at the time-of-Service delivery, or through a Contractor generated invoice. Invoices shall be submitted to the City within six (6) months of completion of the Services. Any invoices submitted in excess of six (6) months from the date that Services were completed, will not be paid. Under no circumstances will a third party be reimbursed for Services performed under this Agreement.

C. Unappropriated Funds. The obligation of the City for payment to the Contractor is limited to the availability of funds appropriated in a current fiscal period, and continuation of this Agreement into a subsequent fiscal period is subject to the appropriation of funds, unless otherwise authorized by law.

D. Taxes, Benefits, and Royalties. The Agreement Amount includes all applicable federal, state and City taxes of every kind and nature applicable to the Services as well as all taxes, contributions, and premiums for unemployment insurance, old age or retirement benefits, pensions, annuities, or similar benefits and all costs, royalties,

and fees arising from the use of, or the incorporation into, the Services, of patented or copyrighted equipment, materials, supplies, tools, appliances, devices, processes, or inventions. All claims or right to claim additional compensation by reason of the payment of any such tax, contribution, premium, costs, royalties, or fees is hereby waived and released by Contractor.

SECTION 3. REPRESENTATIONS OF CONTRACTOR.

A. Standard of Care. The Contractor represents, certifies, and warrants that it shall perform and complete the Services in a manner consistent with the level of care, skill, and diligence exercised by other recognized professional Contractors under similar circumstances at the time the services are performed. The representations, certifications, and warranties expressed shall be in addition to any other representations, certifications, and warranties expressed in this Agreement, or expressed or implied by law, which are hereby reserved unto the City.

B. Professional License. The Contractor represents that it is properly licensed by the State of Illinois Department of Professional Regulation as an alarm contractor pursuant to 225 ILCS 447/10-5.

C. Solvency. The Contractor represents that it is financially solvent and has the necessary financial resources to perform the Services with the standard of care required under this Agreement.

D. Key Project Personnel/Personnel. The Key Project Personnel identified in Group Exhibit B shall be primarily responsible for carrying out the Services on behalf of the Contractor. The Key Project Personnel shall not be changed without the City's prior written approval. The Contractor shall provide all personnel necessary to complete the Services.

SECTION 4. INDEMNIFICATION; INSURANCE; LIABILITY

A. Indemnification. The Contractor shall, without regard to the availability or unavailability of any insurance, either of the City or of the Contractor, indemnify, save harmless, and defend the City, and its officials, directors, officers, employees, agents, and attorneys, in whole or in part from and against any and all lawsuits, claims, demands, damages, liabilities, losses, fines, judgments, settlements, penalties, costs, and expenses, including, but not limited to reasonable expert witness and attorneys' fees, as well as costs of litigation, that arise, or may be alleged to have arisen, out of or in connection with:

i. the installation, maintenance, operation, or nonoperation of the Network, but barring claims of acts of God, wars, riots, civil unrest and or utility interruptions.

ii. the Contractor's performance of or failure to perform, the Services or any part thereof, whether or not due or claimed to be due in whole or in part to the active, passive, or concurrent negligence or fault of the Contractor, except to the extent caused by the sole negligence of the City.

iii. the Contractor's failure to comply with any federal, state, or local law applicable to its performance under this Agreement.

The obligation on the part of the Contractor to defend, hold harmless, and indemnify the City shall survive the expiration or termination of this Agreement. Nothing in this Agreement shall be construed as prohibiting the City, its officials, directors, officers, employees, agents, or attorneys from defending, through the selection and use of their own agents, attorneys and experts, any claims, actions, or suits brought against them arising out of the performance of this Agreement.

In the event that any claim for indemnification hereunder arises from the negligence or willful misconduct of both the Contractor and the City, the parties agree that any and all lawsuits, claims, demands, damages, liabilities, losses, fines, judgments, settlements, penalties, costs, and expenses shall be apportioned between the parties on the basis of their comparative degrees of fault, except as otherwise herein provided.

B. **Insurance.** Contemporaneous with the Contractor's execution of this Agreement, the Contractor shall provide certificates and policies of insurance, all with coverages and limits acceptable to the City, and evidencing at least the minimum insurance coverages and limits as set forth by the City in the Special Provisions for: Insurance Coverage for Professionally Licensed Contractors Providing Services and Equipment, included in Group Exhibit A to this Agreement.

C. **No Personal Liability.** No elected or appointed official, director, officer, agent, or employee of the City shall be personally liable, in law or in contract, to the Contractor as the result of the execution, approval or attempted execution of this Agreement.

D. **No Liability to Any Third Party.** The City shall have no liability to any third party as a result of the failure of the Network to operate as intended. However, the City shall notify the Contractor of any Network failure that it becomes aware of. Contractor agrees that it shall include in all contracts for services provided to the Network, a provision which states that the customer agrees that the City shall have no liability in the event that the Network fails to operate as intended.

E. **Third Party Beneficiaries.** There are no third-party beneficiaries of this Agreement.

SECTION 5. CONFIDENTIAL INFORMATION.

A. **Confidential Information.** The term "**Confidential Information**" shall mean information in the possession or under the control of the City relating to the technical, business, or corporate affairs of the City; City property; user information, including, without limitation, any information pertaining to usage of the City's computer system, including and without limitation, any information obtained from server logs or other records of electronic or machine readable form; and the existence of, and terms and conditions of, this Agreement. City Confidential Information shall not include information that can be demonstrated: (i) to have been rightfully in the possession of the Contractor from a source other than the City prior to the time of disclosure of said information to the Contractor under this Agreement ("**Time of Disclosure**"); (ii) to have been in the public domain prior to the Time of Disclosure; (iii) to have become part of the public domain after the Time of Disclosure by a publication or by any other means except an unauthorized act or omission or breach of this Agreement on the part of the Contractor or the City; or (iv) to have been supplied to the Contractor after the Time of Disclosure without restriction by a third party who is under no obligation to the City to maintain such information in confidence.

B. **No Disclosure of Confidential Information by the Contractor.** The Contractor acknowledges that it shall, in performing the Services for the City under this Agreement, have access to or be directly or indirectly exposed to Confidential Information. The Contractor shall hold confidential all Confidential Information and shall not disclose or use such Confidential Information without express prior written consent of the City. The Contractor shall use reasonable measures at least as strict as those the Contractor uses to protect its own confidential information. Such measures shall include, without limitation, requiring employees and subcontractors of the Contractor to execute a non-disclosure agreement before obtaining access to Confidential Information.

C. **Breach of Confidentiality.** In the event of breach of the confidentiality provisions of Section 5 of this Agreement, it shall be conclusively presumed that irreparable injury would result to the City and there would be no adequate remedy at law. The City shall be entitled to obtain temporary and permanent injunctions, without bond and without proving damages, to enforce this Agreement. The City shall be entitled to damages for any breach of the

injunction, including but not limited to, compensatory, incidental, consequential, exemplary, and punitive damages. The confidentiality provisions of this Agreement survive the termination or performance of this Agreement.

SECTION 6. EQUIPMENT INSTALLATION AND ON-GOING MANAGEMENT, MAINTENANCE, AND SERVICE AGREEMENT GENERAL PROVISIONS.

A. Independent Contractor Status. The Contractor shall act as an independent contractor in providing and performing the Services. Nothing in, nor done pursuant to, this Agreement shall be construed (i) to create the relationship of principal and agent, employer and employee, partners, or joint venturers between the City and Contractor; or (ii) to create any relationship between the City and any subcontractor of the Contractor. Contractor is not in any way authorized to make any contract, agreement, or promise on behalf of the City, or to create any implied obligation on behalf of the City, and Contractor specifically agrees that it shall not do so. The City shall not have the authority to control the method or manner by which Contractor complies with the terms of this Agreement.

B. Term. This Agreement shall become effective on July 18, 2022, at 12:00 a.m. and it shall be in effect until July 17, 2025, at 11:59 p.m., unless terminated sooner in accordance with the terms of this Agreement. The City shall have the option to extend the term of this Agreement for one (1) additional one (1) year term.

C. Termination. Notwithstanding any other provision hereof, the City may terminate this Agreement, with or without cause, at any time upon fifteen (15) days prior written notice to the Contractor. In the event that this Agreement is so terminated, the City shall pay Contractor for the Services performed and reimbursable expenses actually incurred as of the effective date of termination, less any sums attributable, directly, or indirectly, to Contractor's breach of this Agreement. The written notice required under this subsection shall be either (i) served personally during regular business hours; (ii) served by facsimile during regular business hours (iii) served by certified or registered mail, return receipt requested, addressed to the address listed at the end of this Agreement with postage prepaid and deposited in the United States mail or (iv) by e-mail sent to the Contractor's Key Project Personnel. Notice served personally, by facsimile transmission or e-mail shall be effective upon receipt, and notice served by mail shall be effective upon receipt as verified by the United States Postal Service. Contractor shall provide the City with its Key Project Personnel's e-mail address upon its execution of this Agreement.

D. Default. If it should appear at any time that the Contractor has failed or refused to perform, or has delayed in the performance of, the Services with diligence at a rate that assures completion of the Services in full compliance with the requirements of this Agreement, or has otherwise failed, refused, or delayed to perform or satisfy the Services or any other requirement of this Agreement ("**Event of Default**"), then the City shall have the right, without prejudice to any other remedies provided by law or equity, to pursue any one or more of the following remedies:

1. Cure by Contractor. The City may require the Contractor, within a reasonable time, to complete or correct all or any part of the Services that are the subject of the Event of Default; and to take any or all action necessary to bring the Contractor and the Services into compliance with this Agreement.

2. Termination of Agreement by City. The City may terminate this Agreement as to any or all Work yet to be performed, effective at a time specified by the City, and shall pay Contractor for the Work performed or reimbursable expenses actually incurred as of the effective date of termination

3. Withholding of Payment by City. The city may withhold from any payment, whether or not previously approved, or may recover from the Contractor, any and all costs, including attorneys' fees and administrative expenses, incurred by the City as the result of any Event of Default by the Contractor or as a result of actions taken by the City in response to any Event of Default by the Contractor.

E. **News Releases.** The Contractor shall not issue any news releases or other public statements regarding the Services without prior approval from the City Manager.

F. **Work Products.** Designs, drawings, plans, specifications, photos, reports, information, observations, calculations, notes, studies, logbooks, instructions, manuals, models, recommendations, printed and electronic files, and any other data or information, in any form, prepared, collected, or received by the Contractor in connection with any or all of the Services to be performed under this Agreement ("**Documents**") shall be and remain the exclusive property of the City. At the City's request, or upon termination of this Agreement, the Contractor shall cause the Documents to be promptly delivered to the City.

G. **Freedom of Information Act.** The Contractor shall, within four (4) business days of the City's request, provide any documents in the Contractor's possession related to this Agreement which the City is required to disclose to a requester under the Illinois Freedom of Information Act ("**FOIA**"). This provision is a material covenant of this Agreement. Contractor agrees to not apply any costs or charge any fees to the City regarding the procurement of records required pursuant to an FOIA request. Should Contractor request that the City utilize a lawful exemption under FOIA in relation to any FOIA request thereby denying that request, Contractor agrees to pay all costs connected therewith (such as reasonable attorneys' fees and witness fees, filing fees, and any other expenses) to defend the denial of the request. The defense shall include, but not be limited to, challenged or appealed denials of FOIA requests to either the Illinois Attorney General or a court of competent jurisdiction. Contractor agrees to defend, indemnify, and hold harmless the City, and agrees to pay all costs in connection therewith (such as reasonable attorneys' and witness fees, filing fees, and any other expenses) to defend any denial of a FOIA request by Contractor's request to utilize a lawful exemption to the City.

H. **Warranties.** Contractor warrants that the services provided for under this Agreement will be completed in a good and workmanlike manner in accordance with applicable codes, ordinances, regulations, or other legal requirements that are in effect at the time of this Agreement. Contractor also warrants that the equipment provided in accordance with this Agreement will be free from material defects in materials and workmanship and shall provide the City with all available and applicable warranties and guarantees provided by the manufacturer. Contractor shall extend such manufacturer warranties and guarantees to a period of three (3) years and shall provide all manufacturers' warranty information to the City. The three (3) year warranty period shall begin from the date of head end remote equipment and subscriber location radio installations and shall include all parts and labor. Defective products shall be repaired or replaced without cost to the City. The rights and remedies provided herein are in addition to and do not limit any rights afforded to the City by any other provision or term in this Agreement or by law. If within the warranted guaranty period any defects or signs of deterioration are noted which, in the opinion of the City, are due to faulty design and installation, workmanship, or materials, the City shall notify the Contractor. At the Contractor's expense, the Contractor shall repair or adjust the equipment or parts to correct the condition or replace the part or equipment to the complete satisfaction of the City. Replacement parts of defective components shall be supplied at no cost to the City. Shipping costs for defective parts required to be returned to the Contractor shall be paid by the Contractor.

I. **Patents.** The Contractor agrees to protect, defend, and save the City harmless against any demand for payment for the use of any patented material process, good, or device utilized or supplied in connection with the performance of the services and work required or provided pursuant to the terms of this Agreement.

SECTION 7. COMPLIANCE WITH LAWS AND GRANTS.

A. **Generally: Permits/Codes/Business Laws/Safety Standards/Grants.** Contractor shall give all notices, pay all fees, and take all other action that may be necessary to ensure that the Services are provided, performed, and completed in accordance with all required governmental permits, licenses, or other approvals and authorizations that may be required in connection with providing, performing, and completing the Services, and will comply with all applicable municipal, county, state and federal statutes, ordinances, rules, and regulations, including without limitation

all applicable building and fire codes, now in force or which may hereafter be in force, any statutes regarding qualification to do business, and all local, state and federal safety standards. Contractor shall comply with all conditions of any federal, state, or local grant received by Owner or Contractor with respect to this Agreement or the Services. Contractor shall be solely liable for any fines or civil penalties that are imposed by any governmental or quasi-governmental agency or body that may arise, or be alleged to have arisen, out of or in connection with Contractor's, or its subcontractors', performance of, or failure to perform, the Services or any part thereof. Every provision of law required by law to be inserted into this Agreement shall be deemed to be inserted herein.

B. No Delinquent Taxes. The Contractor represents and certifies that the Contractor is not barred from contracting with a unit of state or local government as a result of a delinquency in the payment of any tax administered by the Illinois Department of Revenue unless the Contractor is contesting, in accordance with the procedures established by the appropriate revenue act, its liability for the tax, or has entered into an agreement with Department of Revenue for payment of all taxes due and is currently in compliance with that agreement, as set forth in 11-42.1-1 et seq. of the Illinois Municipal Code, 65 ILCS 5/11-42.1-1 et seq.

C. No Collusion. The Contractor represents and certifies that the Contractor is not barred from contracting with a unit of state or local government as a result of a violation of either Section 33E-3 or Section 33E-4 of Article 33E of the Criminal Code of 2012, 720 ILCS 5/33E-1 et seq. The Contractor represents that the only persons, firms, or corporations interested in this Agreement as principals are those disclosed to the City prior to the execution of this Agreement, and that this Agreement is made without collusion with any other person, firm, or corporation. If at any time it shall be found that the Contractor has, in procuring this Agreement, colluded with any other person, firm, or corporation, then the Contractor shall be liable to the City for all loss or damage that the City may suffer, and this Agreement shall, at the City's option, be null and void.

D. Sexual Harassment Policy. The Contractor shall certify that it has a written sexual harassment policy in full compliance with Section 2-105(A)(4) of the Illinois Human Rights Act, 755 ILCS 5/2-105(A)(4).

E. Patriot Act (USA Freedom Act) Compliance. The Contractor represents and warrants to the City that neither it nor any of its principals, shareholders, members, partners, or affiliates, as applicable, is a person or entity named as a Specially Designated National and Blocked Person (as defined in Presidential Executive Order 13224) and that it is not acting, directly or indirectly for or on behalf of a Specially Designated National and Blocked Person. The Contractor further represents and warrants to the City that the Contractor and its principals, shareholders, members, partners, or affiliates, as applicable, are not directly or indirectly, engaged in, and are not facilitating, the transactions contemplated by this Agreement on behalf of any person or entity named as a Specially Designated National and Blocked Person. The Contractor hereby agrees to defend, indemnify, and hold harmless the City, its corporate authorities, and all City elected or appointed officials, officers, employees, agents, representatives, engineers, and attorneys, from and against any and all claims, damages, losses, risks, liabilities, and expenses (including reasonable attorneys' fees and costs) arising from or related to any breach of the representations and warranties in this subsection.

F. Anti-Discrimination Laws. Contractor shall comply with all federal and state laws prohibiting discrimination because of, or requiring affirmative action based on race, color, religion, sex, sexual orientation, marital status, order of protection status, national origin or ancestry, citizenship status, age, physical or mental disability unrelated to ability, military status or an unfavorable discharge from military service, and shall execute the Equal Employment Opportunity Clause compliance certification attached to this Agreement in Group Exhibit A.

G. Americans with Disabilities Act. Contractor shall utilize standards and/or methods that do not discriminate against the disabled in compliance with the Americans with Disabilities Act, 42 U.S.C. §§12101 et seq.

H. Drug Free Workplace Act. Contractor shall comply with all conditions of the Illinois Drug Free Workplace Act, 30 ILCS 580/3 et seq.

I. **Employment of Illinois Workers on Public Works Projects Act.** When applicable, Contractor shall comply with the Illinois labor employment requirements as set forth in the Employment of Illinois Workers on Public Works Projects Act, 30 ILCS 570/1 et seq.

K. **Public Works Employment Discrimination Act.** Contractor shall comply with all conditions and requirements of the Illinois Public Works Employment Discrimination Act, 775 ILCS 10/0.01 et seq.

M. **Steel Products Procurement Act.** When applicable, any steel product used or supplied in the performance of the contract or any subcontract thereto, shall be manufactured or produced in the United States, as required by the Illinois Steel Products Procurement Act, 30 ILCS 565/1 et seq.

N. **Substance Abuse Prevention.** Pursuant to the Substance Abuse Prevention on Public Works Projects ("SAPPWP") 820 ILCS 265/1 et seq., employees of the Contractor and employees of any Subcontractor are prohibited from the use of drugs or alcohol, as defined in the SAPPWP, while performing work on any public works project. The Contractor certifies that it has a written Substance Abuse Prevention Program for the prevention of substance abuse among its employees which meets or exceed the requirements of the SAPPWP or shall have a collective bargaining agreement in effect dealing with the subject matter.

O. **Prevailing Wage Act.**

☐ Prevailing Wage Act **DOES NOT APPLY**

☒ Prevailing Wage Act **APPLIES**. The Illinois Prevailing Wage Act, 820 ILCS 130/4 requires contractors and subcontractors to pay laborers, workers, and mechanics performing work under this contract no less than the "general prevailing rate of wages" (hourly cash plus annualized fringe benefits) and "general prevailing rate for legal holiday and overtime work" for Du Page County, Illinois as ascertained by the Illinois Department of Labor or a court on review. The selected Bidder and all its subcontractors shall be responsible for checking the Illinois Department of Labor web page at:
https://www2.illinois.gov/idol/Laws-Rules/CONMED/Pages/prevailing-wage-rates.aspx
to ensure that they are paying the current prevailing rate of wages.

All contractors and subcontractors rendering services under this contract shall comply with all requirements of the Illinois Prevailing Wage Act, *including, but not limited to,* all wage, notice and record keeping duties, as more fully set forth in the "Special Provisions for: Wages of Employees on Public Works" contained in Group Exhibit A to this Agreement. Contractor shall insert into each subcontract and into the project specifications for each subcontract a provision stating to the effect that no less than the prevailing rate of wages shall be paid to all laborers, workers, and mechanics performing work under the contract.

All bonds provided by Contractor and any subcontractor under the terms of this Agreement shall include such provisions as will guarantee the faithful performance of the Contractor and subcontractor's obligations under this clause and under the Prevailing Wage Act, 820 ILCS 130/1 *et seq.*

The Contractor shall indemnify the City for any and all violations of the prevailing wage laws and any rules and regulations now and hereafter issued pursuant to said laws.

P. **Veterans Preference Act.** When applicable, Contractor shall comply with all employment preference requirements of the Illinois Veterans Preference Act, 330 ILCS 55/0.01 et seq.

Q. **Illinois Property Tax Code (35 ILCS 200/18-50.2).** The City of Wheaton is required under Section 200/18-50.2 of the Illinois Property Tax Code (35 ILCS 200/18-50.2) to collect and electronically publish

information from vendors/contractors, and subvendors/subcontractors pertaining to their status as a minority-owned, women-owned, or veteran-owned business. Vendors/Contractors seeking contract award are required to complete the City's Vendor/Contractor/Subcontractor Information Reporting Form and return with their submittal to the City. This information will be electronically published on the City's website in compliance with the Property Tax Code's vendor information collection and reporting requirements. Current City Vendors/sub-vendors/contractors/subcontractors should return this form to the City within thirty (30) days of receipt of this form from the City. Additionally, vendors/contractors are required to provide this form to all subvendors/subcontractors providing goods, work, or services to the City and shall return completed forms to the City's Procurement Officer prior to the subcontractor's performance of work or services.

SECTION 8. GENERAL PROVISIONS.

A. Integration. The provisions set forth in this Agreement represent the entire agreement between the parties and supersede all prior agreements, promises, and representations, as it is the intent of the parties to provide for a complete integration within the terms of this Agreement.

B. Amendment. No amendment or modification to this Agreement shall be effective unless and until such amendment or modification is in writing, properly approved in accordance with applicable procedures, and executed.

C. Assignment. This Agreement, or any part, rights, or interests hereof, may not be assigned by the City or by the Contractor to any other person, firm, or corporation without the prior written consent of the other party.

D. Binding Effect. The terms of this Agreement shall bind and inure to the benefit of the parties hereto and their agents, successors, and assigns.

E. Waiver. Any failure of either the City or the Contractor to strictly enforce any term, right or condition of this Agreement, whether implied or express, shall not be construed as a waiver of such term, right or condition, nor shall it be deemed to or constitute a continuing waiver unless otherwise expressly provided in this Agreement.

F. Severability. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

G. Time. Time is of the essence as to each provision of the City's Radio Fire Alarm Monitoring Network Request for Proposal.

H. Governing Laws/Jurisdiction. This Agreement shall be interpreted according to the laws, of the State of Illinois. Exclusive jurisdiction for any litigation involving any aspect of this Agreement shall be in the Eighteenth Judicial Circuit Court, DuPage County, Illinois.

I. Force Majeure. No party hereto shall be deemed to be in default or to have breached any provision of this Agreement as the result of any delay, failure in performance or interruption of services resulting directly or indirectly from acts of God, acts of civil or military disturbance, or war, which are beyond the control of such non-performing party.

J. Headings. The headings of the several paragraphs of this Agreement are inserted only as a matter of convenience and for reference and are in no manner intended to define, limit, or describe the scope of intent of any provision of this Agreement, nor shall they be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

K. **Rights Cumulative.** Unless expressly provided to the contrary in this Agreement, each and every one of the rights, remedies, and benefits provided by this Agreement shall be cumulative and shall not be exclusive of any other such rights, remedies and benefits allowed by law.

L. **Counterpart Execution.** This Agreement may be executed in several counterparts, each of which, when executed, shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

M. **Notice.** Unless otherwise expressly provided in this Agreement, any notice or communication required or permitted to be given under this Agreement shall be in writing and shall be delivered (i) personally, (ii) by a reputable overnight courier, (iii) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid, (iv) by facsimile, or (v) by electronic internet mail ("e-mail"). Facsimile notices shall be deemed valid only to the extent that they are (a) actually received by the individual to whom addressed and (b) followed by delivery of actual notice in the manner described in either (i), (ii), or (iii) above within three (3) business days thereafter at the appropriate address set forth below. E-mail notices shall be deemed valid and received by the addressee thereof when delivered by e-mail and (a) opened by the recipient on a business day at the address set forth below, and (b) followed by delivery of actual notice in the manner described in either (i), (ii), or (iii) above within three (3) business days thereafter at the appropriate address set forth below. Unless otherwise expressly provided in this Agreement, notices shall be deemed received upon the earlier of (a) actual receipt; or (b) one business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (c) three business days following deposit in the U.S. mail, as evidence by a return receipt. By notice complying with the requirements of this Subsection, each party shall have the right to change the address or the addressee, or both, for all future notices and communications to such party, but no notice of a change of addressee or address shall be effective until actually received.

Notices and communications shall be addressed to, and delivered to as follows:

If to the Contractor:
Chicago Metropolitan Fire Prevention Co.
Attn: Paula Pohlmann
820 N. Addison Avenue
Elmhurst, IL 60126
E-Mail: ppohlmann@CMFP.com
Fax #: 630-833-1110

If to the City:
City of Wheaton
Attn: City Clerk
303 W. Wesley Street, Box 727
Wheaton, IL 60187-727
E-Mail: cityclerk@wheaton.il.us
Fax #: 630-260-2017

N. **Contract Numbering.** The faces of all invoices and documents shall contain the following contract number **315** for reference purposes.

IN WITNESS WHEREOF, the parties have entered into this Agreement this 19th day of July 2022.

CITY OF WHEATON, an Illinois municipal corp.

By: Philip J. Suess Date: 7/19/2022
Mayor

ATTEST:

BY: Andrea Rosedale
City Clerk

CHICAGO METRO FIRE PREVENTION CO.

BY: Robert E Henry Date: 7/18/2022
Signature Robert Henry

Its: General Manager

ATTEST:

BY: Pamela Dohm

Title: Director - Municipal Services