RESOLUTION R-2022-83

A RESOLUTION AUTHORIZING THE EXECUTION OF AGREEMENT NO. 337 WITH HOERR CONSTRUCTION FOR THE 2022 SEWER MAIN TO SERVICE LATERAL CONNECTION TESTING AND SEALING PROJECT FOR A TOTAL AMOUNT NOT TO EXCEED $340,735

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, the City solicited an Invitation to Bid (Bid Number 22-179) for the 2022 Sewer Main to Service Lateral Connection Testing and Sealing Project; and

WHEREAS, the City solicited bids in a public bidding process and bids were publicly opened and read on October 10, 2022, at 12:00 PM. Hoerr Construction was determined to be the lowest, responsive, responsible bidder with a bid amount of $340,735; and

WHEREAS, the City budgeted funds in the Sanitary Sewer Fund in an amount of $400,000 for the for service lateral rehabilitation; and

WHEREAS, both parties agree to the terms and conditions, and pricing set forth in the bid proposal and the agreement contained in the City's bid package for the 2022 Sewer Main to Service Lateral Connection Testing and Sealing Project; and

WHEREAS, the corporate authorities of the City of Wheaton, DuPage County, Illinois find it reasonable and appropriate to enter into an agreement with Hoerr Construction for the 2022 Sewer Main to Service Lateral Connection Testing and Sealing Project.

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. 337 with Hoerr Construction for the 2022 Sewer Main to Service Lateral Connection Testing and Sealing Project; 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 17th day of October 2022.

Philip J. Suess
Mayor

ATTEST:

Andrea Rosedale
City Clerk

Roll Call Vote:
Ayes: Councilman Barbier
Councilwoman Bray-Parker

Councilman Brown
Mayor Suess
Councilwoman Robbins
Councilman Weller
Nays: None
Absent: Councilwoman Fitch

Motion Carried Unanimously

Agreement No. **337**

CITY OF WHEATON, ILLINOIS
CONSTRUCTION SERVICES AGREEMENT FOR
2022 SEWER MAIN TO SERVICE LATERAL CONNECTION TESTING AND SEALING PROJECT

THIS AGREEMENT is made and entered this 19th day of October, 2022 by and between the **CITY OF WHEATON**, an Illinois municipal corporation **("City")**, located at 303 W. Wesley Street, Wheaton, Illinois, 60187 and **Hoerr Construction, Inc. ("Contractor")**, located at 1416 County road 200N, Goodfield, Illinois 61742. City and Contractor may be referred to in this Agreement individually as "Party," and collectively as the "Parties."

WHEREAS, the City has determined that it is reasonable and appropriate to engage a Contractor to provide materials, labor, equipment, supervision, and services required to perform the 2022 Sewer Main to Service Lateral Connection Testing and Sealing Project in the City of Wheaton (hereinafter, **"2022 Sewer Main to Service Lateral Connection Testing and Sealing"**) consistent with the City's 2022 Sewer Main to Service Lateral Connection Testing and Sealing Project Invitation to Bid which is attached hereto and incorporated herein as if fully set forth as **Group Exhibit A**; and

WHEREAS, Contractor has submitted a quote to provide the materials, labor, equipment, supervision and services required to perform the 2022 Sewer Main to Service Lateral Connection Testing and Sealing Project in the City of Wheaton, consistent with the City's 2022 Sewer Main to Service Lateral Connection Testing and Sealing Project Invitation to Bid, a copy of the Contractor's proposal is attached hereto and incorporated herein as if fully set forth as Group Exhibit B, and Contractor represents that it has the necessary expertise and experience to perform the 2022 Sewer Main to Service Lateral Connection Testing and Sealing Project in the City of Wheaton, upon the terms and conditions set forth herein below; and

WHEREAS, the City finds that the Contractor's bid meets the City's requirements for the services.

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. CONTRACT DOCUMENTS.

1.1 Incorporated Documents. The Contract Documents consist of this Agreement and the following attached exhibits which are incorporated into this Agreement:

a. The City's Invitation to Bid and all related documents is attached as **Group Exhibit A;**
b. The Contractor's Bid and all related documents is attached as **Group Exhibit B;**
c. Insurance Coverage for Construction Service Providers is attached as **Exhibit C;**
d. Legal certifications and compliance with laws documentation is attached as **Group Exhibit D;** and

e. Change Order Form, is attached as **Exhibit E;** and

These attachments along with this Agreement represent the entire integrated Contract between the Parties and supersede any and all prior negotiations, representations, or agreements, written or oral.

The Contract Documents also shall include any subsequent Change Orders or Written Amendments to any documents listed above or included within the incorporated exhibits, and other documents amending, modifying, or supplementing the Contract Documents, which may be delivered or issued after the effective date of the Agreement and are not attached hereto.

It shall be understood that words "Agreement" and "Contract" are synonymous in this document and its incorporated exhibits.

1.2 Controlling Document. In the event of a conflict between this Agreement and any attachment or exhibit, the provisions of this Agreement shall control. 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.

SECTION 2. PROJECT.

2.1 Project Name. The name of this project is the **2022 Sewer Main to Service Lateral Connection Testing and Sealing ("Project").**

2.2 Retention and Work to Be Done by Contractor. The City retains the Contractor to perform the **2022 Sewer Main to Service Lateral Connection Testing and Sealing Project** for the completion of this Project. For and in consideration of the payments indicated in the Contractor's bid hereto attached in **Group Exhibit B**, the Contractor promises and agrees that it shall at its own cost and expense perform all the work and furnish all the labor, material, tools, equipment, and other property necessary to do, construct, install, and complete all the work and improvements required for the Project (hereinafter **"Work"**), all in full accordance with and in compliance with and as required by the Contract Documents, including any and all Addenda or Change Orders for such Work, and to do all other things required of the Contractor by the Contract Documents for such Work.

2.3 Independent Contractor Status. The Contractor shall act as an independent contractor in providing and performing the Work. 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.

2.4 **Agreement Administration.** A "Notice to Proceed" order will be issued by the City upon confirmation of a properly executed Agreement. Once the "Notice to Proceed" order is issued, the Contractor's primary contacts with the City will be the Project Manager or her designee (hereinafter "Representatives"). The City Representatives' primary responsibility is to assure that the City receives the Work in accordance with the terms and conditions of this Agreement. The City Representative(s) shall 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, and review and approve service deliverables.

2.5 **Reporting.** The Contractor shall regularly report to the City's Project Manager, or his designee, regarding the progress of the Work, assumptions, and problems encountered during the term of this Agreement. Such reports may be provided in person or over the telephone at the discretion of the City.

2.6 **Project Manager.** The City's Project Manager for the Project is Russell Peacock. The Project Manager's contact information is as follows: (630) 260-2040 or via email at rpeacock@wheaton.il.us.

2.7 **Engineering Design Professional Representative.** The City reserves the right to utilize an Engineering Design Professional Representative to monitor the progress of Contractor's Work, observe in detail the quality of Contractor's Work and determine whether the Contractor's Work is proceeding in accordance with the Contract Documents. The City will provide Contractor with the name and contact information of any Engineering Design Professional Representative utilized. Contractor shall Work cooperatively with the City's Engineering Design Professional Representative in the performance of the Work required by this Agreement.

2.8 **Time of Performance.** The Contractor shall perform the Work within the Term of this Agreement as set forth in **Section 7.1** of this Agreement, in accordance with the schedule of work indicated in the attached bid or as provided in accordance with the Invitation to Bid (**Group Exhibit B**) and **Group Exhibit A**, and in accordance with any other completion schedule or milestones which may be separately agreed upon in writing by the Parties. Contractor represents that it has the personnel required to perform the Work in conformance with such conditions. Upon request of City, Contractor shall provide a more detailed schedule of anticipated performance to meet the schedule of work. The Contractor agrees that time is of the essence.

2.9 **Additional Work.** The Contractor shall provide only the Work specified in the Contract Documents. The Contractor acknowledges and agrees that the City shall not be liable for any costs incurred by the Contractor in connection with any work provided by the Contractor that is outside the scope of this Agreement ("**Additional Work**"), regardless of whether such Additional Work is requested or directed by the City, except upon the prior written consent of the City through an approved Change Order. Upon recognizing the need to perform Additional Services, the Contractor shall notify the City with reasonable promptness

and explain the facts and circumstances giving rise to the need and submit to the City a Change Order Form for amendment to the Agreement for the City's review and approval setting forth the details of the requested Additional Work. Additional Work that has been authorized in writing by the City shall be subject to the terms and conditions of this Agreement and payment for Additional Work shall be mutually agreed upon by the parties before the commencement of any Additional Work.

2.10 **Changes and Alterations.** Any changes or alterations to this Project affecting, inclusive of, but not limited to, scope, cost, milestones, deadlines, or other significant factors shall be integrated in writing on a City of Wheaton Change Order Form **(Exhibit E)**; verbal approval is not considered a Change Order and is not authorization to proceed. All Change Orders shall clearly identify the impact of cost and the effect on time required to perform the Work. Any proposed change to the Project that increases the Agreement price or the costs to be expended by the Contractor in an amount of $20,000 or more shall require the approval of the City of Wheaton City Council before such changes may be made. Any Work that is performed beyond the approved Agreement scope or Agreement price shall not be paid without the City's prior written consent through an approved Change Order.

2.11 **Bonds.** When specifically requested by City in Exhibit A, Contractor shall furnish with the executed Agreement, performance and payment bonds equal to one-hundred and ten percent (110%) of the full contract price, on forms approved by the City, as security for the faithful performance and completion of all the Contractor's obligations under the Contract Documents, including, but not limited to Contractor's Prevailing Wage Act obligations under this Agreement, and covering the payment of all materials used in the performance of this Agreement and for all labor and services performed under this Agreement. Such bond(s) shall be conditioned to save and keep harmless the City from any and all claims, demands, losses, suits, costs, expenses and damages which may be brought, sustained or recovered against the City by reason of any negligence, default or failure of the Contractor in performing or completing the Services, and that the Services shall be free from all defects and remain in good order and condition for one year from its completion and acceptance by the City; ordinary wear and tear, and damage resulting from accident or willful destruction excepted. Each surety providing a bond must be licensed in Illinois and have an A.M. Best Company, Inc. financial strength rating of at least A-. All bonds signed by an agent must be accompanied by a certified copy of his or her authority to act. Should, in the City's sole opinion, any bond become insufficient, or any surety be found to be unsatisfactory, Contractor shall renew or replace the affected bond within ten (10) days of receiving notice from the City. In the event the surety or Contractor intends to reduce or cancel any required bond, at least thirty (30) days prior written notice shall be given to the City, and Contractor shall post acceptable replacement bonds at least ten (10) days prior to the expiration of the original bonds. No further payments shall be deemed due or will be made under this Agreement until any replacement bonds required by this section are accepted by the City. To the extent, if any, that the Agreement Amount is increased in accordance with the Agreement, the Contractor shall, upon request of the City, cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the City. To the extent available, the bonds shall further provide that no change or alteration of the Agreement (including, without

limitation, an increase in the Agreement Amount, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Contractor, will release the surety. A copy of all bond certificates shall be attached to this Agreement and made a part hereof. Failure to provide the required bond(s) shall constitute a breach of Contractor's obligations under this Agreement.

2.12 **Warranty.** Any defective material, or workmanship, or any unfaithful or imperfect work, which may be discovered before the final acceptance of the Work and/or within one (1) year thereafter, shall be corrected immediately on the requirements of the City Project Manager, without extra charge, notwithstanding that it may have been overlooked in the previous inspections and estimates. Failure to review construction shall not relieve the Contractor from any obligation to perform sound and reliable work as herein described.

SECTION 3. COMPENSATION AND METHOD OF PAYMENT.

3.1 **Agreement Amount.** The total amount billed by the Contractor for the Work performed for the Project under this Services Agreement shall not exceed **$340,735** including reimbursable expenses, without the prior express written authorization of the City.

3.2 **Payment.** The Contractor shall receive and accept payments indicated in its bid as full compensation for furnishing all materials and equipment and for doing all the Work contemplated and embraced in this Agreement. City shall make payments to the Contractor on the basis of Contractor's Applications for Payment as recommended by the City's Project Manager, or his designee, or by City's Engineering Design Professional Representative in conformance with the City of Wheaton's accounts payable schedule and the payment provisions contained in the attached **Group Exhibit A**. All payments shall be based on the progress of the Work measured by the schedules provided in the Contract Documents. Authorization of payment requires the receipt by the City of invoices from the Contractor containing sufficient detail of the Work performed to enable the City to properly evaluate the payout request; and shall include the following:

1. To fulfill the Waiver(s) of Lien requirement for Applications for Payment, the First Application for Payment, shall be accompanied by the Prime (General) Contractor's partial waiver of lien, called "Waiver of Lien to Date", for the full amount of payment due.

2. Each subsequent Application for Payment shall be accompanied by the Prime (General) Contractor's Waiver of Lien to Date, plus the partial waivers of lien of Laborers, Subcontractors and Material Suppliers from all laborers, subcontractors, sub-subcontractors, and suppliers who were included in the immediately preceding payment application, to the extent of that payment.

3. The final Application for Payment shall be accompanied by the Final Waiver of Lien for the full amount of the contract from the Prime (General) Contractor, and all laborers, subcontractors, sub-subcontractors, and

suppliers, including those who have not previously furnished such final waivers.

The City shall pay Contractor in accordance with the Illinois Local Government Prompt Payment Act. The City shall make all payments on the basis of approved invoices and supporting documents. The City shall use its best efforts to make payments within thirty (30) days after review and approval of the invoice. Each payment requires the City Council's approval of the expenditure which occurs at publicly scheduled meetings. Any invoices submitted in excess of six (6) months from the date that Work were completed, will not be paid. Under no circumstances will a third party be reimbursed for Work performed under this Agreement.

To ensure proper performance of this Agreement, the City shall retain ten percent (10%) of the amount for each application for payment until the Work is fifty percent (50%) complete, at which time the City may reduce the amount retained during the remaining progress of the work, provided the Contractor has satisfied the City in quality and timeliness of the Work performed up to and including the date of the request for payment. The Work shall be deemed fifty percent (50%) complete when the Contractor's gross Work invoices, excluding the value of materials stored off-site, equal or exceed fifty percent (50%) of the value of the Agreement. The amounts retained from each application for payment shall not be released to Contractor unless the following conditions have been met: (i) final inspection and acceptance of the Work has been made by the City; (ii) Contractor has submitted to the City an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the City might be responsible have been paid or have otherwise been satisfied; and (iii) Contractor has submitted to the City all certified payrolls, warranty documentation, insurance documentation, releases and waivers of liens, claims, security interests or encumbrances arising out of the Agreement, and any other required documentation pursuant to this Agreement. Nothing herein shall prevent the City from invoking the remedies available to it pursuant to the default provisions of this Agreement or from withholding payment to the Contractor in addition to the amounts identified herein for unsatisfactory Work progress, defective Work not remedied, disputed Work, or third-party claims filed against the City or reasonable evidence that a third-party claim will be filed. The City shall not be required to make final payment prior to completion and acceptance of the Work by the City.

The City may use the retained amounts to remedy any defective or uncorrected Work. At the end of the final payment, the City may apply any retained amounts to offset any approved adjustment or authorized deduction to the Contract price.

3.3 Liquidated Damages. The City and Contractor recognize that time is of the essence in Contractor's performance of this Agreement. To the extent that this Agreement is funded in whole or in part by a State of Illinois Department of Commerce and Economic Opportunity Rebuild Illinois Fast-Track Grant (hereinafter, "Grant"), the City will suffer financial loss if the Work is not completed on time in that it will lose the Grant funding awarded for this Project. Additionally, since quantifying losses arising from Contractor's delay are inherently difficult insofar as delay may impact the public's use of City property, as well as contract administration costs, the City shall require Contractor to compensate the City in the amount of

$50.00 for each calendar day beyond the **June 30, 2023**, completion date that the Work required under this Agreement is not completed. This is not meant to be a penalty, but rather is a reasonable measure of damages given the nature of the losses that may result from delay. Any extensions agreed to by executed change orders or alterations in Work shall be considered in the application of liquidated damages. This liquidated damage provision is in addition to any liquidated damage provisions contained in the specifications for this Project. The City shall have the right to deduct the liquidated damages from any money in its hands, otherwise due, or to become due, to Contractor, or to initiate applicable dispute resolution procedures and recover liquidated damages for nonperformance of this Contract within the time stipulated.

3.4 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.

3.4 Taxes, Benefits, and Royalties. The Agreement Amount includes all applicable federal, state and City taxes of every kind and nature applicable to the Work 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 Work, 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.

3.5 Interest Waiver. Contractor hereby waives any and all claims or rights to interest on money claimed to be due pursuant to this Agreement, and all such rights to interest to which it may otherwise be entitled pursuant to law, including, but not limited to, pursuant to the Local Government Prompt Payment Act, (50 ILCS 505/1 *et seq.*) as amended or the Illinois Interest Act (815 ILCS 205/1, *et seq.*) as amended.

3.6 Account Records. The Contractor shall maintain records showing actual time devoted and costs incurred in connection with the Work performed under this Agreement and shall permit the authorized representative of the City to inspect, audit and make copies of all data, financial records, and supporting documents of the Contractor for the Work done under this Agreement. All such records shall be clearly identifiable. The records shall be made available to the City during normal business hours during the Agreement period, and for three years after the expiration or termination of this Agreement.

In the event that the City receives Grant funds from the State of Illinois or Federal government for this Project, Contractor and its subcontractors and consultants shall grant the State of Illinois grant awarding agency, the Illinois Auditor General, the Illinois Attorney General, any Executive Inspector General, federal authorities, any person identified in 2 C.F.R. § 200.336, or any of their duly authorized representatives, and any other person as may be authorized by the State of Illinois or by federal statute, full access to and the right to examine any pertinent books, records, related papers, supporting documentation and personnel relevant to this

Agreement and the Grant funds awarded to the City pertaining to the Project. All subcontractors shall be required to comply with this provision and Contractor shall include this requirement in all contracts it has with all subcontractors performing Work on this Project.

SECTION 4. REPRESENTATIONS OF CONTRACTOR; SUBCONTRACTORS

4.1 Standard of Care. The Contractor represents, certifies, and warrants that it shall perform and complete the Work in a manner consistent with the level of care, skill, and diligence exercised by other recognized Contractors in the Wheaton area, under similar circumstances at the time the Work is performed. Contractor agrees that all employees and subcontractors shall have sufficient skill and experience to perform the Work assigned to them. The representations, certifications, and warranties expressed herein 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. Contractor shall perform, at its own cost and expense and without reimbursement from the City, any services or work necessary to correct errors or omissions which are caused by the Contractor's failure to comply with the standard of care provided for herein. Any employee or subcontractor of the Contractor who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee or subcontractor who fails or refused to perform the Work in a manner acceptable to the City, shall be promptly removed from the Project by the Contractor and shall not be re-employed to perform any of the Work on the Project.

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

4.3 Personnel. The Contractor shall provide all personnel necessary to complete the Work, including without limitation, any Key Project Personnel identified in the Contract Documents. The Key Project Personnel shall not be changed without the City's prior written approval. The Contractor shall notify the City as soon as practicable prior to terminating the employment of, reassigning, or receiving notice of the resignation of, any Key Project Personnel. The Contractor shall have no claim for damages and shall not bill the City for additional time and materials charges as the result of any portion of the Work which must be duplicated or redone due to such termination or for any delay or extension of the Time of Performance as a result of any such termination, reassignment, or resignation of the Key Project Personnel.

4.4 Subcontractors; Assignment or Transfer. Contractor shall not subcontract any portion of the Work required under this Agreement, except as expressly authorized herein, without the prior written approval of the City. The City's approval of any subcontractor or subcontract shall not relieve the Contractor of full responsibility and liability for the provision, performance, and completion of the Work required by this Agreement. All Services performed under any subcontract shall be subject to all of the provisions of this Agreement in the same manner as if performed by employees of the Contractor. For purposes of this Agreement, the

term "Contractor" shall be deemed also to refer to all subcontractors of the Contractor, and every subcontract shall include a provision binding the subcontractor to all provisions of this Agreement.

Contractor shall also not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement, or any interest herein without the prior written consent of the City. Any attempt to subcontract or take any other action not authorized herein shall be null and void, and any subcontractors, assignees, hypothecates or transferees shall acquire no right or interest by reason of such actions.

4.5 **Political Advocacy and Advertising.** Contractor shall not engage in any form of political advocacy or political advertising at the project/work site, including but not limited to the display of signs, placement of decals on equipment, and distribution of material, which promotes or opposes any political committee, candidate, referendum, or issue. This provision shall not apply to peaceful primary picketing as permitted under the Illinois Labor Dispute Act.

4.6 **Illinois Works Job Programs Act.** For projects in which the Agreement Amount is $500,000 or more, Contractor shall utilize apprentices, as defined by the Illinois Works Job Programs Act ("IWJPA"), 30 ILCS 559/20 *et seq.* to perform 10% of the total labor hours actually worked in each prevailing wage classification or 10% of the estimated labor hours in each prevailing wage classification, whichever, is less. Contractor shall also execute and submit to the City all Illinois Works Job Program documents required by the IWJPA; the implementing regulations found at 14 Ill. Adm. Code Section 680 *et. seq.*, and/or the Illinois Department of Commerce and Economic Opportunity ("DCEO"), including, but not limited to the Illinois Works Apprenticeship Initiative Periodic Reporting Form ("Reporting Form") which shall be submitted to the City every eighty (80) days after execution of the Agreement with the City to allow for the City's timely filing of the quarterly Reporting Form with the DCEO , and Certificates of Compliance upon completion of both the work set forth in this Agreement and upon completion of all of the work for the Project setting forth the information required by 14 Ill. Adm. Code 680.50 and certifying that the Contractor has either met the 10% apprenticeship goal or received a reduction or waiver of the 10% apprenticeship goal pursuant to Section 20-20(b) of the IWJPA and 14 Ill. Adm. Code 680.40. Forms can be found at the Illinois Department of Commerce's website:

www2.illinois.gov/dceo/WorkforceDevelopment/Pages/IllinoisWorksJobsProgramsAct.aspx.

The Contractor may seek from the DCEO a waiver or reduction of this apprenticeship goal requirement in certain circumstances pursuant to 30 ILCS 559/20-20(b). Should the Contractor seek a request for a waiver or reduction of apprenticeship goal requirements with the DCEO, the Contractor shall also submit a copy of the request to the City at the time of submitting such request with the DCEO."

Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs,

the registration of the apprentices and trainees, and the ratio and wage rates prescribed in the applicable programs.

SECTION 5. INDEMNIFICATION; INSURANCE; LIABILITY

5.1 Indemnification. The Contractor shall, without regard to the availability or unavailability of any insurance, either of the City or of the Contractor, defend, indemnify, and hold harmless the City, its past, present, and future elected officials, directors, officers, representatives, employees, agents, volunteers, and attorneys (hereinafter the **"City Indemnitees"**) from and against any and all claims, suits, allegations, demands, losses, damages, injuries, liabilities, fines, settlements, judgments, penalties, costs, expenses, and attorneys' fees, or any and all other relief or liability (hereinafter collectively the **"Claims"** or individually the **"Claim"**), that may be incurred as a result of bodily injury, sickness, death or property damage or as a result of any other claim or suit of any nature whatsoever arising out of, or in connection with, or resulting from or through or alleged to arise out of or result from or through, directly, or indirectly, the negligent acts, errors or omissions, or intentional acts or omissions of Contractor or Contractor's officers, employees, agents, or subcontractors in the performance of the Work required by this Agreement or from the Work to be performed under this Agreement, except to the extent caused by the City Indemnitees own negligence. Contractor shall also defend, indemnify, and hold harmless the City Indemnitees from claims arising out of or in connection with litigation based on any mechanic's lien or other claims, suits, judgments and/or demands for damages by subcontractors; ; provided, however, that the Contractor shall not be obligated to indemnify, hold harmless and defend the City or DuPage County for any negligent or intentional wrongful misconduct or omissions by the City or DuPage County officials, employees, agents, contractors or personnel. The Contractor is solely responsible for determining the accuracy and validity of any information provided to the Contractor by the City or its representatives. The provisions of this paragraph and in all other paragraphs in this **Section 5.1** shall not be limited by any amount of insurance required under this Agreement, shall survive any expiration and/or termination of this Agreement, and shall apply to the fullest extent permitted by law. In the event that any provision in this paragraph or in any other paragraph in this **Section 5.1** is determined to be unenforceable, the indemnification obligations shall be severable and the fullest extent of indemnification that may lawfully apply shall remain in full force and effect.

Contractor shall be responsible for any losses and costs to repair or remedy work performed under this Agreement resulting from or arising out of any act or omission, neglect, or misconduct in the performance of its work or that of its employees or any own for whom Contractor is legally responsible. Acceptance of the Work by the City shall not relieve the Contractor of the responsibility for subsequent correction of any such error, omissions, and/or negligent acts or of its liability for loss or damage resulting therefrom.

Contractor shall promptly provide, or cause to be provided, to the City Clerk copies of all notices that Contractor may receive of any claims, actions, or lawsuits that may be given or filed in connection with Contractor's performance or the performance of any of Contractor's subcontractors and for which the City Indemnitees are entitled to indemnification under this

Agreement and to give the City Indemnitees authority, information, and assistance for the defense of any claim or action.

Contractor's obligation to defend under this Agreement shall be immediate upon written notice by City to Contractor and shall not be limited by any allegations that City Indemnitees were in charge of the Work or by any alleged negligence on the part of City Indemnitees. Furthermore, Contractor shall, if requested by City, defend the City and City Indemnitees using counsel approved by the City in its sole discretion. The City shall have the right at its sole option, to participate in the defense of any such suit, without relieving Contractor of its obligations under this **Section 5.1.** Nothing in this Agreement shall be construed as prohibiting the City Indemnitees from defending, through the selection and use of their own agents, attorneys, and experts, any Claims brought against them arising out of, in connection with, or resulting from 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 degree of fault, except as otherwise provided herein.

In the event any Claim is asserted, and money is due to the Contractor under and by virtue of this Agreement, the City may, in its sole and absolute discretion, to protect itself against said Claim, retain such money until such time that all such Claims have been settled or have been fully judicially determined and satisfied, and evidence to that effect has been furnished to the satisfaction of the City.

No inspection by the City or by its employees or agents shall be deemed a waiver by the City of full compliance with the requirements of this Agreement.

To the extent permissible by law, Contractor waives any limits to the amount of its obligations to indemnify, defend, or contribute to any sums due under any Claims, including any claim by any employee of Contractor that may be subject to the Illinois Workers Compensation Act, 820 ILCS 305/1 et seq. or any other related law or judicial decision, including, but not limited to, Kotecki v. Cyclops Welding Corporation, 146 Ill.2d 155 (1991). The City, however, does not waive any limitations it may have under the Illinois Workers Compensation Act, the Illinois Pension Code, or any other statute.

5.2 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 Construction Services** included in **Exhibit C** to this Agreement. The City, its officers, elected officials, employees, agents, and volunteers shall be included under the Contractor's insurance as additional primary insureds with respect to claims and/or liability arising out of Work performed for the City by the Contractor. All subcontractors shall comply with each and every

insurance provision in **Exhibit C.** Contractor shall therefore not allow any subcontractor to commence Work on any subcontract to perform any part of the Work until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under this Agreement. The insurance described herein as set forth in **Exhibit C** shall be maintained for the duration of the Agreement, including warranty period. All costs for insurance as specified herein will be considered as included in the cost of the contract.

5.3 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.

5.4 Governmental Immunity. Nothing in this Agreement shall be construed as a waiver of any and all privileges, immunities, or defenses provided to or enjoyed by the City under common law or pursuant to statute, including but not limited to the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/2-101 *et. seq.*

5.5 Third Party Beneficiaries. It is recognized that the Work performed by Contractor is for the benefit of the City and no other party.

5.6 Limitation of Liability. CITY SHALL NOT BE LIABLE TO CONTRACTOR FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE, OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION, LOST PROFITS (DIRECT OR INDIRECT) AND LOST REVENUES HOWSOEVER ARISING, WHETHER OR NOT CHARACTERIZED IN NEGLIGENCE, TORT, CONTRACT OR OTHER THEORY OF LIABILITY, EVEN IF CITY HAS BEEN ADVISED OF THE POSSIBILITY OF OR COULD HAVE FORESEEN ANY SUCH DAMAGES.

SECTION 6. CONFIDENTIAL INFORMATION.

6.1 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.

6.2 No Disclosure of Confidential Information by the Contractor. The Contractor acknowledges that if in the event that it shall, in performing the Work for the City under this Agreement, have access to or be directly or indirectly exposed to Confidential Information, that 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.

6.3 Breach of Confidentiality. In the event of breach of the confidentiality provisions of **Section 6** 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 7. TERM, TERMINATION, and DEFAULT.

7.1 Term. This Agreement shall become effective upon the latter of the date accepted and signed by the City and the date accepted and signed by the Contractor, and shall continue in full force and effect until the earlier of the following occurs: (i) the termination of this Agreement; or (ii) final completion of all items of Work specified in the Agreement by **June 30, 2023** or to a new date mutually agreed upon by the parties in writing, or (iii) the completion by Contractor and City of their respective obligations under this Agreement, in the event such completion occurs before the date(s) in item (ii) above. A determination of completion shall not constitute a waiver of any rights or claims which the City may have or thereafter acquire with respect to any term or provision of this Agreement. The parties agree that time is of the essence.

7.2 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 Work 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. On receiving such notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all Work under this Agreement. As soon as practicable after receiving the termination notice, Contractor shall submit an invoice to the City showing in detail the Work performed under this Agreement up to the termination date. Contractor's receipt of payment for Work rendered upon City's termination of this Agreement, is Contractor's sole and exclusive remedy for termination for convenience by the City. City's termination for convenience does not constitute a default or breach of this Agreement.

If this Agreement is terminated as provided herein, City may require Contractor to provide all finished or unfinished documents and data and other information of any kind prepared by Contractor in connection with the performance of the Work under this Agreement. Contractor shall be required to provide such documents, data, and other information within fifteen (15) days of the request.

7.3 **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 Work with diligence at a rate that assures completion of the Work in full compliance with the requirements of this Agreement, or has otherwise failed, refused, or delayed to perform or satisfy the Work requirements 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 Work that is the subject of the Event of Default; and to take any or all action necessary to bring the Contractor and the Work 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.

7.4 **Bonds.** Upon an event of default, the City may file and prosecute claims against any surety posting bonds required by this Agreement.

7.5 **Election of Remedies.** Election of remedy by the City will not be exclusive and it shall retain the rights to pursue any remedy under this Agreement, common law, equity, or administrative relief.

SECTION 8. COMPLIANCE WITH LAWS AND GRANTS.

8.1 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.

8.2 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.

8.3 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.

8.4 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.

8.5 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).

8.6 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.

8.7 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 D**.

8.8 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.

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

8.10 CDL Driver Controlled Substances and Alcohol Use and Testing. To the extent that the Contractor and any employees, agents, or subcontractors thereof, will operate any commercial vehicles requiring the necessity for a state issued Commercial Driver's License,

Contractor shall comply with Federal Highway Authority Rules on Controlled Substances and Alcohol Use and Testing, 49 CFR Parts 40 and 382 and shall notify the City of any employee, agent subcontractor driver participating in a drug and alcohol testing program pursuant to the aforementioned rules during the term of this Agreement.

8.11 Employment of Illinois Workers on Public Works Projects Act.

☒Employment of Illinois Workers on Public Works Projects Act **DOES NOT APPLY**

☐Employment of Illinois Workers on Public Works Projects Act **APPLIES.** The Employment of Illinois Workers on Public Works Projects Act, 30 ILCS 570/1 et seq., requires the workforce on all public works projects to be comprised of a minimum of 90% Illinois residents during excessive periods of unemployment. Excessive unemployment is defined as any month immediately following two (2) consecutive calendar months that the Illinois unemployment rate exceeds 5%. Due to the high unemployment rate caused by the ongoing COVID-19 pandemic, the Employment of Illinois Workers on Public Works Act is in effect.

8.12 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.

8.13 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.

8.14 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.

8.15 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.

8.16 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.

8.17 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 sub-vendors/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 sub-vendors/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.

8.18 Execution of Certifications. Contractor shall execute the legal certifications and compliance with laws documentation which is attached hereto and incorporated herein as if fully set forth as **Group Exhibit D and** the State and Federal Grant Program Required Provisions (if applicable) and Certifications which is attached hereto and incorporated herein as if fully set forth as **Group Exhibit F.**

SECTION 9. GENERAL PROVISIONS.

9.1 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 Work 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.

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

9.3 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.

9.4 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.

9.5 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.

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

9.7 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.

9.8 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.

9.9 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.

9.10 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 the public enemy, acts of civil or military disturbance, or war, acts of terrorism, unusually severe weather, fires, floods, epidemics, quarantines, strikes, labor disputes and freight embargoes to the

extent such events were not the result of, or were not aggravated by, the acts or omissions of the non-performing or delayed party.

9.11 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.

9.12 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.

9.13 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.

9.14 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:
Hoerr Construction, Inc.
Attn: Andrew Hoerr
1416 County Road 200N
Goodfield, IL 61742
E-Mail: info@hoerr.com

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

9.15 Contract Numbering. The faces of all invoices and documents shall contain the following contract number **337** for reference purposes.

9.16 Electronic Signatures. The parties may execute this Agreement in writing or by facsimile transmission or by e-mail delivery of a ".pdf" format data file, and any such signature shall have the same legal effect as a handwritten signature for the purposes of validity, enforceability, and admissibility. In addition, a true and correct facsimile copy or computer image of this Agreement shall be treated as and shall have the same effect as an original signed copy of this document.

9.17 Authority to Enter Agreement. Contractor has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party. If the Contractor is a corporation, the legal name of the corporation shall be set forth below, together with the signature of the officer or officers authorized to sign contracts on behalf of the corporation; if Contractor is a co-partnership the true name of the firm shall be set forth below, together with the signatures of all partners; and if the Contractor is an individual, the Contractor shall sign his name below. If signature is by an agent other than an officer of a corporation or a member of a partnership, a power-of-attorney must be attached hereto.

IN WITNESS WHEREOF, the parties have entered into this Agreement this 18th day of October 2022.

CITY OF WHEATON, an Illinois municipal corp.

By: _____ Date: 10/18/2022
Mayor

ATTEST:

By: _____
City Clerk

HOERR CONSTRUCTION, INC.

By: _____ Date: 10/13/22
Signature

Its: Vice President

ATTEST:

By: _____

Title: Assistant Secretary