



**INVITATION TO BID #26-13**  
**GABLES BOULEVARD RECONSTRUCTION PROJECT**

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<b>Issue Date:</b>	February 12, 2026
<b>Request for Authorization to Bid:</b>	<u>No later than</u> February 20, 2026, at 4:30 pm (CST)
<b>Last Date for Questions:</b>	<u>No later than</u> February 26, 2026, at 11:00 am (CST)
<b>Due Date:</b>	<u>No later than</u> March 10, 2026, at 11:00 am (CST)
<b>Bid Opening:</b>	March 10, 2026, at 11:00 am (CST) at Wheaton City Hall located at 303 W. Wesley Street, Wheaton IL 60187 in the Conley Meeting Room (lower level).
<b>Prevailing Wages:</b>	All Contracts for the Construction of Public Works are subject to the Illinois Prevailing Wage Act (820 ILCS 130/1-12). <input checked="" type="checkbox"/> <b>DOES APPLY</b> <input type="checkbox"/> <b>DOES NOT APPLY</b>

**To be considered responsive, the following documents shall be included with your submittal:**

- Original Bid Bond
- Certificate of Insurance (as proof of insurance)
- Cost Proposal Form (Exhibit D)
- Notice of Deviations Form (Exhibit E)
- Listing of Subcontractors, Consultants, and Agents Form (Exhibit F)
- Low Impact Design – Green Infrastructure Training Form (Exhibit G)
- Apprenticeship and Training Certification Form (Exhibit H)
- References Form (Exhibit I)
- Certification Regarding Lobbying Form (Exhibit J)
- State and Federal Grant Program Required Provisions and Certifications Form (Exhibit J)
- City of Wheaton Business Enterprise Program Utilization Form (Exhibit L)
- Vendor Certification Form (Exhibit M)
- Vendor Information Reporting Form (Exhibit N)
- W-9 form

**The successful Vendor will be required to submit the following additional documents:**

- Certificate of Insurance with signed endorsements
- Performance, Payment, and Maintenance Bonds
- Signed Agreement

**EXHIBIT A**  
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**INTRODUCTION**

The City of Wheaton is soliciting competitive bids for The Gables Boulevard Reconstruction Project.

**PREVAILING WAGE ACT**

All Contracts for the Construction of Public Works are subject to the Illinois Prevailing Wage Act (820 ILCS 130/1-12).  **DOES APPLY**  **DOES NOT APPLY**

**DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

The City encourages minority business firms to submit proposals for the Gables Boulevard Reconstruction Project. Contractors soliciting subcontractors shall also make a good faith effort to contract with subcontractors meeting the minority business firm requirements.

**PROJECT SCHEDULE**

The project schedule will be determined by the City of Wheaton Engineering Department after the award.

**PROJECT FUNDING – DCEO GRANT (EXHIBIT L)**

The project will receive partial funding from a grant provided by the Illinois Department of Commerce and Economic Opportunity. An overall Business Enterprise Program (BEP) Goal of 28% has been determined with 18% of grant dollars going to minority-owned business enterprises (MBEs or WMBEs), and 10% going to women-owned business enterprises (WBEs or WMBEs), or persons with disabilities-owned business enterprises (PBEs) for this project. This goal is based on the availability of State-certified BEP vendors to perform the anticipated direct subcontracting opportunities found in the Grant Project's approved scope of work. This Invitation to Bid includes forms that must be completed to ensure compliance with the grant requirements. Failure to complete these forms shall render a bid or offer as non-responsive. Non-responsive bids will be rejected by the City.

**SCOPE OF WORK**

See attached Special Provisions and drawings. Full size drawings have been uploaded as a separate document.

**REQUEST FOR AUTHORIZATION TO BID**

Contractors wanting to bid as a Prime Contractor on the City of Wheaton – Gables Boulevard Reconstruction Project, must submit the following to the City of Wheaton's Procurement Officer [asperkowski@wheaton.il.us](mailto:asperkowski@wheaton.il.us) via E-mail no later than 4:30 p.m. February 20, 2025.

**DUE DATE FOR WRITTEN QUESTIONS**

All questions, either administrative or technical, shall be submitted via email to Tony Sperkowski at [asperkowski@wheaton.il.us](mailto:asperkowski@wheaton.il.us) no later than **February 26, 2026, at 11:00 am (CST)**.

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**ADDENDA**

All questions, clarifications or revisions regarding this bid will be issued via a written addendum and published on the City's website. Each Vendor shall acknowledge receipt of any addenda on the Cost Proposal form. Each Vendor, by acknowledging receipt of any addenda, is responsible for the content of the addenda and any changes to the bid. Failure to acknowledge issued addenda may cause the bid submittal to be rejected.

**BID SUBMITTAL**

Submittals shall be received no later than **March 10, 2026, at 11:00 am (CST)**. Late submissions will not be accepted. An original Bid Bond shall be included with each bid submittal. Copies will not be accepted.

**Submit a hard copy bid to:**

City of Wheaton  
303 W. Wesley Street - 1<sup>st</sup> Floor Finance Counter  
Wheaton, IL 60187-0727  
**Attn: Tony Sperkowski, Procurement Officer**

All hard copy bids shall be submitted in a sealed package marked with the following information:

- Bid Name & Number
- Bid Closing Date
- Bid Closing Time
- Vendor Name and address

It is the sole responsibility of the Vendor to ensure that their bid is delivered by the stated bid opening date/time. The City is not responsible for misdirected bid packages.

**CONFIDENTIAL INFORMATION**

Any BID material that is to be considered as proprietary or confidential in nature must be clearly marked as such by the propose. Failure to do so may result in information becoming a public record.

**COSTS INCURRED IN RESPONDING**

The City will not be responsible for any expenses incurred in preparing and submitting a proposal.

**CITY'S CONSTRUCTION SERVICES AGREEMENT (EXHIBIT B)**

The attached 'Draft' Construction Services Agreement is the City's standard agreement which specifically outlines the contractual liabilities and shall be used for this project. In submitting a bid, the Vendor agrees to enter into an agreement with the City of Wheaton utilizing the City's standard Construction Services Agreement.

**BONDS**

**Bid Bond:** A Bid Bond/Bid Deposit of 10% of the full contract price is required with your bid submittal.

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- Payment Bond:** The successful Bidder shall provide an original Payment Bond equal to one hundred percent (100%) of the full amount of the award.
- Performance Bond:** The successful Bidder shall provide an original Performance Bond equal to one hundred percent (100%) of the full amount of the award.
- Maintenance Bond:** The successful Bidder shall be required to furnish a Maintenance Bond equal to ten percent (10%) of the final contract price for the faithful performance of the Bidder's obligation to maintain and keep in good repair, the work herein contracted to be done and performed for one (1) year from the date of final acceptance by the City.

The cost of said bonds shall be included in the total bid amount.

**INSURANCE REQUIREMENTS (EXHIBIT C)**

The Vendor must carry and maintain adequate insurance consistent with the requirements listed in Exhibit C-Insurance Requirements. Provide a current Certificate of Insurance with bid as proof of insurance.

**INVOICES**

All invoices shall reflect the following applicable information: Agreement number, name of the Project, name of the Contractor, and the services/deliverables with the price depicted in the same format as the offer.

Invoices shall be emailed to Accounts Payable at [AP@wheaton.il.us](mailto:AP@wheaton.il.us).

**WHEN CONTRACTORS FILE CERTIFIED PAYROLL WITH IDOL, THEY WILL RECEIVE A '.PDF CONFIRMATION' COPY OF THEIR SUBMISSION. A COPY OF THIS '.PDF CONFIRMATION' SHALL BE ATTACHED TO ALL INVOICES. NOT ATTACHING THE CONFIRMATION PAGE MAY CAUSE DELAYS IN PAYMENT.**

**WAIVERS OF LIEN**

- The first Application for Payment shall be accompanied by the General Contractor's partial waiver of lien, called Waiver of Lien to Date, for the full amount of payment due.
- Each subsequent Application for Payment shall be accompanied by the General Contractor's Waiver of Lien to Date, plus the partial waivers of lien of Labor, Subcontractors and Material Suppliers who were included in the immediately preceding Application for Payment to the extent of that payment.
- The final Application for Payment shall be accompanied by the Final Waiver of Lien for the full amount of the Agreement from the General Contractor, Labor, Subcontractors, and Material Suppliers, including those who have not previously furnished such final waivers.

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**PROJECT CLOSE OUT**

- Verification of quality and completion of service.
- Completion of Punch List and all areas of non-compliance or incomplete tasks.
- Review Liquidated Damages.
- Review of Retainage.
- **FINAL PAYMENT: PRIOR TO AUTHORIZATION OF FINAL PAYMENT, THE FOLLOWING DOCUMENTS MUST BE SUBMITTED:**
  - COMPLETED WAIVERS AND LIENS.
  - ELECTRONIC CONFIRMATION FROM THE ILLINOIS DEPARTMENT OF LABOR FOR EACH SUBMITTAL OF CERTIFIED PAYROLL.
  - DOCUMENTED COMPLETION OF THE PUNCH LIST.
  - WRITTEN APPROVAL OF THE CITY'S PROJECT MANAGER.



## City of Wheaton

303 W. Wesley Street  
Wheaton, Illinois

For City of Wheaton Use Only

Prime Contractor Approved for Bid  
 NOT APPROVED TO BID

## REQUEST FOR AUTHORIZATION TO BID

### City of Wheaton – Gables Boulevard Reconstruction Project

IDOT Contractor Number \_\_\_\_\_

Plans, proposals, and specifications may be downloaded at no cost from the City of Wheaton's Web Site located at <http://www.wheaton.il.us/Bids.aspx>. The City of Wheaton offers plans, proposals, and specifications and addendums in electronic format **ONLY**.

**PREQUALIFICATION** - Any contractor who desires to bid the **City of Wheaton – Gables Boulevard Reconstruction Project** must be pre-qualified by the Illinois Department of Transportation (IDOT). Forms and pre-qualification instructions are available at the IDOT website.  
<http://www.dot.state.il.us>

For this project, firms wishing to bid as a Prime Contractor shall have type of work rating of at least 50% for IDOT's Section, 003 - Hot-Mix Asphalt (HMA).

**REQUEST FOR AUTORIZATION TO BID** - Contractors wanting to bid as a Prime Contractor on the **City of Wheaton – Gables Boulevard Reconstruction Project** must submit the following to the City of Wheaton's Procurement Officer [asperkowski@wheaton.il.us](mailto:asperkowski@wheaton.il.us) via website E-mail no later than **4:30 p.m. February 20, 2026**.

1. "City of Wheaton - Request for Authorization to Bid"
2. Current copy of IDOT "Certificate of Eligibility"

**WHO CAN BID?** Bids will be accepted from only those companies that request and receive **Authorization to Bid** from the City of Wheaton's Procurement Officer.

**WHAT CONSTITUTES AUTHORIZATION TO BID?** : When a prospective bidder submits a "City of Wheaton - Request for Authorization to Bid" (COW-RAB) the City will review the submitted information along with the "Certificate of Eligibility". After the request has been analyzed, the bidder's authorization status will be posted on the City website.

**ABOUT AUTHORIZATION TO BID:** Authorization to Bid status will be posted on the City's website within 2 working days of contractor document submittal. Firms unsure as to authorization status should contact the City of Wheaton's Procurement Office at [asperkowski@wheaton.il.us](mailto:asperkowski@wheaton.il.us).

**ADDENDA:** Inquiries regarding clarification or missing information should be directed to the City of Wheaton - Procurement Officer [asperkowski@wheaton.il.us](mailto:asperkowski@wheaton.il.us). Inquiries will be answered via published amendment. It is the contractor's responsibility to be aware of any amendments that may be issued regarding this project. Each amendment will be published on the City's website. Failure to incorporate all relevant amendments may cause the bid to be declared unacceptable.

The City of Wheaton's website is the primary tool to manage the bidding process. To receive an alert when bid items are updated, subscribe to the Wheaton Notify Me page at <https://www.wheaton.il.us/list.aspx>. Select: Bid Postings: City of Wheaton Bids – Building & Construction Improvements. It is the bidder's responsibility to check the Bid Documents webpage at, <http://www.wheaton.il.us/Bids.aspx> before submitting final bid information.

Company: _____			
Street Address: _____	For United Parcel Delivery		
City	State	Zip Code	
E-Mail Address: _____			
Requestor Phone No. _____		Requestor Fax No. _____	
Post Office Box No.: _____		Box No.	For First Class Delivery

1. Using **Black Ink**, complete the request form.
2. **E-mail** the completed request form to [asperkowski@wheaton.il.us](mailto:asperkowski@wheaton.il.us) or Fax to 630 260-2017
3. **Do Not** make any changes on the request form after it has been submitted. Additional items will require a supplemental request.

**EXHIBIT A**  
**GENERAL INSTRUCTIONS REGARDING THE SOLICITATION OF**  
**CONSTRUCTION AND CONTRACTED SERVICES**

Solicitations are open to all business firms actively engaged in providing the materials, equipment, and services specified and inferred. Active engagement will be verified via references. These General Instructions Regarding the Solicitation of Construction and Contracted Services apply to all solicitations for contracted services by the City of Wheaton and shall be incorporated as part of the written and signed Agreement with the successful Bidder along with any addenda items which are issued, unless otherwise specified.

For solicitations involving the IDOT "Standard Specifications for Road and Bridge Construction":

Section 102 of the IDOT "Standard Specifications for Road and Bridge Construction," (the "Standard Specifications"), Adopted January 1, 2022, pertaining to the advertisement, bidding, award, and contract execution shall not apply to this solicitation and contract. Where these General Instructions Regarding the Solicitation of Contracted Services (the "Solicitation Instructions") are inconsistent with any provision of the IDOT Bureau of Local Roads and Streets Special Provision for Bidding Requirements and Conditions for Contract Proposals, these Solicitation Instructions shall control.

**A. DEFINITIONS:**

The following words and phrases, when used in these General Instructions Regarding Solicitations of Construction and Contracted Services document shall have the meanings as specified herein.

- A-1) Agreement:** The written contract between the City and the Bidder covering the work or services to be performed, which includes all other documents that are attached to the Agreement or incorporated by reference and made a part thereof. It shall be understood that the words "Contract" and "Agreement" are synonymous in these documents.
- A-2) Proposal or Bid:** The complete and properly signed bid to do the work or services for the sum stipulated therein, submitted in accordance with the bidding or proposal documents. It shall be understood that the words "bid", and "proposal" are synonymous in these instructions and in the Invitation to Bid documents.
- A-3) Bidder/Proposer:** The person, firm, or corporation submitting a bid or proposal.
- A-4) City:** The City of Wheaton, Illinois, an Illinois Municipal Corporation.
- A-5) Offer:** A signed Proposal or Bid that is timely delivered to the City.
- A-6) Solicitation:** The City's request for an offer from a Bidder for the provision of work, services and/or goods. It shall be understood that the words "solicitation" and "invitation to bid" are synonymous in these instructions and in the Invitation to Bid documents.

**B. SOLICITATION PROCESS:**

The City intends to award a contract to a Bidder who has the experience and equipment to successfully complete the project or provide the service solicited. The Bidder shall be responsible for performing all work or services as outlined in the specifications contained within the Invitation to Bid and shall provide and furnish all labor, materials, equipment and supplies, vehicles, and transportation services required to perform and complete the required work or service in strict accordance with the Invitation to Bid documents. The Proposer desiring to furnish a Proposal or Bid for such work or services shall submit a sealed Bid in accordance with these General Instructions

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Regarding the Solicitations of Construction and Contracted Services and all accompanying documents.

**B-1) Documents:**

- a) The City of Wheaton's website is the official source for all documents related to this solicitation. The City is not responsible for documents distributed by any other source. The City will not transmit solicitation documents to prospective Bidders by way of a facsimile machine.
- b) It is the responsibility of the Bidder to seek clarification of any requirement that may not be clear. This includes a review of all solicitation documents.
- c) Questions concerning this request shall be submitted via e-mail to the attention of the Procurement Officer by the last date for questions as reflected on the Notice to Bidders document. A written response in the form of an addendum will be posted on the City's website for all Proposers to download. It is the responsibility of the Proposer to review all addendums.
- d) Any interpretation, correction or change of the solicitation documents will be made by published Addendum on the City's website. Interpretations, correction, and changes to the solicitation documents made in any other manner will not be binding.
- e) Bidders shall acknowledge the receipt of any addendum.

**B-2) The Cone of Silence:**

- a) The Cone of Silence is designed to protect the integrity of the procurement process by shielding it from undue influences.
- b) During the period beginning with the issuance of the solicitation document through the execution of the award document, Bidders are prohibited from all communications regarding this solicitation with City staff, City consultants, City legal counsel, City agents, or elected officials.
- c) Any attempt by a Bidder to influence a member or members of the aforementioned may be grounds to disqualify the Bidder from participation in this solicitation.

**B-3) Exceptions to the Cone of Silence:**

Exceptions to the Cone of Silence include:

- a) Written communications directed to the Procurement Officer.
- b) All communications occurring at pre-bid meetings.
- c) Oral presentations during finalist interviews, negotiation proceedings, or site visits.
- d) Oral presentations before publicly noticed committee meetings.
- e) Contractors already on contract with the City to perform services for the City are allowed discussions necessary for the completion of an existing contract.
- f) Procurement of goods or services for emergency situations.

**B-4) Investigation:**

- a) The Bidder shall carefully examine all forms included in the solicitation package.
- b) It shall be the responsibility of the Bidder to make any and all investigations necessary to become thoroughly informed of what is required and specified in the solicitation.

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- c) The Bidder shall inspect in detail the site of the proposed work or services and familiarize himself or herself with all the local conditions affecting the work or services and the detailed requirements of delivery, installation, or construction.
  - i) If the site of the work is an area restricted from the general public, an opportunity will be provided for Bidders to perform this inspection.
  - ii) If the site of the work is an area open to the general public, the Bidder may perform their inspection at a time of their choosing.
- d) No plea of ignorance by the Bidder of conditions that exist or that may hereafter exist, because of failure or omission on the part of the Bidder to make the necessary examinations and investigations, will be accepted as a basis for varying the requirements of the City or the compensation to the Bidder.
- e) The submission of a Proposal shall be considered conclusive evidence that the Proposer has investigated and is satisfied as to all conditions to be encountered in performing the work or service, and is fully informed as to the character, quality, quantities, and costs of the work or services to be performed and materials to be furnished, and as to the requirements of the solicitation.

**B-5) Offers:**

- a) Offers including goods or equipment must include Manufacturer's warranties, and/or guarantees.
- b) Offers including service during the warranty/guarantee period must include, in writing, any restrictions, and/or associated costs.
- c) FORMAL OFFERS must be submitted on the forms provided, completed in ink or typewritten, with all blank spaces filled in, properly signed in ink in the proper spaces and submitted in a sealed envelope and delivered to: **City of Wheaton 303 W. Wesley St.-1<sup>st</sup> Floor Finance Counter, Wheaton, IL 60187** prior to the bid opening date and time.
- d) Bidders may attach separate sheets of paper for the purpose of explanation, exception, or alternate proposal and to cover required unit prices. All such attachments must be no larger than 8.5 x 11 inches.
- e) No erasures are permitted. Mistakes may be crossed out and corrections typed adjacent, initialed, and dated in ink by the person signing the offer.
- f) Offers must reference the project name and date of the Bid opening. **Documents should not utilize binders, folders, or papers larger than 8.5 x 11.**
- g) Bids shall be identified as such on the outside of the sealed envelope by marking the envelope "SEALED BID" and with the following information: Company name, address, item, or service proposing, date and time of opening.
- h) Delivery of an offer is acceptance of the City's Agreement. Proposals containing terms and conditions contrary to those specified may be considered non-responsive.
- i) The City shall not accept an offer which is based upon any other offer, contract, or reference to any other document or numbers not included in the solicitation documents.

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**B-6) Order of Precedence:**

- a) Wherever requirements are in conflict, the order of precedence shall be as follows: City Agreement, City Specifications, City Special Terms and Conditions, City General Terms and Conditions.
- b) City requirements take precedence over Bidder's offer.

**B-7) Signatures as Offer:**

- a) Solicitation documents, including but not limited to completed bid certification forms, shall be signed by an officer or employee of the Bidder having the authority to bind the company or firm by signature. All signatures must be properly done in ink in the proper spaces.
  - i) Individuals or sole proprietorships shall be signed by a person with the authority to enter into legal binding contracts. Said individual shall use his/her usual signature.
  - ii) Partnerships shall be signed with the partnership name by one of the members of the partnership, or an authorized representative, followed by the signature and title of the person signing.
  - iii) Corporations shall be signed with the name of the corporation, followed by the signature and title of the person authorized to bind it in the matter, and shall be attested to by the corporate secretary or other authorized officer of the corporation.
- b) The timely delivery of a signed bid is an offer to contract with the City based on the terms, conditions and specifications contained in the City's Invitation to Bid.
- c) If the offer is accepted, the Bidder shall be responsible for all errors in the offer resulting from the Bidder's failure to comply with these instructions and the City shall not be responsible for any charge for extra work or change in anticipated profits resulting from such failure or neglect.
- d) An accepted offer shall become part of the Agreement entered into between the City and Bidder.

**B-8) Modification/Withdrawal of Offers:**

- a) A Bidder may correct, modify, or withdraw its offer by making a request in writing to the City Procurement Officer prior to the time and date of bid opening.
- b) All corrections and modifications must be delivered to the City Procurement Department in a sealed envelope with a notation on the envelope indicating that it contains a modification or correction to the original offer submitted, and identifying the bid by name, number, and opening date.
- c) Offers may not be withdrawn or revised after the due date without the approval of the Procurement Officer.
- d) Negligence in preparing an offer confers no right of withdrawal or cancellation after opening / due date.

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**B-9) Timeframe and Consequences:**

- a) It is the sole responsibility of the Bidder to ensure that the offer is received by the City Procurement Department prior to the bid opening date and time stated on the Notice to Bidders.
- b) Late offers will not be accepted or opened. Offers arriving after the specified bid opening date and time, whether sent by mail, courier, or in person, will not be accepted and will be refused and returned unopened. Any offer submitted to any other office or department of the City and received by the Procurement Department after the deadline for receipt of bids shall not be accepted. Mailed offers which are delivered after the specified bid opening date and time will not be accepted regardless of postmarked time on the envelope.
- c) Unless otherwise specified in the solicitation, offers shall be binding for ninety (90) calendar days following the due date.
- d) No responsibility will attach to the City Procurement Officer or to the City for the premature or non-opening of an offer not properly addressed and identified, except as otherwise provided by law.

**B-10) Public Openings:**

- a) Formal sealed offers will be publicly opened at the time and location stated. The Procurement Officer shall read the name of the Bidder and the offered price. After the opening an apparent low bid will be announced. The award will be based on analysis of costs, deviations, City budget, and approval by the City Council.
- b) The City shall make every effort to publish the Results of Openings on the City's website within approximately three (3) business days.
- c) Bidders are encouraged to attend all openings and to offer constructive suggestions for improvements to the solicitation process, to increase competition, and ways in which the City may achieve greater savings and increased transparency.
- d) Despite the reading of offers at a public opening, if the offers are thence rejected and thus subject to rebid, the read results will not be published and will be exempt from FOIA requests.

**C. REQUIREMENTS:**

**C-1) Brand Names or Equal:**

- a) Specifications are prepared to describe the goods and services which the City deems to be in its best interests to meet its performance requirements. These specifications shall be considered the minimum standards expected of the contractor.
- b) If an offer does not indicate deviations or alternatives to the specifications, the City shall assume the offer is fully compliant with all specifications.

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- c) Specifications are not intended to exclude potential contractors. Any reference in the City's specifications to a brand name, manufacturer, trade name, catalog number or the like is descriptive, not restrictive, indicating materials that are satisfactory.
- d) Consideration of other makes and models will be considered, provided the Bidder submits a request for pre-approval by the last date for questions stated on the Notice to Bidders. The Bidder should state exactly what they propose and attach a cut sheet, illustration or other descriptive matter which will clearly indicate the character of the item. A written response in the form of a public addendum will be published on the City's website.

**C-2) Quantities:**

- a) All quantities represent an estimate of the quantity of the work to be done and/or materials to be ordered. It is given as a basis for comparison of offers and to determine the awarding of the Contract.
- b) The City does not expressly or by implication agree that the actual quantities involved will correspond to the published estimate. The Bidder accepts that the quantities stated are estimates only and will not hold the City bound to said number.
- c) The City reserves the right to modify the estimates, or remove them in their entirety, whichever is in the best interests of the City.

**C-3) Bid Bonds:**

- a) When specifically requested by the City, the Bidder shall provide a Bid Bond / Bid Deposit of 10% of the full Contract price. NOTE: for solicitations involving IDOT specifications and special provisions, this amount supersedes any amount specified by the Illinois Department of Transportation's Bureau of Local Roads and Streets ("BLRS") Special Provisions for Bidding Requirements and Conditions for Contract Proposals as may be incorporated on IDOT Form BLR 12200 and as may otherwise be incorporated as a special provision in the contract documents.
- b) If a Bid Bond (preferred), an original shall be submitted with the bid. If in the form of a certified check or a bank cashier's check, it is made payable to the City of Wheaton. Checks will be retained by the City until an award is fully executed, at which time the checks will be promptly returned to the unsuccessful Bidders.
- c) The Bid Deposit check of the successful Bidder will be retained until the Contract has been executed and all required documents, including a Performance Bond if requested, are received.
- d) The Bid Deposit check of the successful Bidder shall be forfeited to the City if the Bidder withdraws its offer, or neglects, refuses or is unable to enter into a Contract within five (5) business days after Notice of Award.
- e) If the Bidder chooses to use a Bid Bond, the Bid Bond must be in compliance with all bond requirements mandated by the State of Illinois.

**C-4) Deviations to Requirements and Alternative Offers:**

- a) If the Bidder is unable to meet most of the specifications but believes their product/work/services will meet the needs of the City, the Bidder should submit an Alternate Bid and include material specification sheets, performance data, or other documentation justifying consideration.

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- b) If a Bidder plans to submit multiple offers, each offer must be packaged separately and identified on the outer envelope and on the cover page of the offer in a way that can be differentiated from the other offer(s).
- c) The Procurement Officer reserves the right to make the final determination of compliance or whether any deviation or alternate is of an equivalent or better quality, and which offer can best meet the needs of the City. Such a determination shall be incorporated within the City's recommendation to the City Council.

**C-5) Environmental Requirements:**

- a) The City is committed to becoming a sustainable City that conserves its use of resources to optimize efficiency and minimize waste. The City is committed to providing services in an equitable manner for present and future generations.
- b) Recycled Content Products: It is in the City's interest to purchase products with the highest recycled material content feasible. The City requests that Bidders suggest recycled content products as alternatives.
- c) Recycled Packing Material: The City desires that all shipping containers/packing material for equipment, materials and supplies delivered to the City contain no less than the specified minimum EPA percentage requirements of post-consumer recycled content. Containers and packing material should show the recycled product logo and recycled content percentage information.
- d) To help "Turn Wheaton Green," the Bidder's sustainability policy, as well as green initiatives for this solicitation, will be considered in the evaluation of the offer.

**C-6) Price:**

- a) The price offered shall remain firm throughout the duration of the Contract.
- b) Failure to record all requested breakdown of prices may result in disqualification. Unit price shall be shown for each unit specified. In case of mistake in extended price, unit price shall govern.
- c) Price shall represent the entire cost of all requirements stated within the solicitation and Contract. No subsequent claim will be recognized for any surcharges, add on costs, increase in material prices, cost indexes, wage scales, fuel surcharges, freight costs, packaging or any other rates affecting the industry or this project.

**C-7) For Projects Bid as Time and Material:**

- a) Time includes, but is not limited to, salaries, benefits, overtime, set-up, break-down, includes all costs associated with labor for this service.
- b) Material includes, but is not limited to, goods, components, equipment, and includes all costs associated with all items necessary to complete this service.
- c) Complete illustrative and technical data, drawings, and/or printed literature for the materials or equipment quoted should be included with the offer.
- d) Overhead and Profit shall include all costs not covered under material or labor, such as fixed costs and taxes.

**C-8) Discounts:**

- a) Discounts of less than thirty (30) days will not be considered in the evaluation.
- b) Discounts for thirty (30) days or more may be considered in the evaluation.

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- c) Where the net offer is equal to an offer with a discount deducted, the award shall be made to the net offer.
- d) Discounts will be figured from the date of receipt of a proper invoice or the approval of the quality of the product received or service completed – whichever is later.

**C-9) Taxes:**

- a) The City is exempt by law from paying sales tax on goods, equipment, and products permanently incorporated into the project, from State and City Retailer's Occupation Tax, State Service Occupation Tax, State Use Tax and Federal Excise Tax. Unit prices shall not include any local, state, or federal taxes.
- b) The City's Sales Tax Exemption Number is E99974312.

**D. EVALUATION OF OFFERS:**

**D-1) Waivers and Rejection of Offers:**

- a) The City reserves the right to waive any informality, technical requirement, deficiency, or irregularity in the offer. The City may conduct discussions with Bidders to further clarify the offer as may be necessary. Correction of the offer shall be affected by submission within 4 hours (e-mail or fax) of a corrected page with changes documented and signed.
- b) The City reserves the right to reject any and all offers in whole or in part, if it is in the public interest to do so, including, but not limited to: budgetary constraints, unclear solicitation documents, pricing aberrations, front end loading; mathematically unbalanced proposals/bids in which prices for some items are substantially out of proportion to comparable prices; materially unbalanced proposals in which material requirements for some items are substantially higher to comparable proposals; and other reasons deemed important to the City. The City further reserves the right to reject the Bid of any Bidder who, either in its own right or through an affiliation with another entity which the City has determined has not completed a prior project, whether with the City or elsewhere, because of the fault of the Bidder, its subcontractors or employees; has been declared in default on a prior contract whether with the City or elsewhere; has failed to complete a prior project in a timely fashion whether with the City or elsewhere; based on its work record, is not capable of performing the Contract whether due to lack of sufficient prior experience, as determined by the City, or any other reason; has a work record of its Subcontractors demanding direct payment from the owner; has a work record of its Subcontractors, employees, or material suppliers complaining to the City or other awarding authority regarding the Bidder's failure to pay them; has a record of complaints made to the City or other awarding authority by persons offended by the behavior of the Bidder, its Subcontractors or employees; or has a record of its failure to comply with State of Illinois and/or City laws or requirements. "Work record" and "record" constitute a minimum of one event in the work history of the Bidder.

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- c) The City reserves the right to accept or reject any offer in which the Bidder names a total price for all the work without breaking down requested material costs, labor costs, and/or overhead and profit.
- d) Multiple offers from an individual, firm, partnership, corporation, or association under the same or different names are subject to rejection unless specifically permitted in the solicitation. Reasonable grounds for believing that a Bidder is interested in more than one offer may result in rejection of all offers in which the Bidder is interested. Any or all offers will be rejected if there is any reason for believing that collusion exists.
- e) Nothing in this section precludes a firm from acting as a subcontractor to be included as a subcontractor for two or more prime contractors submitting a proposal for work or services. However, a subcontractor may not submit a proposal as a prime contractor, and a prime contractor may not submit a proposal as a subcontractor.
- f) If the City rejects all offers and concurrently provides notice of its intent to reissue the solicitation, the rejected offers remain exempt from FOIA disclosure requirements until the City awards or rejects the reissued solicitation.

**D-2) Receipt of One (or too few) Offers:**

If the City receives one or too few proposals, as defined by the City, the City may reschedule the due date. The offers received will either be:

- a) Returned unopened to the Bidder for re-submittal at the new due date and time, or
- b) If there are no changes in requirements, and pending Agreement with the Proposer, held until the new due date and time.
- c) If the City does not receive any bids from a publicly broadcast solicitation, the City may negotiate with any interested parties.

**D-3) Confidential Information:**

- a) Bidders may be required to provide evidence of financial viability. This may be a Dunn and Bradstreet Report, a financial statement prepared by a licensed Certified Public Accountant showing the Bidder's financial condition at the end of the past fiscal year, or an annual report.
- b) Bidders may be required to provide other information which they consider proprietary and confidential, and if made known to the public, may affect their ability to compete in the marketplace. Said information is subject to the requirements of the Illinois State Freedom of Information Act ("FOIA"), 5 ILCS 140 *et seq.*, which requires the disclosure of public records upon request unless the records are specifically exempt from disclosure.
- c) Pursuant to FOIA, the following shall be exempt from inspection and copying: "(g) Trade secrets and commercial or financial information obtained from a person or business where the trade secrets or commercial or financial information are furnished under a claim that they are proprietary, privileged or confidential, and that disclosure of the trade secrets or commercial or financial information would cause competitive harm to the person or business and only insofar as the claim directly applies to the records requested." 5 ILCS 140/7(g).

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d) Bidders considering requests to be proprietary and confidential should submit an additional redacted offer. Failure to do so may result in information becoming available to the public.

**D-4) Determining Responsibleness of the Bidder:**

- a) The City reserves the right to determine the competence, the financial stability, and the operational capacity, of any Bidder.
- b) Upon request by the City, Bidders shall furnish evidence for the City to evaluate their resources and ability to provide the goods and services required. Such evidence may include, but not be limited to, tour of facilities, staffing levels, listing of equipment and vehicles, listing of personnel's qualifications, certificates, and licenses; listing of committed but not yet completed orders; financial statements.
- c) Bidder may be required to submit samples of items within a specified timeframe and at no expense to the City. If not destroyed in testing, samples will be returned at the Supplier's request and expense. Samples which are not requested to be returned within thirty (30) days will become the property of the City.
- d) Bidders may be required to perform a demonstration of the item or service being proposed. Such a demonstration must be at a site convenient and agreeable to the affected City personnel and at no cost to the City.
- e) Bidders may be required to provide references. The City reserves the right to contact said references or other references that may be familiar with the Bidder. The City reserves the right to eliminate a Bidder who has not demonstrated the required years of service within the required specialty.
- f) Bidders may be required to provide their internal policy on sustainability.
- g) The City reserves the right to determine if such information might hinder, influence the quality of the work specified, or prevent the prompt completion of additional work such as future maintenance and service.

**D-5) Selection Process:**

- a) The City endeavors to select the offer meeting the best interests of the City as stated by its City Council based on the totality of lawful considerations.
- b) The City's determination of best overall value may include consideration of the City's internal cost structure for meeting requirements, such as the City's inventory carrying costs, ordering lead times, equipment maintenance costs, standardization, available project management resources, and items typically identified with and relating to a "Life Cycle Cost Analysis".
- c) The City will consider the following non-exclusive list in determining award: soft costs of contract management; total cost of ownership factors such as transition costs, training costs, additional requirements such as spare parts and special tooling.
- d) The City will contact references to verify Bidder's ability and skill to perform the work required based on past work of similar nature, quality of work, proactive nature of work crew, adherence to the project's production schedule and proposed price constraints, and references' experience if the Contractor has character, integrity, and a reputation for good judgment.

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- e) If the City's evaluation yields a concern with the potentially recommended Bidder's ability, the City reserves the right to require a Performance Bond at no additional cost to the City.
- f) Should identical low, responsive, and responsible bids be received from two or more Bidders, the City shall exercise one of the following tie breaking methods:
  - (i) Tie Bid (two suppliers): The Procurement Officer, with a witness present, may flip a coin with heads representing the Offeror whose name appears first in alphabetical order. If the toss is heads, said Offeror will receive the recommendation to award.
  - (ii) Tie Bid (three or more suppliers): The Procurement Officer, with a witness and each vendor present, shall shuffle a new deck of playing cards and have each Offeror cut the cards. The Offeror who cuts the highest card (with Ace high) shall be recommended for award.

**D-6) Award:**

- a) Except as otherwise stated, Bidders will be awarded within ninety (90) days from the opening date.
- b) The award is based on the lowest responsive responsible offer; offering the lowest life-cycle cost; providing the best overall value to the City; and deemed most advantageous to the City, price and other factors considered.
- c) When there is a Base Bid and Alternates, the low Bidder shall be the lowest responsible and responsive bid submitted for the best combinations for the City. If all Bids and Alternate exceed the project budget, the City reserves the right to award to the Bidder presenting the best alternatives for the City.
- d) When there is a Base Bid and Options, the low Bidder shall be the lowest responsible and responsive bid submitted for the best combinations for the City.
- e) The City reserves the right to award by item, part or portion of an item, group of items, in the aggregate, or to reject any and all offers in whole or in part according to the best interests of the City.
- f) A Bidder may restrict its offer to consideration in the aggregate by so stating on the proposal form but must name a unit price on each item.
- g) The successful Bidder shall be required to enter into a Contract with the City of Wheaton covering all matters set forth in the solicitation document, and addenda.

**D-7) Reservation of Rights:**

This solicitation does not commit the City to enter into a contract, nor does it obligate the City to pay for any costs incurred in preparation and submission of proposals/bids or in anticipation of a contract. The City expressly reserves the right to:

- a) Make the selection based on its sole discretion;
- b) Postpone bid opening for its own convenience;
- c) Consider and accept alternate Proposals/Bids, if specified in the solicitation, when most advantageous to the City;
- d) Waive any informality and minor deviations from the specifications provided they do not affect competition;

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- e) Waive any minor informality in any Proposal/Bid or solicitation procedure (a minor informality is one that does not affect the competitiveness of the Proposer/Bidder);
- f) Add additional terms or modify existing terms in the solicitation documents;
- g) Solicit new Proposals/Bids;
- h) Accept other than the lowest offer;
- i) Negotiate with any, all, or none of the Bidders;
- j) Approve or disapprove the use of particular subcontractors; and/or
- k) Otherwise solicit proposals or quotations if some other manner of negotiation better serves the City's interests.

**E. REQUIREMENTS IF AWARDED THE WORK:**

**E-1) Agreement:** The successful Bidder, if awarded by Agreement, shall be required to enter into an Agreement with the City of Wheaton covering the services or work to be provided and shall execute all legal certifications and compliance with laws documentation required by that Agreement.

**E-2) 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 ("IDOL") 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.*

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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.

**E-3) Insurance:**

- a) The successful Bidder, if awarded by Agreement, shall be required to carry insurance acceptable to the City.
- b) Contemporaneous with the successful Bidder's execution of an Agreement with the City, the successful Bidder shall provide certificates of insurance with endorsements, including those of subcontractors, and waivers of subrogation all in accordance with the Special Provisions for Insurance Coverage of Construction Services (Agreement Exhibit C), and shall list the City of Wheaton as an additional primary insured under the Bidder's general liability insurance policy.
- c) The Bidder's obligation to purchase stated insurance cannot be waived by the City's action or inaction.

**E-4) Performance and Payment Bonds:**

**Performance and Payment Bond NOT Required.**

**Performance and Payment Bond IS Required.** The successful Bidder, if awarded by Contract, shall be required to provide a performance and payment bond through a bonding company listed on the Department of Treasury's Listing of Approved Sureties: [Surety Bonds - List of Certified Companies \(treasury.gov\)](https://treasury.gov) The surety must be in compliance with any bond requirements mandated by the State of Illinois and by City Agreement. All bonds provided by Contractor and any subcontractor shall include such provisions as will guarantee the faithful performance of the Contractor and subcontractor's obligations under the Prevailing Wage Act, 820 ILCS 130/1 *et seq.*

**E-5) Maintenance Bond:**

**Maintenance Bond NOT Required.**

**Maintenance Bond IS Required.** The successful Bidder shall be required to furnish a Maintenance Bond equal to ten percent (10%) of the final contract price for the faithful performance of the Bidder's obligation to maintain and keep in good repair, the work herein contracted to be done and performed for one (1) year from the date of final acceptance by the City.

**E-6) Security Clearance:**

- a) Background checks inclusive of finger printing may be required for employees, agents, and subcontractors of the Bidder working in secured areas on City property. The successful Bidder shall submit a list of employees', agents and subcontractor names to the Project Manager who will coordinate the background checks with the police department.
- b) Anyone with a background history showing a conviction for a felony; theft history of any kind, sex offense history, or any crime involving moral turpitude, illegal drug or narcotics use, sale or possession, or anyone showing a felony charge pending, or who has any outstanding warrants of any type, including misdemeanor traffic or felony warrants, may be subject to arrest, and shall not be allowed to work under this Agreement.

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**F. AUDIT:**

The successful Proposer may be audited by the City or an agent of the City. Audits may be at the request of federal or state regulatory agencies, other governmental agencies, courts of law, consultants hired by the City or other parties which in the City's opinion requires information. Data, information, and documentation will include, but not be limited to, original estimate files, change order estimate files, detailed worksheets, subcontractor proposals, supplier quotes and rebates, and all project related correspondence, and subcontractor and supplier change order files.

**G. PROTESTS:**

**G-1) Right to Protest.** Any actual or prospective, bidder, proposer, offeror, or vendor ("protesting party") who believes they have been adversely affected in connection with a City-issued solicitation, evaluation of a bid or proposal, or award of a contract may initiate a pre-bid, pre-award, or post-award protest. A protesting party has no right to protest the cancellation of ITBs or RFPs and protests relating to the rejection of all bids or proposals.

- A pre-bid protest shall be submitted in writing to the Procurement Officer no later than five (5) business days before the due date for bids or proposals.
- A pre-award protest shall be submitted in writing to the Procurement Officer no later than five (5) business days after the due date for bids or proposals or notification that the protesting party's status as a bidder or proposer has changed.
- A post-award protest shall be submitted in writing no later than three (3) business days after the date the bid award is posted on the City's website or online forum.

**G-2) Contents of Protest.** Protests must include: the name, address, phone number, e-mail address of the protesting party; appropriate identification of the solicitation; if an award has been initiated, the award document number (if available); justification or grounds for the protest, with specificity of the local, state, and federal law, regulation or procedure that is alleged to be violated; precise statement(s) of the relevant facts; identification of the issue to be resolved; the protesting party's argument and supporting documentation; information establishing the timeliness of the protest; and the signature of the protesting party. Issues not raised by the protesting party in the protest are deemed waived and may not be raised after a final determination has been made. Protests that do not meet the time or content requirements may be rejected by the Procurement Officer. The Procurement Officer is not obligated to postpone contract awards to allow a protesting party time to correct a deficient protest unless otherwise required by federal law or regulation.

**G-3) Protest Bond.** The protesting party shall, at the time of submitting any protest to the City, furnish at its sole expense a protest bond in the form of a cashier's check payable to the City of Wheaton, in an amount equal to five percent (5%) of the City's estimate of the total contract award amount, or, if the amount of the contract award cannot be reasonably determined at that time, then in the amount of one thousand two hundred and fifty dollars (\$1,250.00). In those circumstances when the contract award cannot be reasonably determined, the City, by the determination of its

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City Attorney, may require a protest bond in an amount not to exceed ten thousand dollars (\$10,000.00) if one thousand two hundred and fifty dollars (\$1,250.00) is inadequate under the facts presented. If the City increases the required protest bond amount, the protesting party shall have five (5) business days in which to pay the City, in the form of a cashier's check, the difference between the one thousand two hundred and fifty dollars (\$1,250.00) and the new amount of protest bond. The protest bond shall serve as a guarantee of the validity and accuracy of the protest.

- If the protest is upheld, the bond shall be returned to the protesting party.
- If the protest is denied, the bond shall be used by the City to recover any administrative costs and damages incurred as a result of the protest and/or resulting delay in the contracting for goods and services which were the subject of the solicitation.
- Failure to submit a compliant protest bond with the written protest shall be deemed a waiver of the protest and jurisdictional deficiency in the protest that forfeits the right to protest.
- Failure to pay any additional amount of protest bond required shall be deemed a waiver of the right to maintain a protest.

**G-4) Respondent party response.**

- A respondent party is a person who has the right to respond to a protesting party's protest and shall be an actual bidder, proposer, prospective bidder or prospective proposer in the procurement involved whose direct economic interest would be affected by the award of the contract or by the failure to award the contract; and who demonstrates compliance with the bid protest procedures, the terms on the invitation for bids, and the contract documents (if bid) or request for proposals (RFP), as applicable (hereinafter "respondent party").
- After receiving notice of the protest from the City, the respondent party shall have five business (5) days to respond in writing to a protest to provide the Procurement Officer with supplemental information. A respondent party may request, and the Procurement Officer may allow an additional period of time to respond if the protest is complicated and/or the documentation is voluminous. In no event will the additional time exceed 5 business days.
- The failure of a respondent party to respond to a protest, or to any portion of it, shall not be deemed to be an admission of any allegation in the protest, but shall be deemed to constitute a waiver of the opportunity to respond to such allegation(s), if any, at this stage in the process.

**G-5) Stay of Procurement.**

- Upon timely receipt of a protest and after examination of the issues surrounding the protest, the Procurement Officer, in consultation with the City Attorney, will determine whether the protest has merit and if the solicitation, evaluation, or award shall be stayed, or if other further action is necessary to protect the interests of the City.

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- If the contract performance has already begun, the Procurement Officer, in consultation with the City Attorney, will determine whether the performance of the contract should be suspended. A contract may not be suspended if the work or supplies are necessary to protect the interests of the City.

**G-6) Final Determination.** The Procurement Officer, in consultation with the City Attorney, will provide a written decision to the protesting party as expeditiously as possible, but no later than thirty (30) business days after receiving all relevant information. The Procurement Officer's decision shall become final on the third business day after the date of the Procurement Officer's written decision, unless a timely request for reconsideration is filed with the Procurement Officer as noted below.

**G-7) Reconsideration of Protest Decision.** A protesting party or respondent party may request the Procurement Officer's reconsideration if:

- Information becomes available that was not previously known, or could have reasonably become known; or
- The Procurement Officer's decision contains an error of law or regulation.

The request shall be submitted in writing to the Procurement Officer within three (3) business days of the date of issuance of the initial decision. The request shall include a detailed explanation of the basis for reconsideration and state the course of action the protesting party or respondent party desires that the Procurement Officer take. For purposes of this section, deposit in the mail, postage prepaid does not constitute filing or receipt. A request is considered filed when physically received by the Procurement Officer or duly appointed designee.

The Procurement Officer shall refer the request for reconsideration of the protest decision to the City Manager. The City Manager, or his or her designee, may conduct an evidentiary hearing at his or her sole option. The City Manager or designee will conduct a review of the request for reconsideration of the protest decision and will attempt to issue a decision within ten (10) business days after the City's receipt of the request for reconsideration or the date of the hearing, whichever is later. The City Manager or designee's decision shall be final.

After a written decision is issued by the City Manager or his designee, the appropriate actions will take place. If the protest is upheld, the Procurement Officer's actions may include, but are not limited to, any appropriate steps to correct the procurement process, such as: re-solicitation of bids or proposals, revising evaluation of bids or proposals, or termination of the contract. If the protest is denied, the Procurement Officer will lift any imposed suspension and proceed with the procurement process or the contract.

**H. OTHER ENTITY USE:**

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- a) Although this solicitation is specific to the City of Wheaton, Offerors have the option of allowing this offer, if awarded by the City to the Offeror, to be available to other local entities and agencies within the DuPage-Kane-Cook-Will and Kendall Counties. If the successful Offeror and the interested entity/agency mutually agree on the Terms and Conditions, inclusive of pricing, both parties may perform business under the authority of this solicitation and Contract.
- b) It is understood that at no time will any City or municipality or other agency be obligated for placing an order for any other City, municipality, or agency; nor will any City or municipality or agency be obligated for any bills incurred by any other City or municipality or agency. Further, it is understood that each agency will issue its own purchase order to the awarded Supplier.

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### GENERAL TERMS AND CONDITIONS FOR CONSTRUCTION

- 1) **DEFINITIONS:** The following words and phrases, when used in these General Terms and Conditions for Construction shall have the meanings as specified herein.
  - a) **Agreement:** The written contract between the City and the Contractor covering the work or services to be performed, which includes all other documents that are attached to the Agreement or incorporated by reference and made a part thereof. It shall be understood that the words "Contract" and "Agreement" are synonymous in these documents.
  - b) **City:** The City of Wheaton, Illinois, an Illinois Municipal Corporation
  - c) **Offer:** A signed proposal or bid that is timely delivered to the City.
- 2) **CONTROLLING DOCUMENT:**

For contracts that incorporate the IDOT "Standard Specifications for Road and Bridge Construction," Adopted January 1, 2022 (the "Standard Specifications") or Supplement Specifications and Recurring Special Provisions: Where these General Terms and Conditions for Contractors are inconsistent with any provision of the Standard Specifications or the Supplemental Specifications and Recurring Special Provisions, these General Terms and Conditions shall control.
- 3) **AGREEMENT ADMINISTRATION:**
  - a) A "Notice to Proceed" order will be issued by Procurement upon confirmation of a properly executed Agreement.
  - b) Once the "Notice to Proceed" order is issued, the Contractor's primary contact with the City will become the Project Manager.
  - c) The Project Manager's primary responsibility is to assure the City receives the contracted services in accordance with the terms and conditions and specifications of the 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 equipment, materials, and project progress; address any quality issues and change orders; verify schedule of values, output, schedule status; conduct random inspections.
  - d) The Contractor shall provide the name and contact information of a key Representative to the Project Manager who can be contacted during time of emergency or at any hour City staff sees fit to do so.
  - e) If security clearance is required for this work, it shall be pursued at this time.
- 4) **COMMUNICATIONS PLAN:**
  - a) The Contractor shall designate an individual who must be present, at all times, on the site and who will serve as the Contractor's authorized representative throughout the completion of the Work and who shall be readily available to respond to communications. This individual must be a competent, English-speaking individual who is capable of reading and understanding the Agreement documents. This representative shall be subject to receive instructions and have full authority to execute the directions, without delay, and promptly supply any necessary labor, equipment, material, or incidentals to do so. If any person employed shall refuse or neglect to obey the directions of the Project Manager, in anything relating to the Work, or shall appear to be incompetent, disorderly, or unfaithful, he/she shall,

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upon request of the City, be at once discharged and shall not be employed again on any part of the Work.

- b) The Contractor shall provide the name and phone number of the Contractor's representative who, in the case of an off-hours emergency can be readily accessible and be available for quick response to the site. If that person does not respond within the period of time requested all reasonable costs, including the payment of overtime wages or charges, shall be deducted from payments due the Contractor. The Contractor shall immediately notify the Project Manager in writing of any change in the identity and telephone number of the Contractor's representative.
- c) The Contractor is required to provide the City's Project Manager with written/e-mailed bulletins addressing the status of the project throughout the life of the Agreement.
- d) The bulletins shall cover all work performed and completed and shall confirm the schedule of the work yet to be performed. It shall also state any assumptions and/or exclusions.
- e) The bulletin shall identify problems encountered, or still outstanding, with an explanation of the cause and resolution of the problem or how the problem will be resolved.
- f) The Contractor will be responsible for conducting status meetings with the Project Manager as scheduled. The meetings can be in person or over the phone, at the discretion of the City.

#### 5) DOCUMENTS:

- a) Contractor shall maintain at the job site a complete and current set of drawings, plans, and Agreement documents; bulletins, supplemental instructions, proposals, change orders, subcontractor's proposals, supplier's invoices, all written requests, and responses to each required change.
- b) All documents shall accurately reflect the current status of all pertinent data including changes in the line-item quantities and contract sum attributed to change orders.
- c) All documents shall be available to the Project Manager.
- d) All documents shall be available for auditing purposes, Freedom of Information Act compliance requirements, and other reasons necessitated by the City.

#### 6) MATERIAL AND EQUIPMENT:

- a) If the offer identifies an item by manufacturer's name, trade name, catalog number, or reference, the Contractor shall furnish the item so identified and shall not propose to furnish an "equal".
- b) If the identified item is no longer available, the City shall approve any proposed "equal" prior to order placement. The City will not incur any additional costs for the "equal".
- c) All components used in the manufacture or construction of materials, supplies and equipment, and all finished materials, shall be new, the latest make/model, of the best quality, and the highest-grade workmanship.
- d) Contractor shall provide documentation that any and all Hazardous Material created during the performance of the project work has been disposed of or recycled in compliance with the "Standards for Universal Waste Management", as set forth in Title 35, Part 733 of the Illinois Administrative Code, and other applicable State, Federal and local regulations.

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- e) All material or equipment furnished shall meet the minimum requirements of Occupational Safety & Health Standard (OSHA) published in the Federal Register, U L, or other nationally recognized certifying body.
- f) Contractors shall store all volatile materials in covered metal containers and remove them from the project site daily.
- g) Contractors shall provide adequate ventilation when using volatile or noxious substances or materials.

#### 7) SUBSTITUTIONS:

- a) No substitutions shall be considered after Notice of Award except under one or more of the following conditions:
  - i) Substitution required for compliance with final interpretations of code requirement or insurance regulations.
  - ii) Unavailability of specified products, through no fault of the Contractor.
  - iii) Subsequent information discloses the inability of specified products to perform properly or to fit in designated space.
  - iv) Manufacturer /fabricator refusal to certify or guarantee performance of specified product as specified.
  - v) When a substitution would be substantially to City's best interest.
- b) Substitutions shall not be considered when items are indicated or implied on shop drawings or product data submittals without formal request.

#### 8) REQUESTS FOR SUBSTITUTION:

- a) Requests for substitution shall be submitted to the attention of the Project Manager. Include documentation confirming compliance of proposed substitution with Agreement documents.
  - i) For products include Product description and identification, manufacturer's name, and address. manufacturer's literature, performance and test data, reference standards, samples, name, and address of similar projects on which product was used and dates of installation.
  - ii) For construction methods include a detailed description of proposed method, drawings illustrating methods, itemized comparison of proposed substitution with product or method specified, statement regarding the effect of the substitution to the construction schedule.
- b) Identify: changes or coordination required, other contracts affected, accurate cost data on proposed substitution in comparison with product or method specified.
- c) Contractor attests that he has personally investigated proposed product or method and determined that it is equal or superior in all respects to that specified; that he will provide the same guarantee for substitution as for product or method specified; that he will coordinate installation of accepted substitutions into the work, making all changes for work to be complete in all respects.
- d) Cost data must include all related costs under contract but excludes owner's redesign, administrative costs of owner, costs under separate contracts.

## EXHIBIT A

### GENERAL TERMS AND CONDITIONS FOR CONSTRUCTION

- e) The Contractor shall pay all additional costs and expenses for the owner and other Contractors.
  - i) Acceptance of substitution shall require substantial revision of plans, drawings, and Agreement documents for all related projects.

#### 9) **DELIVERY AND STORAGE:**

- a) Deliveries of documents, materials, equipment etc. are between the hours of 8:30 A.M. and 3:00 P.M. Monday through Friday, excluding holidays, unless otherwise stipulated.
- b) Failure to deliver within a reasonable lead-time as determined by the City shall constitute authority for the Procurement Officer to purchase in the open market items of comparable grade to replace the items not delivered.
- c) Contractor shall accept material and equipment delivered to the job site and shall be responsible to store all items in accordance with the manufacturer's written instructions, handling, and protection from weather, damage, and theft for the duration of the Agreement. The Contractor shall be responsible for losses.
- d) Material delivered shall remain the property of the Contractor until:
  - i) A physical inspection and actual usage of the material is made and found to be acceptable to the City; and
  - ii) Material is determined to be in full compliance with the solicitation documents and executed Agreement.
  - iii) Where circumstances or conditions exist preventing effective inspection of the goods at the time of delivery, the City reserves the right to inspect the goods within a reasonable time after delivery.
- e) Contractor assumes full responsibility for protection and safekeeping of the Contractor's own materials and equipment stored on premises, shall move, if necessary, all stored products which interfere with operations of the City.
- f) Unless otherwise specified, packaged material shall remain in original containers with labels intact and seals unbroken.
- g) The Contractor shall submit a Safety Data Sheet (SDS) prior to or at the time of delivery for any/all toxic substances per Public Act 83-240, OSHA standards or any other applicable law.

#### 10) **NONCONFORMING MATERIALS:**

- a) In the event the delivered material is not in compliance to the specification documents and executed Agreement, the City will reject the material.
- b) The Contractor shall remove rejected materials at his expense promptly after notification of rejection.
- c) Contractor shall provide replacement of rejected articles immediately. If replacement is not timely, as determined by the City, the Procurement Officer will purchase in the open market items of comparable grade to replace the items not replaced and the Contractor shall reimburse the City for any expense incurred in excess of Agreement prices. Such purchases shall be deducted from Agreement quantities.
- d) The City reserves the right to either: cancel the order; request Contractor to issue credit to the City; or deduct such amount from monies owed.

## EXHIBIT A

### GENERAL TERMS AND CONDITIONS FOR CONSTRUCTION

- e) Should public necessity demand it, the City reserves the right to use or consume items delivered which are substandard in quality, subject to an adjustment in price to be determined by the Procurement Officer.

#### **11) MANUFACTURER'S REQUIREMENTS:**

- a) All work must be performed according to the manufacturer's stated recommendations.
- b) If manufacturer's stated recommendations conflict with specifications, issues should be addressed in writing to the Project Manager prior to proceeding with any work.
- c) If manufacturer's stated recommendations include required services not listed within the specifications, said services shall be considered as inherent to the City's specifications and offers shall include said services.
- d) All work shall be performed consistent to industrial performance standards.

#### **12) PERMITS AND LICENSES:**

- a) The successful Contractor shall be responsible for obtaining, at his or her own expense, all permits and licenses which may be required to complete the Agreement.
- b) Contractor represents that it, its employees, agents, and subcontractors shall hold all required licenses, permits, qualifications and certificates, and have duly registered and otherwise complied in all respects with all applicable federal, state, and local laws, regulations, and ordinances applicable to the performance of this Agreement.

#### **13) CONTRACTOR USE OF PREMISES:**

- a) Contractor shall confine operations at the site to areas permitted by all laws, ordinances, and permits, as well as the Agreement documents.
- b) The Contractor shall control operations to avoid interference with normal traffic flow on and around the site; when necessary, provide barriers, warning lights, and signs as required to protect workers and the public.
- c) Contractors shall limit use of premises for work, storage of material and equipment, and parking of worker's automobiles.
- d) Contractor shall conduct operations in a manner that avoids interference with use of the building and building operations and which protects persons and property.
- e) If utility shutdown is required, Contractor shall provide the Project Manager two (2) days advanced warning and an estimation of the duration of required utility shutdown.

#### **14) UTILITY LOCATION:**

- a) The Contractor shall exercise extreme caution while working around existing utilities. The Contractor shall notify J.U.L.I.E., utility companies, and the Project Manager before commencing construction work around utility locations within the scope of the project.

#### **15) CONTRACTOR IDENTIFICATION**

- a) For security purposes, all contracted service providers shall be clearly identified with company photo id and company attire.
- b) Upon Project Manager's approval, Contractors requiring unrestricted mobility within designated facilities shall require a City of Wheaton Contractor photo id.

## EXHIBIT A

### GENERAL TERMS AND CONDITIONS FOR CONSTRUCTION

- c) Contractor's advertising decals, stickers or other signs shall not be affixed to equipment or visible to the public.

#### **16) MANUALS AND DOCUMENTS:**

- a) The Contractor shall submit to the City such operating and maintenance manual and repair part lists as required by the nature of the work.

#### **17) CLEANING:**

- a) Contractors shall maintain premises and public properties free from accumulation of waste, debris, and rubbish caused by construction operations. Cleaning and disposal operations shall comply with Federal, State, and local ordinances and anti-pollution laws.
- b) Contractors shall provide on-site metal containers for collection of waste materials, debris, and rubbish.
- c) At completion of work, the Contractor shall: sweep paved areas broom clean; remove waste materials, rubbish, tools, equipment, machinery, and surplus materials; clean all sight-exposed surfaces and leave project area clean and ready for use; clean the project site, yard, grounds, and landscaped areas; remove petro-chemical spills, stains, and other foreign deposits; clean plumbing fixtures to a sanitary condition, free of stains.
- d) Contractor touch-up and otherwise repair and restore marred exposed finishes and surfaces.
- e) If Contractor fails to clean up as provided in this paragraph, the City may do so, and the City shall be entitled to reimbursement from the Contractor.

#### **18) PARKING:**

- a) The Contractor shall not permit its employees, agents, or any subcontractor's and their employees to park their vehicles or store equipment or materials adjacent to the traveled right-of-way where it may be a hazard to traffic.
- b) A clear distance of at least thirty (30) feet from the edge of the pavement or right-of-way shall be kept free of any obstacles unless otherwise authorized by the City.

#### **19) SAFETY AND HEALTH:**

- a) All Occupational Safety and Health Administration (OSHA) standards apply.
- b) Volatile waste shall be stored in covered metal containers and removed from premises daily.
- c) Adequate ventilation shall be provided during use of volatile or noxious substances.
- d) Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Work required under the Agreement.
- e) Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to (i) employees on the project and other person who may be affected thereby; (ii) the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of Contractor or subcontractors; and (iii) other property at the project site or adjacent thereto, such as trees,

## EXHIBIT A

### GENERAL TERMS AND CONDITIONS FOR CONSTRUCTION

shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation or replacement in the course of construction.

- f) Contractor shall erect and maintain, as required by existing conditions and performance of the Work, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities.

#### **20) CHANGE ORDER PROCEDURE:**

The City reserves the right to make changes to the Scope of Work or Scope of Services by altering, adding to, or deducting from the work, or services, or by making changes to any applicable plans and specifications, without invalidating the Agreement. All such changes shall be executed under the conditions of the original Agreement, except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such change.

- a) Issuance of a memo or verbal approval shall not be considered a Change Order and is not authorization to proceed.
- b) A change order is a change in a contract term, other than as specifically provided for in the contract, that authorizes or necessitates any increase or decrease in the cost of the contract or in the time of completion or in the scope of the work.
- c) Should the Contractor consider that a change in the specified work or services, the Agreement sum, or Agreement time is required, he shall initiate a change order and submit it to the Project Manager for documented approval before proceeding with the work or services.
- d) A fully executed and approved City of Wheaton Change Order Form shall be required with any and all changes in Agreement amount/cost, in time for completion of services or work, in scope to the extent that it results in a change in Agreement amount/cost or timeframe, or any combination thereof and shall become incorporated into the Agreement upon City approval. Issuance of a memo or verbal approval shall not be considered a Change Order and is not authorization to proceed.
- e) Change Orders shall describe the City approved change(s), shall refer to the Contractor's recommended proposed change, and shall be signed by the City and the Contractor prior to implementing the change.
- f) All Change Orders shall clearly identify the impact of cost and the effect on time required to perform the work or services associated with the proposed change.
- g) If the Contractor's proposed change(s) is found to be satisfactory and in proper order, and both parties agree upon cost or credit and timeframe for the change, the City will authorize the documented Change Order which will become incorporated into the previously executed Agreement upon the parties' execution of the Change Order.
- h) Approved Change Orders shall be numbered in sequence and dated and shall be preserved in the contract's file which shall be open to the public for inspection.
- i) From time to time during progress of the work, the City may issue a bulletin which interprets the Agreement documents or orders minor changes in the work or services without change in Agreement amount/price or Agreement time. The issuance of such a bulletin is not to be considered a Change Order.

## EXHIBIT A

### GENERAL TERMS AND CONDITIONS FOR CONSTRUCTION

- j) Any proposed changes that increase the Agreement amount/price or the costs to be expended by Contractor shall require the approval of the City before such changes may be made.
- k) Any proposed changes that increase the Agreement amount/price or the costs to be expended by Contractor/Service Provider in an amount of \$35,000 or more shall require the approval of the City of Wheaton City Council before such changes may be made.
- l) Overhead and Profit shall be shown on all change orders and shall include all costs not covered under material or labor, such as fixed costs and taxes. The Overhead and Profit shall not exceed 15% of the total work to be completed in a given change order, utilizing a fair and rational unit price of the work to be completed.
- m) The Public Works Construction Change Order Act, 50 ILCS 525/5 et seq. shall apply to all change orders for the Project.
- n) Whenever the quantity of any pay item as given in the proposal shall be increased or decreased, payment shall be made on the basis of the actual quantity completed at the unit price for such pay time named in the proposal.
- o) Should a condition arise that requires immediate action to avoid a work stoppage, delay, and/or extra cost, or that is deemed an emergency or an imminent threat to the safety of employees of the City, Contractors, or the general public, a change order may be approved by the Project Manager, with the verbal consent of the City Manager. All such Emergency Change Orders shall be provided to the City Council as soon as all documents become available.

#### 21) PAYMENT:

- a) A schedule of dates when Applications for Payments must be submitted shall be determined at the pre-construction meeting. Payments shall be issued once per month. Invoices shall be submitted for review one (1) week prior to City Council meetings. A schedule of City Council meetings shall be provided to the Contractor at the pre-construction meeting.
- b) City shall pay Contractor or cause the Contractor to be paid an amount equal to the estimated value of the Work the Contractor performed less a retained amount in accordance with the following:
  - i. The City shall retain ten percent (10%) from each payment due the Contractor to ensure the Contractor's satisfactory performance.
  - ii. After the Contractor completes fifty percent (50%) of the Work to the City's satisfaction, the City may reduce any retained amount during the remaining progress of the Work provided Contractor continues to make satisfactory progress and there is no specific cause for greater withholding.
  - iii. The City may use the retained amounts to remedy any defective or uncorrected Work. At the time of the final payment, the City may apply any retained amounts to offset any approved adjustment or authorized deduction to the Contract Price.
- c) All Applications for Payment shall include the following:
  - i. Agreement Number;
  - ii. Name of the Project;

## EXHIBIT A

### GENERAL TERMS AND CONDITIONS FOR CONSTRUCTION

- iii. Name of the Contractor;
- iv. Invoice-Voucher;
- v. Contractor's Affidavit and Sworn Statement itemizing the portions of the work performed and deliverables received with the price depicted;
- vi. Waivers of Lien from Prime Contractor and all laborers, subcontractors, and sub- subcontractors and suppliers;
- vii. Warranties and Guarantees (if applicable)
- viii. Stored Material Log (if applicable) providing (a) Contractor evidence of title to such materials and equipment and (b) a certificate of insurance showing the City and the County of DuPage as an additional insured and showing the amount of insurance coverage for the stored materials for materials stored off-site.

The failure to provide all of the above shall delay payment to Contractor.

- d) 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.
- e) 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.
- f) 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 partial or final lien waivers.
- g) Approved Applications for Payment shall be paid in accordance with this Agreement and the Illinois Local Government Prompt Payment Act which states that any bill approved for payment shall be paid within 30 days after date of approval. 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, which occurs at publicly scheduled meetings.
- h) The City reserves the right to make payments to Contractor pursuant to this Agreement through its Purchasing Card Program, MasterCard.
- i) Any Applications for Payment submitted to the City after six (6) months from the date that the progress Work for which payment application is being made was completed, shall not be paid.
- j) Payment shall be made to the Contractor awarded this Agreement. Under no circumstances will a third party be reimbursed.

#### 22) CONTRACTOR SERVICE ISSUES:

- a) Recourse for non-compliant construction services shall be managed, in any order, via (a) Punch List, (b) Retainage and/or (c) Performance Bonds.
- b) The City shall have the right, but not the obligation, to repair, rebuild, or otherwise restore City property damaged by Contractor or his or her employees, agents, or subcontractors and

## EXHIBIT A

### GENERAL TERMS AND CONDITIONS FOR CONSTRUCTION

shall have the right to: (i) withhold payments to Contractor to recover any costs incurred by the City for repairing, rebuilding or otherwise restoring City property damaged by Contractor, or its employees, agents or subcontractors; or (ii) if no payments to Contractor remain due, to seek reimbursement of costs incurred by the City for repairing, rebuilding, or otherwise restoring City property damaged by Contractor, or its employees, agents, or subcontractors from Contractor.

- c) The City shall have the right, but not the obligation, to complete or correct all or any part of the Services or Work that Contractor failed, refused, or delayed to perform as required by the Agreement and to: (i) withhold payments to Contractor to recover any costs the City incurs for completing or correcting any part of the Services; or (ii) if no payments to Contractor remain due, to seek reimbursement of costs incurred for completing or correcting any part of the Services from Contractor.
- d) When the City incurs such costs as described in paragraphs 22(b) and 22(c) above, and seeks reimbursement, the City shall submit an invoice to Contractor for payment of such costs which shall be paid by Contractor within 30 days of the date of the invoice.

#### **23) PROCESS TO TERMINATE:**

- a) The service provider shall not be reimbursed until services are compliant.
- b) If services continue to remain non-compliant, Procurement will prepare a formal Letter of Warning addressing the Contractor's Failure to Comply.
- c) If Contractor fails to achieve required results within stated timeframe, Procurement will terminate this Agreement.
- d) The City shall have the right to terminate this Agreement, with or without cause, upon fifteen (15) days written notice to the Contractor. The Contractor shall be paid for all work performed in conformance with the Agreement through the effective date of the not for cause termination.

#### **24) PROTECTION OF PROPERTY:**

- a) The Contractor shall protect public and private property, structures, utilities, landscaping, and work of any kind against damage or interruptions of service that may result from its activities.
- b) The Contractor shall repair, replace, or restore any damage, injury, or loss to any of the above public or private property at its expense and to the City's satisfaction.
- c) Should the Contractor fail to perform its obligations hereunder, the City may make good any damage to public or private property caused by the Contractor. The cost thereof shall be deducted from payment(s) to the Contractor.

#### **25) WARRANTY/GUARANTEE PERIOD:**

- a) The Contractor warrants that all goods furnished hereunder will conform in all respects to the terms of this Agreement, including any drawings, specifications, or standards incorporated herein, and/or that defects in goods are free from defects in design. The Contractor also warrants that the goods are suitable for and will perform in accordance with the purposes for which they are intended.

## EXHIBIT A

### GENERAL TERMS AND CONDITIONS FOR CONSTRUCTION

- b) The Contractor agrees that the supplies or services furnished under this Agreement shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such supplies or services and that the rights and remedies provided herein are in addition to and to not limit any rights afforded to the City by any other clause of this contract or by law.
- c) The Contractor shall provide the City with a warranty on materials and workmanship equal to one (1) year or the duration of the manufacturers' warranty, whichever is greater. Warranty periods shall commence on the date on which the City approved the final completion of the project.
- d) Contractor shall transfer to the City any manufacturers' warranties which it has for materials used in connection with this project.
- e) 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. Warranty work shall be completed at Contractor's sole cost and expense. For all warranty repair and/or maintenance, Contractor shall be responsible for all shipping and/or freight costs from City's designated location to Contractor's facility and for the subsequent return to City's designated location. 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.

**26) ILLINOIS PROPERTY TAX CODE (35 ILCS 200/18-50.2) REPORTING REQUIREMENTS:**

The City 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.

**EXHIBIT B**  
**INVITATION TO BID #26-13 GABLES BOULEVARD RECONSTRUCTION PROJECT**

Agreement No.

**CITY OF WHEATON**  
**CONSTRUCTION SERVICES AGREEMENT FOR**  
**GABLES BOULEVARD RECONSTRUCTION PROJECT**

**THIS AGREEMENT** is made and entered this \_\_\_\_\_ day of \_\_\_\_\_, 2026 by and between the **City of Wheaton**, an Illinois municipal corporation ("City"), located at 303 W. Wesley Street, Wheaton, Illinois, 60187 and ("Contractor"), located at 1234 Main Street, Anytown, IL 60107. The 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 Gables Boulevard Reconstruction Project in the City of Wheaton (hereinafter, "Work") consistent with the Gables Boulevard Reconstruction 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 in the City of Wheaton, consistent with the Gables Boulevard Reconstruction 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 Gables Boulevard Reconstruction 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 this 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 are attached as **Group Exhibit B**;
- c. Insurance Coverage for Construction Service Providers are 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

**EXHIBIT B**  
**INVITATION TO BID #26-13 GABLES BOULEVARD RECONSTRUCTION PROJECT**

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 **Gables Boulevard Reconstruction Project ("Project")**.

**2.2    Retention and Work to Be Done by Contractor.** The City retains the Contractor to perform the Gables Boulevard Reconstruction Project in the City of Wheaton 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 the Contractor complies with the terms of this Agreement.

**EXHIBIT B**  
**INVITATION TO BID #26-13 GABLES BOULEVARD RECONSTRUCTION PROJECT**

**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’s 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 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 Representative for the Project is Sarang Lagvankar. The Project Manager’s contact information is as follows: [slagvankar@wheaton.il.us](mailto:slagvankar@wheaton.il.us) or (630) 260-2067.

**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 the 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 Work, the Contractor shall notify the City with reasonable promptness and explain the facts and

**EXHIBIT B**  
**INVITATION TO BID #26-13 GABLES BOULEVARD RECONSTRUCTION PROJECT**

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 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 \$35,000 or more shall require the approval of the 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 percent (100%) 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

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(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 and Maintenance Bond.** 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 of any obligation to perform sound and reliable work as herein described.

To ensure compliance with this provision, the Contractor shall provide the City with a Maintenance Bond for ten percent (10%) of the final contract amount. This Bond shall cover a period of one (1) year from the date of final acceptance, which shall be defined as the date of the final payment estimate. The Contractor warrants to the City that all materials and equipment furnished under the Contract will be new and, in the case of equipment, in good working order, that all materials, equipment and labor furnished under the Contract will be free from defects of any kind and shall be in strict conformance with the contract requirements. This warranty shall not be restricted by the limitations of any manufacturer's warranty. Work not conforming to these requirements, including substitutions nor properly approved and authorized, may be considered defective. Liability or refusal of a Subcontractor or equipment supplier responsible for the defective work or materials, to correct or replace same, shall not excuse the Contractor from performing under this warranty.

**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 Agreement shall not exceed \$\_\_\_\_\_ 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'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:

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- 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 was 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,

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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 a 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 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 the 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

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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

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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](http://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,

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the registration of the apprentices and trainees, and the ratio and wage rates prescribed in the applicable programs. Does not apply to federal aid projects. Applicable only to maintenance and construction projects that use Motor Fuel Tax funds or state grant monies.

**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's 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

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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**

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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 OF WHEATON 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 THE 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. 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

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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 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 December 31, 2026 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

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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. The 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.

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**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 right 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. The Contractor agrees to not apply any costs or charge any fees to the City regarding the procurement of records required pursuant to a 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 Work 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

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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, or work authorization status and shall execute the Equal Employment Opportunity Clause compliance certification attached to this Agreement in **Group Exhibit D.**

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**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%.

**8.12 Public Works Employment Discrimination Act.** The 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**

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**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.

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**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 are 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

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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)

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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:

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](mailto:cityclerk@wheaton.il.us)

**9.15 Contract Numbering.** The faces of all invoices and documents shall contain the following contract number \_\_\_\_ 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 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 \_\_\_\_ day of \_\_\_\_\_ 2026.

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**CITY OF WHEATON, an Illinois municipal corp.**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Mayor

ATTEST:

By: \_\_\_\_\_  
City Clerk

**Contractor**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Signature  
Its: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Signature

Title: \_\_\_\_\_

## EXHIBIT C

### Special Provisions for: Insurance Coverage for Construction Services

Before commencing Work, the Contractor and each of its agents, subcontractors, and consultants hired to perform the Work, shall purchase, and maintain insurance coverage during the effective period stated in C.2. below which will satisfactorily insure the Contractor and where appropriate, the City of Wheaton (the "City"), against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work required by the Contract and the results of that Work by the Contractor, his or her agents, representatives, employees, or subcontractors. Such insurance shall be issued by companies that are authorized to do business in the State of Illinois and that are acceptable to the City.

**A. Minimum Scope and Limit of Insurance Coverages.** The Contractor shall purchase and maintain the following insurance coverages with the specified minimum limits of liability until all Work required under the Contract has been completed and accepted by the City except as otherwise provided, such as in the case of completed operations coverage:

**A.1. Commercial General Liability ("CGL") Insurance** protecting the Contractor against any and all liability claims for damages for personal and bodily injury, and damages to property which may arise directly or indirectly from or in connection with the performance of the Work under this Contract. Coverage shall be at least as broad as that of the current Insurance Services Office ("ISO") Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal and advertising injury with a limit of not less than **ONE MILLION DOLLARS (\$1,000,000)** for each occurrence and a general aggregate limit of not less than **TWO MILLION DOLLARS (\$2,000,000)**.

**A.1.a.** Contractual Liability Coverage shall be provided under the Commercial General Liability policy and if not covered under such policy, then a "Broad Form Contractual Liability Coverage" Endorsement shall be included, and the certificate of insurance filed with the City shall show such contractual liability coverage has been obtained. Contractor shall also provide a copy of the Contractual Liability coverage policy language or endorsement to the City prior to the commencement of Work. Contractual Liability coverage shall not be removed or limited by ISO Form CG 21 39 (Contractual Liability Limitation Endorsement) or ISO Form CG 24 26 (Amendment of Insured Contract Definition).

**A.1.b.** Explosion, Collapse and Underground liabilities (XCU) coverage shall be included in the CGL policy and shall not be removed from the policy with the following ISO Form exclusions: CG 21 42 or CG 21 43. In the event Explosion, Collapse and Underground liabilities are not covered in the CGL policy, then the CGL insurance shall include an "Explosion, Collapse, or Underground Coverage" Endorsement to the CGL policy.

**A.1.c.** Products and completed operations coverage shall be maintained for a minimum of three (3) years after the time the Work under this Agreement is completed. The Contractor shall furnish the City evidence of continuation of such insurance at final payment and three (3) years thereafter.

- A.2. **Commercial Automobile Liability Insurance** covering all vehicles used in connection with the Contract, whether owned, non-owned, or hired vehicles and whether on or off of the City's premises with coverage limits of not less than **ONE MILLION DOLLARS (\$1,000,000)** per accident for bodily injury and property damage, combined single limit.
- A.3. **Umbrella or Excess Liability Insurance** coverage of not less than **ONE MILLION (\$1,000,000)** per occurrence. Excess insurance shall contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City before the City's own primary insurance policy or self-insurance shall be called upon to protect its named insured.
- A.4. **Worker's Compensation Insurance** covering all employees to be engaged under this Contract shall be procured and maintained in strict accordance with the limits required by the applicable State of Illinois Worker's Compensation Insurance Laws. The **Employer's Liability** coverage under the worker's compensation policy shall have limits not less than **FIVE HUNDRED THOUSAND DOLLARS (\$500,000)** for each accident/injury and **FIVE HUNDRED THOUSAND DOLLARS (\$500,000)** for each employee/disease and **FIVE HUNDRED THOUSAND DOLLARS (\$500,000)** policy limit.
  - A.4.a. The workers' compensation policy shall provide a waiver of subrogation (a/k/a Waiver of our Right to Recover from Others Endorsement), to the City.

If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. All insurance coverage and limits available to the named insured on all policies required in Section A shall also be available and applicable to the additional insureds.

- B. **Insurance Policy Provisions.** The insurance policies shall also contain, or be endorsed to contain, the following provisions:

- B.1. **Additional Insured Status.** The City, its officers, elected officials, employees, agents, and volunteers shall be covered as additional insureds on all policies required above in Section A, except for Worker's Compensation and Employer's Liability Insurance, with respect to liability arising out of or in connection with the Work or operations performed by or on behalf of the Contractor, and the results of that Work, including materials, parts, or equipment furnished in connection with such Work or operations.

Additional Insured CGL coverage can be provided in the form of an endorsement to the Contractor's insurance which shall be at least as broad as ISO Form CG 20 10 11 85 (which provides both ongoing operations and completed operations coverage) if available or if not available, through the addition of CG 20 10 (covers ongoing operations) **with** CG 2037 (covers completed operations) or equivalent, or CG 20 38 **with** CG 20 37 or equivalent.

- B.2. **Primary and Non-contributory.** Each policy required above in Section A shall state that the insurance provided to the additional insureds shall apply on a primary and non-contributory basis for the benefit of the additional insureds before the additional insureds' own primary insurance or self-insurance shall be called upon to protect their named insured(s).

**B.3. Notice of Cancellation.** Each insurance policy required by the insurance provisions of this Contract shall not be suspended, voided, or canceled except after providing thirty (30) calendar days prior unqualified written notice to the City. Such notice shall be sent directly to the City (City of Wheaton Procurement Officer, 303 W. Wesley St., Wheaton, IL 60187). Should Contractor fail to provide the City with timely notice, Contractor shall be considered in breach and subject to cure provisions set forth within this Contract. A copy of the notice of cancellation endorsement shall be provided to the City.

**B.4. Waiver of Subrogation.** Contractor hereby grants to the City a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City by virtue of the payment of any loss or damage(s) under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

**B.5. Deductibles/Self-Insured Retention.** Any deductibles or self-insured retention shall be stated on the Certificate of Insurance provided to the City.

**B.6. Subcontractors.** Contractor shall require each subcontractor employed by the Contractor to purchase and maintain insurance of the type specified in Section A above in accordance with the provisions in Section B and requirements of Section C herein. Contractor shall require all subcontractors employed by Contractor to add the Contractor, the City, and any other “upstream party” as additional insureds using ISO form number CG 20 38 04 13 or coverage at least as broad. It shall be the Contractor’s responsibility to verify the subcontractor’s policy endorsement. When requested by the City, Contractor shall furnish copies of each subcontractor’s additional insured endorsements to the City. Failure of any subcontractor to maintain insurance in accordance with Sections A, B, and C herein shall be considered a material breach of this Contract by Contractor.

**C. Additional Requirements and Considerations.**

**C.1. Acceptability of Insurers.** All insurance carriers providing coverage under this Contract shall be authorized to do business in the State of Illinois and shall have a current A.M. Best and Companies Insurance Guide rating of no less than A and Class VI or better.

**C.2. Effective Period.** All insurance required for this Contract as stated herein shall be in effect prior to Contract award and such required insurance policies or successor insurance policies that are compliant with the insurance requirements stated herein shall remain in effect until all Work required under the Contract has been completed and accepted by the City, except as otherwise provided herein, such as in the case of products and completed operations coverage which shall remain in effect after the time the Work is completed under this Contract as specified in **Paragraph A.1.c** herein. Contractor’s failure to obtain the required insurance policies and/or endorsements prior to Contract Award or commencement of Work shall not waive the Contractor’s obligation to obtain such insurance policies and/or endorsements. The maintenance of the required insurance stated herein is a material element of the Contract and the failure to maintain or renew insurance coverage or to provide evidence of renewal upon the City’s request shall be considered a material breach of this Contract and subject to the cure provisions set forth within this Contract.

**C.3. Verification of Coverage.** Contractor shall file with the City the original certificates of insurance, amendatory endorsements, and a copy of the policy declarations and endorsement page or copies of the applicable insurance policy language effecting the required coverage specified in this Special Provisions for: Insurance Coverage for Construction Work, including those of subcontractors. All certificates, endorsements, and policy declarations and endorsement pages are to be received and approved by the City before Work commences. However, the failure to obtain the required certificates and endorsements prior to Contract Award or commencement of Work shall not waive the Contractor's obligation to provide them. The City reserves the right to require complete copies of all required insurance policies, including endorsements required herein, at any time.

**C.3.a.** The Certificates of Insurance filed with the City shall, at a minimum, clearly state all of the following:

- i. policy number; and
- ii. name of insurance company; and
- iii. name, address, and telephone number of the insured; and
- iv. project name and address; and
- v. policy expiration date; and
- vi. specific coverages required herein with amounts of coverage; and
- vii. all required additional insureds; and
- viii. policies apply on a primary and non-contributory basis (when applicable); and
- ix. amount of deductibles or self-insured retention.

**C.4. Right to Reject.** The City shall have the right to reject the insurer/insurance policy of the Contractor or any subcontractor.

**C.5. Acceptance of Insurance Does Not Release Liability.** The City's acceptance or approval of any insurance of the Contractor shall not be construed as relieving or excusing the Contractor, or the surety, or its bond, from any liability or obligation imposed upon either or both of them by the provisions of the Contract Documents.

**C.6. Deductible Amounts.** The City will consider deductible amounts as part of its review of Contractor's financial stability prior to Contract award.

**C.7. Insurance Coverage Increases.** The City may require increases in Contractor's insurance coverage amounts over the course of this Contract as it deems necessary so long as it reimburses Contractor for the actual increase in Contractor's insurance premiums attributable to the City's requested increase.

**C.8. Joint-Ventures.** If the Contractor is a joint-venture, the joint-venture shall provide evidence of liability insurance in the name of the joint-venture. If insurance is not purchased in the name of the joint-venture, the member with the majority ownership interest in the joint-venture shall endorse its general liability policy to name the joint-venture as an "Additional Named" insured.

**C.9. Evidence of Current Insurance.** Upon written request by the City, the Contractor shall, within seven (7) calendar days, provide to the City acceptable evidence of current insurance. Should the Contractor fail to provide acceptable evidence of current insurance following written request,

the City shall have the absolute right to terminate the Contract without any further obligation to the Contractor.

- C.10. Policy Expiration.** Contractor shall renew any policy which expires during the performance of the Contract and shall notify the City by appropriate Certificate of Insurance of such renewal prior to the expiration date.
- C.11. No Inspection Exclusion.** Contractual and other liability insurance provided under this Contract shall not contain a supervision, inspection or engineering services exclusion that would preclude the City, or its representative from supervising or inspecting the Project to the end result.

Nothing herein set forth shall be construed to create any obligation on the part of the City to indemnify Contractor for any claims of negligence against Contractor or its agents, employees, subcontractors, or consultants.

**Special Provisions for:  
Wages of Employees on Public Works**

This Agreement may be subject to the "Prevailing Wage Act," 820 ILCS 130/0.01 *et seq* ("The Act"). It shall be the responsibility of the Contractor to determine whether the Act is applicable and if so to comply with all its terms and conditions. Any Contractor having a question as to whether the Act is applicable shall consult with their own attorney to ascertain applicability. The City shall not have any duty to inform the Contractor of the Act's applicability. If, however the City informs the Contractor that the Act is applicable it shall be the Contractor's obligation to comply with all its terms and conditions unless the Contractor can establish to the satisfaction of the City that the Act is inapplicable. If it is determined that The Act applies to this Agreement, all Contractors and subcontractors subject to its terms shall comply with all of its provisions, including, but not limited to the following:

1. **Prevailing Rate of Wages Applies.** Not less than the current prevailing rate of wages (hourly cash wages plus annualized fringe benefits) and the general prevailing wage for legal holiday and overtime work in DuPage County, Illinois, as ascertained by the Illinois Department of Labor ("IDOL") or by a court of review shall be paid to all laborers, workers and mechanics performing work under this Agreement. The IDOL publishes the prevailing wage rates at: [Prevailing Wage Act](#)
2. **Revised Prevailing Rate of Wages.** If the IDOL revises the prevailing rate of hourly wages to be paid by the public body, the revised rate shall apply to the Contractor. The IDOL revises the prevailing wage rates and the Contractor has an obligation to check the IDOL website for revisions to prevailing wage rates.
3. **Certified Payroll.** Effective September 1, 2020, all Certified Transcripts of Payrolls should be submitted electronically to the IDOL at: [Certified Transcript of Payroll](#). If a contractor attempts to file a certified payroll with the IDOL through the IDOL portal and is unsuccessful, then the Contractor shall file its certified payroll with the City in person, by mail, or electronically, no later than the 15th day of each calendar month.

The Contractor and each subcontractor shall:

- a. make and keep, for a period of not less than 5 years, records of all laborers, mechanics, and other workers employed by them on the project; the records shall include: each worker's name, address, telephone number when available, the last four digits of the worker's social security number, the worker's gender, the worker's race, the worker's ethnicity, veteran status, classification or classifications, the worker's skill level, such as apprentice or journeyman, the worker's gross and net wages paid in each pay period, the worker's starting and ending times of work each day, the hourly wage rate, the hourly overtime wage rate, the hourly fringe benefit rates, the name and address of each fringe benefit fund, the plan sponsor of each fringe benefit, if applicable, and the plan administrator of each fringe benefit, if applicable.
- b. The certified payroll filing shall consist of a complete copy of the records identified in paragraph 3(a), above. The certified payroll shall be accompanied by a statement signed by the Contractor or subcontractor which avers that:

**Special Provisions for:  
Wages of Employees on Public Works**

- i. such records are true and accurate;
- ii. the hourly rate paid to each worker is not less than the general prevailing rate of hourly wages required by this Act; and
- iii. the Contractor or subcontractor is aware that filing a certified payroll that he or she knows to be false is a Class A misdemeanor.

4. **Inspection of Records.** Upon 7 business days' notice, the Contractor and each subcontractor shall make available for inspection and copying at a location within this State during reasonable hours, the records required to be maintained by Contractor and each subcontractor under the Illinois Prevailing Wage Act to the City of Wheaton, its officers, and agents, and to the Director of Labor and his deputies and agents, and to federal, State, or local law enforcement agencies and prosecutors.

5. **Bonds.** In all Contractors' and subcontractors' bonds the Contractor or subcontractor shall include a provision that will guarantee the Contractor's or subcontractor's faithful performance of the prevailing wage clause provided by this Agreement.

6. **Employment of Illinois Workers on Public Works Act.** The state law 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%.

**DOES NOT APPLY**  
 **DOES APPLY**

# DuPage County Prevailing Wage Rates posted on 1/15/2026

Overtime																
Trade Title	Rg	Type	C	Base	Foreman	M-F	Sa	Su	Hol	H/W	Pension	Vac	Trng	Other Ins	Add OT 1.5x owed	Add OT 2.0x owed
ASBESTOS ABT-GEN	All	ALL		51.40	52.40	1.5	1.5	2.0	2.0	18.32	17.71	0.00	0.91	0.00	0.00	0.00
ASBESTOS ABT-MEC	All	BLD		42.02	45.38	1.5	1.5	2.0	2.0	16.44	16.64	0.00	0.92		3.37	6.73
BOILERMAKER	All	BLD		58.91	64.21	2.0	2.0	2.0	2.0	7.07	27.02	0.00	3.69	2.31	0.00	39.30
BRICK MASON	All	BLD		53.06	58.37	1.5	1.5	2.0	2.0	12.95	26.26	0.00	1.57	0.00	4.23	8.45
CARPENTER	All	ALL		56.71	58.71	1.5	1.5	2.0	2.0	13.64	27.26	2.61	1.04		0.00	0.00
CEMENT MASON	All	ALL		53.10	55.10	2.0	1.5	2.0	2.0	18.43	24.00	0.00	1.25		2.50	5.00
CERAMIC TILE FINISHER	All	BLD		49.09	49.09	1.5	1.5	2.0	2.0	13.25	17.61	0.00	1.37	0.00	5.57	11.14
CERAMIC TILE LAYER	All	BLD		57.04	62.04	1.5	1.5	2.0	2.0	13.25	21.60	0.00	1.50	0.00	7.63	15.26
COMMUNICATION TECHNICIAN	All	BLD		40.90	43.70	1.5	1.5	2.0	2.0	15.40	24.89	3.20	0.83	0.00	14.46	28.91
CONCRETE SPECIALIST	All	BLD		51.81	58.21	1.5	1.5	2.0	2.0	12.95	27.56	0.00	1.57	0.00	4.88	9.75
CONCRETE SPECIALIST WELDER	All	BLD		54.40	58.21	1.5	1.5	2.0	2.0	12.95	27.56	0.00	1.57	0.00	4.88	9.75
ELECTRIC PWR EQMT OP	All	ALL		52.47	71.60	1.5	1.5	2.0	2.0	7.50	14.69	0.00	1.84	1.57	9.05	18.10
ELECTRIC PWR GRNDMAN	All	ALL		40.31	71.60	1.5	1.5	2.0	2.0	7.50	11.29	0.00	1.41	1.21	6.96	13.91
ELECTRIC PWR LINEMAN	All	ALL		63.08	71.60	1.5	1.5	2.0	2.0	7.50	17.66	0.00	2.21	1.89	10.88	21.76
ELECTRIC PWR TRK DRV	All	ALL		41.77	71.60	1.5	1.5	2.0	2.0	7.50	11.70	0.00	1.47	1.25	7.20	14.40
ELECTRICIAN	All	BLD		48.49	52.74	1.5	1.5	2.0	2.0	15.40	28.48	7.99	1.20	0.00	18.83	37.67
ELEVATOR CONSTRUCTOR	All	BLD		70.68	79.52	2.0	2.0	2.0	2.0	16.28	21.36	5.65	0.80		0.00	0.00
FENCE ERECTOR	NE	ALL		52.25	54.75	1.5	1.5	2.0	2.0	14.29	19.02	0.00	1.00	0.00	0.00	0.00
GLAZIER	All	BLD		53.55	55.05	1.5	2.0	2.0	2.0	16.04	26.64	0.00	2.30	0.00	0.00	0.00
HEAT/FROST INSULATOR	All	BLD		56.02	59.38	1.5	1.5	2.0	2.0	16.44	19.88	0.00	0.92		4.99	9.97
IRON WORKER	All	ALL		62.46	65.96	2.0	2.0	2.0	2.0	19.05	27.04	0.00	0.49	0.00	0.00	0.00
LABORER	All	ALL		51.40	52.15	1.5	1.5	2.0	2.0	18.32	17.71	0.00	0.91	0.00	0.00	0.00
LATHER	All	ALL		56.71	58.71	1.5	1.5	2.0	2.0	13.64	27.26	2.61	1.04		0.00	0.00
MACHINIST	All	BLD		60.39	64.39	1.5	1.5	2.0	2.0	11.43	9.95	1.85	1.47	0.00	0.00	0.00
MARBLE FINISHER	All	ALL		40.21	54.60	1.5	1.5	2.0	2.0	12.95	23.81	0.00	0.98	0.00	3.00	6.00
MARBLE SETTER	All	BLD		52.00	57.20	1.5	1.5	2.0	2.0	12.95	25.57	0.00	1.25	0.00	3.88	7.76

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MATERIAL TESTER I	All	ALL		41.40		1.5	1.5	2.0	2.0	18.32	17.71	0.00	0.91	0.00	0.00	0.00
MATERIALS TESTER II	All	ALL		46.40		1.5	1.5	2.0	2.0	18.32	17.71	0.00	0.91	0.00	0.00	0.00
MILLWRIGHT	All	ALL		56.71	58.71	1.5	1.5	2.0	2.0	13.64	27.26	2.61	1.04		0.00	0.00
OPERATING ENGINEER	All	BLD	1	64.80	68.80	2.0	2.0	2.0	2.0	24.70	21.55	2.00	2.75		0.00	0.00
OPERATING ENGINEER	All	BLD	2	63.50	68.80	2.0	2.0	2.0	2.0	24.70	21.55	2.00	2.75	0.00	0.00	0.00
OPERATING ENGINEER	All	BLD	3	60.95	68.80	2.0	2.0	2.0	2.0	24.70	21.55	2.00	2.75		0.00	0.00
OPERATING ENGINEER	All	BLD	4	59.20	68.80	2.0	2.0	2.0	2.0	24.70	21.55	2.00	2.75		0.00	0.00
OPERATING ENGINEER	All	BLD	5	68.55	68.80	2.0	2.0	2.0	2.0	24.70	21.55	2.00	2.75		0.00	0.00
OPERATING ENGINEER	All	BLD	6	65.80	68.80	2.0	2.0	2.0	2.0	24.70	21.55	2.00	2.75		0.00	0.00
OPERATING ENGINEER	All	BLD	7	67.80	68.80	2.0	2.0	2.0	2.0	24.70	21.55	2.00	2.75		0.00	0.00
OPERATING ENGINEER	All	FLT		53.25	53.25	1.5	1.5	2.0	2.0	25.20	22.75	2.00	3.00		0.00	0.00
OPERATING ENGINEER	All	HWY	1	63.00	67.00	1.5	1.5	2.0	2.0	24.70	21.55	2.00	2.75		0.00	0.00
OPERATING ENGINEER	All	HWY	2	62.45	67.00	1.5	1.5	2.0	2.0	24.70	21.55	2.00	2.75		0.00	0.00
OPERATING ENGINEER	All	HWY	3	60.40	67.00	1.5	1.5	2.0	2.0	24.70	21.55	2.00	2.75		0.00	0.00
OPERATING ENGINEER	All	HWY	4	59.00	67.00	1.5	1.5	2.0	2.0	24.70	21.55	2.00	2.75		0.00	0.00
OPERATING ENGINEER	All	HWY	5	57.80	67.00	1.5	1.5	2.0	2.0	24.70	21.55	2.00	2.75		0.00	0.00
OPERATING ENGINEER	All	HWY	6	66.00	67.00	1.5	1.5	2.0	2.0	24.70	21.55	2.00	2.75		0.00	0.00
OPERATING ENGINEER	All	HWY	7	64.00	67.00	1.5	1.5	2.0	2.0	24.70	21.55	2.00	2.75		0.00	0.00
ORNAMENTAL IRON WORKER	All	ALL		59.26	62.76	2.0	2.0	2.0	2.0	14.86	27.70	0.00	2.25	0.00	0.00	0.00
PAINTER	All	ALL		54.30	56.30	1.5	1.5	1.5	2.0	16.20	11.43	0.00	1.75	0.00	0.00	0.00
PAINTER - SIGNS	All	BLD		48.16	54.11	1.5	1.5	2.0	2.0	8.20	16.81	0.00	0.00	0.00	0.00	0.00
PILEDRIVER	All	ALL		56.71	58.71	1.5	1.5	2.0	2.0	13.64	27.26	2.61	1.04		0.00	0.00
PIPEFITTER	All	BLD		58.50	61.50	1.5	1.5	2.0	2.0	15.15	22.85	0.00	3.12	0.00	0.00	0.00
PLASTERER	All	BLD		53.00	56.18	1.5	1.5	2.0	2.0	12.95	25.66	0.00	1.49	0.00	4.31	8.61
PLUMBER	All	BLD		60.50	64.15	1.5	1.5	2.0	2.0	19.10	17.94	0.00	1.98		0.00	0.00
ROOFER	All	BLD		52.00	57.00	1.5	1.5	2.0	2.0	12.80	18.19	0.00	1.14	0.00	0.00	0.00
SHEETMETAL WORKER	All	BLD		58.83	63.54	1.5	1.5	2.0	2.0	17.16	19.90	0.00	1.79	2.62	0.00	0.00
SPRINKLER FITTER	All	BLD		63.20	65.95	1.5	1.5	2.0	2.0	15.45	19.95	0.00	1.15	0.00	0.00	0.00
STEEL ERECTOR	All	ALL		62.46	65.96	2.0	2.0	2.0	2.0	19.05	27.04	0.00	0.49	0.00	0.00	0.00

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STONE MASON	All	BLD		53.06	58.37	1.5	1.5	2.0	2.0	12.95	26.26	0.00	1.57	0.00	4.23	8.45
SURVEY WORKER	All	BLD		58.45	59.45	1.5	1.5	2.0	2.0	19.10	14.40	0.00	1.59		0.00	0.00
SURVEY WORKER	All	HWY		58.45	59.45	1.5	1.5	2.0	2.0	19.10	14.40	0.00	1.59		0.00	0.00
TERRAZZO FINISHER	All	BLD		51.44	51.44	1.5	1.5	2.0	2.0	13.25	18.87	0.00	1.41	0.00	4.45	8.89
TERRAZZO MECHANIC	All	BLD		55.35	58.85	1.5	1.5	2.0	2.0	13.25	20.26	0.00	1.46	0.00	4.70	9.39
TRAFFIC SAFETY WORKER I	All	HWY		43.40	45.40	1.5	1.5	2.0	2.0	10.08	10.08	0.00	1.05	0.00	0.00	0.00
TRAFFIC SAFETY WORKER II	All	HWY		44.40	46.40	1.5	1.5	2.0	2.0	10.08	10.08	0.00	1.05	0.00	0.00	0.00
TRUCK DRIVER	All	ALL	1	45.31	45.80	1.5	1.5	2.0	2.0	12.15	16.00	0.00	0.30	0.00	0.00	0.00
TRUCK DRIVER	All	ALL	2	45.46	45.80	1.5	1.5	2.0	2.0	12.15	16.00	0.00	0.30	0.00	0.00	0.00
TRUCK DRIVER	All	ALL	3	45.66	45.80	1.5	1.5	2.0	2.0	12.15	16.00	0.00	0.30	0.00	0.00	0.00
TRUCK DRIVER	All	ALL	4	45.80	45.80	1.5	1.5	2.0	2.0	12.15	16.00	0.00	0.30	0.00	0.00	0.00
TUCKPOINTER	All	BLD		52.53	53.53	1.5	1.5	2.0	2.0	11.05	23.16	0.00	1.46	0.00	0.00	0.00

### Legend

**Rg** Region

**Type** Trade Type - All, Highway, Building, Floating, Oil & Chip, Rivers

**C** Class

**Base** Base Wage Rate

**OT M-F** Unless otherwise noted, OT pay is required for any hour greater than 8 worked each day, Mon through Fri. The number listed is the multiple of the base wage.

**OT Sa** Overtime pay required for every hour worked on Saturdays

**OT Su** Overtime pay required for every hour worked on Sundays

**OT Hol** Overtime pay required for every hour worked on Holidays

**H/W** Health/Welfare benefit

**Vac** Vacation

**Trng** Training

**Other Ins** Employer hourly cost for any other type(s) of insurance provided for benefit of worker.

Explanations DUPAGE COUNTY

IRON WORKERS AND FENCE ERECTOR (WEST) - West of Route 53.

The following list is considered as those days for which holiday rates of wages for work performed apply: New Years Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day and Veterans Day in some classifications/counties. Generally, any of these holidays which fall on a Sunday is celebrated on the following Monday. This then makes work performed on that Monday payable at the appropriate overtime rate for holiday pay. Common practice in a given local may alter certain

## **DuPage County Prevailing Wage Rates posted on 1/15/2026**

days of celebration. If in doubt, please check with IDOL.

### **EXPLANATION OF CLASSES**

**ASBESTOS - GENERAL** - removal of asbestos material/mold and hazardous materials from any place in a building, including mechanical systems where those mechanical systems are to be removed. This includes the removal of asbestos materials/mold and hazardous materials from ductwork or pipes in a building when the building is to be demolished at the time or at some close future date.

**ASBESTOS - MECHANICAL** - removal of asbestos material from mechanical systems, such as pipes, ducts, and boilers, where the mechanical systems are to remain.

### **TRAFFIC SAFETY Worker I**

Traffic Safety Worker I - work associated with the delivery, installation, pick-up and servicing of safety devices during periods of roadway construction, including such work as set-up and maintenance of barricades, barrier wall reflectors, drums, cones, delineators, signs, crash attenuators, glare screen and other such items, and the layout and application or removal of conflicting and/or temporary roadway markings utilized to control traffic in construction zones, as well as flagging for these operations.

### **TRAFFIC SAFETY WORKER II**

Work associated with the installation and removal of permanent pavement markings and/or pavement markers including both installations performed by hand and installations performed by truck.

### **CERAMIC TILE FINISHER**

The grouting, cleaning, and polishing of all classes of tile, whether for interior or exterior purposes, all burned, glazed or unglazed products; all composition materials, granite tiles, warning detectable tiles, cement tiles, epoxy composite materials, pavers, glass, mosaics, fiberglass, and all substitute materials, for tile made in tile-like units; all mixtures in tile like form of cement, metals, and other materials that are for and intended for use as a finished floor surface, stair treads, promenade roofs, walks, walls, ceilings, swimming pools, and all other places where tile is to form a finished interior or exterior. The mixing of all setting mortars including but not limited to thin-set mortars, epoxies, wall mud, and any other sand and cement mixtures or adhesives when used in the preparation, installation, repair, or maintenance of tile and/or similar materials. The handling and unloading of all sand, cement, lime, tile, fixtures, equipment, adhesives, or any other materials to be used in the preparation, installation, repair, or maintenance of tile and/or similar materials. Ceramic Tile Finishers shall fill all joints and voids regardless of method on all tile work, particularly and especially after installation of said tile work. Application of any and all protective coverings to all types of tile installations including, but not be limited to, all soap compounds, paper products, tapes, and all polyethylene coverings, plywood, masonite, cardboard, and any new type of products that may be used to protect tile installations, Blastrac equipment, and all floor scarifying equipment used in preparing floors to receive tile. The clean up and removal of all waste and materials. All demolition of existing tile floors and walls to be re-tiled.

### **COMMUNICATIONS TECHNICIAN**

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Low voltage installation, maintenance and removal of telecommunication facilities (voice, sound, data and video) including telephone and data inside wire, interconnect, terminal equipment, central offices, PABX, fiber optic cable and equipment, micro waves, V-SAT, bypass, CATV, WAN (wide area networks), LAN (local area networks), and ISDN (integrated system digital network), pulling of wire in raceways, but not the installation of raceways.

### MARBLE FINISHER

Loading and unloading trucks, distribution of all materials (all stone, sand, etc.), stocking of floors with material, performing all rigging for heavy work, the handling of all material that may be needed for the installation of such materials, building of scaffolding, polishing if needed, patching, waxing of material if damaged, pointing up, caulking, grouting and cleaning of marble, holding water on diamond or Carborundum blade or saw for setters cutting, use of tub saw or any other saw needed for preparation of material, drilling of holes for wires that anchor material set by setters, mixing up of molding plaster for installation of material, mixing up thin set for the installation of material, mixing up of sand to cement for the installation of material and such other work as may be required in helping a Marble Setter in the handling of all material in the erection or installation of interior marble, slate, travertine, art marble, serpentine, alberene stone, blue stone, granite and other stones (meaning as to stone any foreign or domestic materials as are specified and used in building interiors and exteriors and customarily known as stone in the trade), carrara, sanonyx, vitrolite and similar opaque glass and the laying of all marble tile, terrazzo tile, slate tile and precast tile, steps, risers treads, base, or any other materials that may be used as substitutes for any of the aforementioned materials and which are used on interior and exterior which are installed in a similar manner.

MATERIAL TESTER I: Hand coring and drilling for testing of materials; field inspection of uncured concrete and asphalt.

MATERIAL TESTER II: Field inspection of welds, structural steel, fireproofing, masonry, soil, facade, reinforcing steel, formwork, cured concrete, and concrete and asphalt batch plants; adjusting proportions of bituminous mixtures.

### OPERATING ENGINEER - BUILDING

Class 1. Asphalt Plant; Asphalt Spreader; Autograde; Backhoes with Caisson Attachment; Batch Plant; Benoto (requires Two Engineers); Boiler and Throttle Valve; Caisson Rigs; Central Redi-Mix Plant; Combination Back Hoe Front End-loader Machine; Compressor and Throttle Valve; Concrete Breaker (Truck Mounted); Concrete Conveyor; Concrete Conveyor (Truck Mounted); Concrete Paver Over 27E cu. ft; Concrete Paver 27E cu. ft. and Under; Concrete Placer; Concrete Placing Boom; Concrete Pump (Truck Mounted); Concrete Tower; Cranes, All; Cranes, Hammerhead; Cranes, (GCI and similar Type); Creter Crane; Spider Crane; Crusher, Stone, etc.; Derricks, All; Derricks, Traveling; Formless Curb and Gutter Machine; Grader, Elevating; Grouting Machines; Heavy Duty Self-Propelled Transporter or Prime Mover; Highlift Shovels or Front Endloader 2-1/4 yd. and over; Hoists, Elevators, outside type rack and pinion and similar machines; Hoists, One, Two and Three Drum; Hoists, Two Tugger One Floor; Hydraulic Backhoes; Hydraulic Boom Trucks; Hydro Vac (and similar equipment); Locomotives, All; Motor Patrol; Lubrication Technician; Manipulators; Pile Drivers and Skid Rig; Post Hole Digger; Pre-Stress Machine; Pump Cretes Dual Ram; Pump Cretes: Squeeze Cretes-Screw Type Pumps; Gypsum Bulker and Pump; Raised and Blind Hole Drill; Roto Mill Grinder; Scoops - Tractor Drawn; Slip-Form Paver; Straddle Buggies; Operation of Tie Back Machine; Tournapull; Tractor with Boom and Side Boom; Trenching Machines.

Class 2. Boilers; Broom, All Power Propelled; Bulldozers; Concrete Mixer (Two Bag and Over); Conveyor, Portable; Forklift Trucks;

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Highlift Shovels or Front Endloaders under 2-1/4 yd.; Hoists, Automatic; Hoists, Inside Elevators; Hoists, Sewer Dragging Machine; Hoists, Tugger Single Drum; Laser Screed; Rock Drill (Self-Propelled); Rock Drill (Truck Mounted); Rollers, All; Steam Generators; Tractors, All; Tractor Drawn Vibratory Roller; Winch Trucks with "A" Frame.

Class 3. Air Compressor; Combination Small Equipment Operator; Generators; Heaters, Mechanical; Hoists, Inside Elevators (remodeling or renovation work); Hydraulic Power Units (Pile Driving, Extracting, and Drilling); Pumps, over 3" (1 to 3 not to exceed a total of 300 ft.); Low Boys; Pumps, Well Points; Welding Machines (2 through 5); Winches, 4 Small Electric Drill Winches.

Class 4. Bobcats and/or other Skid Steer Loaders; Oilers; and Brick Forklift.

Class 5. Assistant Craft Foreman.

Class 6. Gradall.

Class 7. Mechanics; Welders.

### OPERATING ENGINEERS - HIGHWAY CONSTRUCTION

Class 1. Asphalt Plant; Asphalt Heater and Planer Combination; Asphalt Heater Scarfire; Asphalt Spreader; Autograder/GOMACO or other similar type machines; ABG Paver; Backhoes with Caisson Attachment; Ballast Regulator; Belt Loader; Caisson Rigs; Car Dumper; Central Redi-Mix Plant; Combination Backhoe Front Endloader Machine, (1 cu. yd. Backhoe Bucket or over or with attachments); Concrete Breaker (Truck Mounted); Concrete Conveyor; Concrete Paver over 27E cu. ft.; Concrete Placer; Concrete Tube Float; Cranes, all attachments; Cranes, Tower Cranes of all types; Creter Crane; Spider Crane; Crusher, Stone, etc.; Derricks, All; Derrick Boats; Derricks, Traveling; Dredges; Elevators, Outside type Rack & Pinion and Similar Machines; Formless Curb and Gutter Machine; Grader, Elevating; Grader, Motor Grader, Motor Patrol, Auto Patrol, Form Grader, Pull Grader, Subgrader; Guard Rail Post Driver Truck Mounted; Hoists, One, Two and Three Drum; Heavy Duty Self-Propelled Transporter or Prime Mover; Hydraulic Backhoes; Backhoes with shear attachments up to 40' of boom reach; Lubrication Technician; Manipulators; Mucking Machine; Pile Drivers and Skid Rig; Pre-Stress Machine; Pump Cretes Dual Ram; Rock Drill - Crawler or Skid Rig; Rock Drill - Truck Mounted; Rock/Track Tamper; Roto Mill Grinder; Slip-Form Paver; Snow Melters; Soil Test Drill Rig (Truck Mounted); Straddle Buggies; Hydraulic Telescoping Form (Tunnel); Operation of Tieback Machine; Tractor Drawn Belt Loader; Tractor Drawn Belt Loader (with attached pusher - two engineers); Tractor with Boom; Tractaire with Attachments; Traffic Barrier Transfer Machine; Trenching; Truck Mounted Concrete Pump with Boom; Raised or Blind Hole Drills (Tunnel Shaft); Underground Boring and/or Mining Machines 5 ft. in diameter and over tunnel, etc; Underground Boring and/or Mining Machines under 5 ft. in diameter; Wheel Excavator; Widener (APSCO).

Class 2. Batch Plant; Bituminous Mixer; Boiler and Throttle Valve; Bulldozers; Car Loader Trailing Conveyors; Combination Backhoe Front Endloader Machine (Less than 1 cu. yd. Backhoe Bucket or over or with attachments); Compressor and Throttle Valve; Compressor, Common Receiver (3); Concrete Breaker or Hydro Hammer; Concrete Grinding Machine; Concrete Mixer or Paver 7S Series to and including 27 cu. ft.; Concrete Spreader; Concrete Curing Machine, Burlap Machine, Belting Machine and Sealing Machine; Concrete Wheel Saw; Conveyor Muck Cars (Haglund or Similar Type); Drills, All; Finishing Machine - Concrete; Highlift Shovels or Front Endloader; Hoist - Sewer Dragging Machine; Hydraulic Boom Trucks (All Attachments); Hydro-Blaster; Hydro Excavating (excluding hose work); Laser Screed; All Locomotives, Dinky; Off-Road Hauling Units (including articulating) Non Self-

## DuPage County Prevailing Wage Rates posted on 1/15/2026

Loading Ejection Dump; Pump Cretes: Squeeze Cretes - Screw Type Pumps, Gypsum Bulker and Pump; Roller, Asphalt; Rotary Snow Plows; Rototiller, Seaman, etc., self-propelled; Self-Propelled Compactor; Spreader - Chip - Stone, etc.; Scraper - Single/Twin Engine/Push and Pull; Scraper - Prime Mover in Tandem (Regardless of Size); Tractors pulling attachments, Sheeps Foot, Disc, Compactor, etc.; Tug Boats.

Class 3. Boilers; Brooms, All Power Propelled; Cement Supply Tender; Compressor, Common Receiver (2); Concrete Mixer (Two Bag and Over); Conveyor, Portable; Farm-Type Tractors Used for Mowing, Seeding, etc.; Forklift Trucks; Grouting Machine; Hoists, Automatic; Hoists, All Elevators; Hoists, Tugger Single Drum; Jeep Diggers; Low Boys; Pipe Jacking Machines; Post-Hole Digger; Power Saw, Concrete Power Driven; Pug Mills; Rollers, other than Asphalt; Seed and Straw Blower; Steam Generators; Stump Machine; Winch Trucks with "A" Frame; Work Boats; Tamper-Form-Motor Driven.

Class 4. Air Compressor; Combination - Small Equipment Operator; Directional Boring Machine; Generators; Heaters, Mechanical; Hydraulic Power Unit (Pile Driving, Extracting, or Drilling); Light Plants, All (1 through 5); Pumps, over 3" (1 to 3 not to exceed a total of 300 ft.); Pumps, Well Points; Vacuum Trucks (excluding hose work); Welding Machines (2 through 5); Winches, 4 Small Electric Drill Winches.

Class 5. SkidSteer Loader (all); Brick Forklifts; Oilers.

Class 6. Field Mechanics and Field Welders

Class 7. Dowell Machine with Air Compressor; Gradall and machines of like nature.

### OPERATING ENGINEER - FLOATING

Diver. Diver Wet Tender, Diver Tender, ROV Pilot, ROV Tender

### TRUCK DRIVER - BUILDING, HEAVY AND HIGHWAY CONSTRUCTION

Class 1. Two or three Axle Trucks. A-frame Truck when used for transportation purposes; Air Compressors and Welding Machines, including those pulled by cars, pick-up trucks and tractors; Ambulances; Batch Gate Lockers; Batch Hopperman; Car and Truck Washers; Carry-alls; Fork Lifts and Hoisters; Helpers; Mechanics Helpers and Greasers; Oil Distributors 2-man operation; Pavement Breakers; Pole Trailer, up to 40 feet; Power Mower Tractors; Self-propelled Chip Spreader; Skipman; Slurry Trucks, 2-man operation; Slurry Truck Conveyor Operation, 2 or 3 man; Teamsters; Unskilled Dumpman; and Truck Drivers hauling warning lights, barricades, and portable toilets on the job site.

Class 2. Four axle trucks; Dump Crets and Adgetors under 7 yards; Dumpsters, Track Trucks, Euclids, Hug Bottom Dump Turnapulls or Turnatrailers when pulling other than self-loading equipment or similar equipment under 16 cubic yards; Mixer Trucks under 7 yards; Ready-mix Plant Hopper Operator, and Winch Trucks, 2 Axles.

Class 3. Five axle trucks; Dump Crets and Adgetors 7 yards and over; Dumpsters, Track Trucks, Euclids, Hug Bottom Dump Turnatrailers or turnapulls when pulling other than self-loading equipment or similar equipment over 16 cubic yards; Explosives and/or Fission Material Trucks; Mixer Trucks 7 yards or over; Mobile Cranes while in transit; Oil Distributors, 1-man operation; Pole Trailer, over 40 feet; Pole and Expandable Trailers hauling material over 50 feet long; Slurry trucks, 1-man operation; Winch

## **DuPage County Prevailing Wage Rates posted on 1/15/2026**

trucks, 3 axles or more; Mechanic--Truck Welder and Truck Painter.

Class 4. Six axle trucks; Dual-purpose vehicles, such as mounted crane trucks with hoist and accessories; Foreman; Master Mechanic; Self-loading equipment like P.B. and trucks with scoops on the front.

### **SURVEY WORKER**

Operates survey equipment (such as levels, transits, data collectors, GPS and robotic total stations) for the purpose of performing construction layout and/or grade checking.

### **SURVEY FOREMAN**

Operates survey equipment (such as levels, transits, data collectors, GPS and robotic total stations) for the purpose of performing construction layout and/or grade checking; oversees survey crew operations; and/or coordinates work of survey crews.

### **TERRAZZO FINISHER**

The handling of sand, cement, marble chips, and all other materials that may be used by the Mosaic Terrazzo Mechanic, and the mixing, grinding, grouting, cleaning and sealing of all Marble, Mosaic, and Terrazzo work, floors, base, stairs, and wainscoting by hand or machine, and in addition, assisting and aiding Marble, Masonic, and Terrazzo Mechanics.

### **Other Classifications of Work:**

For definitions of classifications not otherwise set out, the Department generally has on file such definitions which are available. If a task to be performed is not subject to one of the classifications of pay set out, the Department will upon being contacted state which neighboring county has such a classification and provide such rate, such rate being deemed to exist by reference in this document. If no neighboring county rate applies to the task, the Department shall undertake a special determination, such special determination being then deemed to have existed under this determination. If a project requires these, or any classification not listed, please contact IDOL at 217-782-1710 for wage rates or clarifications.

### **LANDSCAPING**

Landscaping work falls under the existing classifications for laborer, operating engineer and truck driver. The work performed by landscape plantsman and landscape laborer is covered by the existing classification of laborer. The work performed by landscape operators (regardless of equipment used or its size) is covered by the classifications of operating engineer. The work performed by landscape truck drivers (regardless of size of truck driven) is covered by the classifications of truck driver.

### **MATERIAL TESTER & MATERIAL TESTER/INSPECTOR I AND II**

Notwithstanding the difference in the classification title, the classification entitled "Material Tester I" involves the same job duties as the classification entitled "Material Tester/Inspector I". Likewise, the classification entitled "Material Tester II" involves the same job duties as the classification entitled "Material Tester/Inspector II".

**DuPage County Prevailing Wage Rates posted on 1/15/2026**

**INVITATION TO BID #26-12  
GABLES BOULEVARD RECONSTRUCTION PROJECT**

**PLEASE RETURN THE REQUIRED FORMS WITH YOUR SUBMITTAL**

- Sample Certificate of Insurance
- Cost Proposal Form (Exhibit D)
- Notice of Deviations Form (Exhibit E)
- Listing of Subcontractors, Consultants, and Agents Form (Exhibit F)
- Low Impact Design – Green Infrastructure Training Form (Exhibit G)
- Apprenticeship and Training Certification Form (Exhibit H)
- References Form (Exhibit I)
- Certification Regarding Lobbying Form (Exhibit J)
- State and Federal Grant Program Required Provisions and Certifications Form (Exhibit K)
- City of Wheaton Business Enterprise Program Utilization Plan Form (Exhibit L)
- Vendor Certification Form (Exhibit M)
- Vendor Information Reporting Form (Exhibit N)
- W-9 Form

Bid submissions will be considered non-responsive if the specified documents above are not completed and included with your submittal.

**RETURN WITH SUBMITTAL**

**EXHIBIT D**  
**COST PROPOSAL FORM**  
**INVITATION TO BID #26-13 GABLES BOULEVARD RECONSTRUCTION PROJECT**

Proposal shall be inclusive of all costs related to the fulfillment of the contract. No additional fees shall be paid by the City.

ITEM DESCRIPTION	QTY	UNIT	UNIT COST	ITEM COST
Removal of Existing Pavement and Earthwork Spoils	4320	CY	\$	
Grading	1	LS		
HMA Pavement Section (14" Section)	4246	SY		
CA-1 - 3" Stone (12" Section)	4246	SY		
2" Mill & Overlay at north end	575	SY		
Geofabric - Mirafi RSi Series	4246	SY		
B-6:12 Curb & Gutter (including depressed where shown)	3215	LF		
HMA Driveway Apron Replacement	12	EA		
Concrete Driveway Apron Replacement	13	EA		
Concrete Sidewalk - ADA Ramp Patches	4	EA		
Commercial Driveway Reconstruction at north end	1	LS		
Seeding and Stabilization	1	LS		
Sediment Filter Basket in each inlet	14	EA		
Temporary Concrete Washout	1	EA		
Adjust Sanitary Manhole w/Seal	3	EA		
12" D.I.W.M.	90	LF		
8" D.I.W.M.	751	LF		
Fire Hydrant	3	EA		
Reconnect Existing Services	18	EA		
12" RCP Storm Sewer	142	LF		
5-ft MH Type A	1	EA		
4-ft MH Type A	4	EA		
3-ft INL Type B	3	EA		
Connect to Existing Storm MH	1	LS		
Construction Layout Special	1	LS		
As-Constructed Drawings	1	LS		
PCC Sidewalk 4 inch	530	SF		
PCC Sidewalk 5 inch	720	SF		
Traffic Control and Protection	1	LS		

**TOTAL BID:** \_\_\_\_\_

## RETURN WITH SUBMITTAL

### EXHIBIT D

### COST PROPOSAL FORM

### INVITATION TO BID #26-13 GABLES BOULEVARD RECONSTRUCTION PROJECT

**Addenda Acknowledgement:** The Bidder acknowledges the receipt of the following addenda issued by the City and incorporated into and made part of this Bid/RFP.

Addendum(s) \_\_\_\_\_; \_\_\_\_\_; \_\_\_\_\_; \_\_\_\_\_

**No addenda were issued.**

All bids must be signed by an authorized representative of the Bidder.

The undersigned hereby agrees to furnish and deliver the above specified item/service to the City of Wheaton in accordance with the Instructions, Provisions, and Specifications for the price(s) stated above.

---

Signature:

---

Date:

---

Printed Name:

---

Title:

---

Company Name:

---

Address:

---

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Email:

***Failure to complete and return this form will be considered sufficient reason for rejection of the submittal.***

**RETURN WITH SUBMITTAL**

**EXHIBIT E**

**NOTICE OF DEVIATIONS FORM**

**INVITATION TO BID #26-13 GABLES BOULEVARD RECONSTRUCTION PROJECT**

**NOTICE OF DEVIATIONS for the Specification Requirements:** We deviate from the desired specifications of the City of Wheaton in the following areas (Please reference the specific requirement number):

No Deviations

As best as can be ascertained, there are no deviations other than those listed.

Company Name: \_\_\_\_\_

Signature: \_\_\_\_\_ Title: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Date: \_\_\_\_\_

***Failure to complete and return this form may be considered sufficient reason for rejection of the submittal.***

## RETURN WITH SUBMITTAL

### EXHIBIT F

#### LISTING OF SUBCONTRACTORS, CONSULTANTS, AND AGENTS FORM – DCEO GRANT INVITATION TO BID #26-13 GABLES BOULEVARD RECONSTRUCTION PROJECT

##### CHECK ONE

I will not be using any Subcontractors, Consultants, and Agents for this work.  
 I will be using the following Subcontractors, Consultants, and Agents for the identified portions of this work:

Service: \_\_\_\_\_

Company Name \_\_\_\_\_

Contact Name \_\_\_\_\_

MBE  WBE  BEPD

Dollar Value: \_\_\_\_\_

Contact Phone \_\_\_\_\_ Email \_\_\_\_\_

Service: \_\_\_\_\_

Company Name \_\_\_\_\_

Contact Name \_\_\_\_\_

MBE  WBE  BEPD

Dollar Value: \_\_\_\_\_

Contact Phone \_\_\_\_\_ Email \_\_\_\_\_

Service: \_\_\_\_\_

Company Name \_\_\_\_\_

Contact Name \_\_\_\_\_

MBE  WBE  BEPD

Dollar Value: \_\_\_\_\_

Contact Phone \_\_\_\_\_ Email \_\_\_\_\_

Service: \_\_\_\_\_

Company Name \_\_\_\_\_

Contact Name \_\_\_\_\_

MBE  WBE  BEPD

Dollar Value: \_\_\_\_\_

Contact Phone \_\_\_\_\_ Email \_\_\_\_\_

Total Dollars Allocated for Services \$ \_\_\_\_\_

### LISTING OF MATERIAL SUPPLIERS

##### CHECK ONE

I will not be using any Material Suppliers for this work.  
 I will be using the following Material Suppliers for the identified portions of this work:

Service: \_\_\_\_\_

Company Name \_\_\_\_\_

Contact Name \_\_\_\_\_

MBE  WBE  BEPD

Dollar Value: \_\_\_\_\_

Contact Phone \_\_\_\_\_ Email \_\_\_\_\_

**RETURN WITH SUBMITTAL**

**EXHIBIT F**

**LISTING OF SUBCONTRACTORS, CONSULTANTS, AND AGENTS FORM – DCEO GRANT**  
**INVITATION TO BID #26-13 GABLES BOULEVARD RECONSTRUCTION PROJECT**

Service:\_\_\_\_\_

Company Name\_\_\_\_\_

Contact Name\_\_\_\_\_

MBE  WBE  BEPD

Dollar Value:\_\_\_\_\_

Contact Phone\_\_\_\_\_ Email\_\_\_\_\_

Service:\_\_\_\_\_

Company Name\_\_\_\_\_

Contact Name\_\_\_\_\_

MBE  WBE  BEPD

Dollar Value:\_\_\_\_\_

Contact Phone\_\_\_\_\_ Email\_\_\_\_\_

**Total Dollars Allocated for Material Suppliers: \$\_\_\_\_\_**

\_\_\_\_\_  
Signature:

\_\_\_\_\_  
Date:

\_\_\_\_\_  
Printed Name:

\_\_\_\_\_  
Title:

\_\_\_\_\_  
Company Name:

\_\_\_\_\_  
Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

***Failure to complete and return this form may be considered sufficient reason for rejection of the submittal.***

**RETURN WITH SUBMITTAL**

**EXHIBIT G**

**LOW IMPACT DESIGN – GREEN INFRASTRUCTURE TRAINING FORM  
INVITATION TO BID #26-13 GABLES BOULEVARD RECONSTRUCTION PROJECT**

City of Wheaton Engineering  
Department

**SPECIAL PROVISION FOR  
Low Impact Design - Green Infrastructure Training**

Effective: 1/1/2017

All general and sub-contractors who manage or carry out routine maintenance or replacement of public surfaces are required to provide annual training to their employees in current green infrastructure or low impact design practices.

All training shall be in accordance with the current regulations governed by the National Pollution Discharge Elimination System (NPDES) ILR-40 General Permit Section 5, Article D, Paragraph ii.

Contractors shall provide confirmation of training below.

I, \_\_\_\_\_ (Company Owner or Management Representative) hereby acknowledge that all employees working on this project who will manage or carry out maintenance or replacement of public surfaces have completed the required annual low impact design/green technology training for this permit cycle year (**April 1, 2025-March 31, 2026**).

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Company: \_\_\_\_\_

***Failure to complete and return this form may be considered sufficient reason for rejection of the submittal.***

## RETURN WITH SUBMITTAL

### EXHIBIT H

#### APPRENTICESHIP AND TRAINING CERTIFICATION FORM

#### INVITATION TO BID #26-13 GABLES BOULEVARD RECONSTRUCTION PROJECT

#### Apprenticeship and Training Certification

Name of Bidder: \_\_\_\_\_

In accordance with the provisions of Section 30-22 (6) of the Illinois Procurement Code, the Bidder certifies that it is a participant, either as an individual or as part of a group program, in the approved apprenticeship and training programs applicable to each type of work or craft that the bidder will perform with its own forces. The Bidder further certifies for work that will be performed by subcontract that each of its subcontractors submitted for approval either (a) is, at the time of such bid, participating in an approved, applicable apprenticeship and training program; or (b) will, prior to commencement of performance of work pursuant to this Contract, begin participation in an approved apprenticeship and training program applicable to the work of the subcontract. The Illinois Department of Labor, at any time before or after award, may require the production of a copy of each applicable Certificate of Registration issued by the United States Department of Labor evidencing such participation by the contractor and any or all of its subcontractors. Applicable apprenticeship and training programs are those that have been approved and registered with the United States Department of Labor. The Bidder shall list in the space below, the official name of the program sponsor holding the Certificate of Registration for all of the types of work or crafts in which the Bidder is a participant and that will be performed with the Bidder's forces. Types of work or craft work that will be subcontracted shall be included and listed as subcontract work. The list shall also indicate any type of work or craft job category that does not have an applicable apprenticeship or training program. **The Bidder is responsible for making a complete report and shall make certain that each type of work or craft job category that will be utilized on the project is accounted for and listed. Return this with the Bid.**

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The requirements of this certification and disclosure are a material part of the Contract, and the Contractor shall require this certification provision to be included in all approved subcontracts. In order to fulfill this requirement, it shall not be necessary that an applicable program sponsor be currently taking or that it will take applications for apprenticeship, training, or employment during the performance of the work of this Contract.

Print Name and Title of Authorizing Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**RETURN WITH SUBMITTAL****EXHIBIT I****REFERENCES FORM****INVITATION TO BID #26-13 GABLES BOULEVARD RECONSTRUCTION PROJECT**

Contractors must submit a list of five (5) references from organizations of comparable size and structure that have received these same services within the last five (5) years.

Organization Name \_\_\_\_\_

Address \_\_\_\_\_

Contact Person \_\_\_\_\_ Telephone Number \_\_\_\_\_

Email Address \_\_\_\_\_ Dates of Service \_\_\_\_\_

Type of Work \_\_\_\_\_

Project Total \_\_\_\_\_

Organization Name \_\_\_\_\_

Address \_\_\_\_\_

Contact Person \_\_\_\_\_ Telephone Number \_\_\_\_\_

Email Address \_\_\_\_\_ Dates of Service \_\_\_\_\_

Type of Work \_\_\_\_\_

Project Total \_\_\_\_\_

Organization Name \_\_\_\_\_

Address \_\_\_\_\_

Contact Person \_\_\_\_\_ Telephone Number \_\_\_\_\_

Email Address \_\_\_\_\_ Dates of Service \_\_\_\_\_

Type of Work \_\_\_\_\_

Project Total \_\_\_\_\_

Organization Name \_\_\_\_\_

Address \_\_\_\_\_

Contact Person \_\_\_\_\_ Telephone Number \_\_\_\_\_

Email Address \_\_\_\_\_ Dates of Service \_\_\_\_\_

Type of Work \_\_\_\_\_

Project Total \_\_\_\_\_

Organization Name \_\_\_\_\_

Address \_\_\_\_\_

Contact Person \_\_\_\_\_ Telephone Number \_\_\_\_\_

Email Address \_\_\_\_\_ Dates of Service \_\_\_\_\_

Type of Work \_\_\_\_\_

Project Total \_\_\_\_\_

Company Name: \_\_\_\_\_

**Failure to complete and return this form will be considered sufficient reason for rejection of the submittal.**

**RETURN WITH SUBMITTAL**

**EXHIBIT J**

**INVITATION TO BID #26-13 GABLES BOULEVARD RECONSTRUCTION PROJECT**  
**CERTIFICATION REGARDING LOBBYING FORM**

\_\_\_\_\_, ("Contractor" or "Consultant"), having been first duly sworn, (Officer of Owner of Company)

deposes and states as follows:

\_\_\_\_\_, having submitted a proposal for:  
(Name of Company or Firm)

hereby certifies to the best of his or her knowledge and belief, that:

- (1) No Federal or State appropriated funds have been paid or will be paid, by or on behalf of the undersigned to any person for influencing or attempting to influence an officer or employee of any government agency, a member of Congress or Illinois General Assembly, an officer or employee of Congress or Illinois General Assembly, or an employee of a member of Congress or Illinois General Assembly in connection with the awarding of any agreement, the making of any grant, the making of any loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment or modification of any agreement, grant, loan or cooperative agreement. 31 U.S.C. § 1352. Additionally, the undersigned Contractor/Consultant certifies that it has filed the required certification under the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352), if applicable.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any government agency, a member of Congress or Illinois General Assembly, an officer or employee of Congress or Illinois General Assembly, or an employee of a member of Congress or Illinois General Assembly in connection with this Agreement, the undersigned shall complete and submit Federal Form LLL, Disclosure of Lobbying Activities Form, in accordance with its instructions, as amended.
- (3) It has complied and will comply with Executive Order No. 1 (2007) (EO 1-2007). EO 1-2007 generally prohibits contractors/consultants from hiring the then-serving Governor's family members to lobby procurement activities of the State, or any other unit of local government in Illinois, including local governments, if that procurement may result in a contract valued at over \$25,000. This prohibition also applies to hiring for that same purpose any former State employee who had procurement authority at any time during the one-year period preceding the procurement lobbying activity.
- (4) The undersigned shall require that the language of this Certification Regarding Lobbying be included in all subcontracts and sub-subcontracts and that all subcontractors and sub-subcontractors shall certify and disclose accordingly.
- (5) This Certification of Lobbying is a material representation of fact upon which reliance was placed when the underlying transaction to which this Certification of Lobbying is an incorporated provision was made or entered into, and is a prerequisite for this transaction, pursuant to 31 U.S.C. § 1352, as amended. Any

## **RETURN WITH SUBMITTAL**

person who fails to file the required certifications shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000, for each such failure.

NOTE: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.

The Contractor/Consultant certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor/Consultant understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.* apply to this certification and disclosure, if any.

By \_\_\_\_\_  
(Authorized Signature and Title)

State of \_\_\_\_\_

County of \_\_\_\_\_

Signed and sworn (or affirmed) to before me on \_\_\_\_\_  
(Date)

By \_\_\_\_\_  
(Name of person making statement)

---

(Signature of Notary Public)

(Seal)

***Failure to complete and return this form may be considered a sufficient reason for rejection of the bid.***

***Document must be notarized.***

**EXHIBIT K****STATE AND FEDERAL GRANT PROGRAM REQUIRED PROVISIONS AND CERTIFICATIONS FORM**  
**INVITATION TO BID #26-13 GABLES BOULEVARD RECONSTRUCTION PROJECT**

The work or services under the Agreement may be funded in whole or in part through a State of Illinois or Federal grant which requires compliance with the provisions contained in this Exhibit to the Agreement and all other applicable Federal and State laws and regulations. If this Agreement is between the City and the "Consultant," the term "Contractor" as used herein shall mean the "Consultant." The provisions below are incorporated into and made a part of the Agreement.

- 1) **Standard Assurances.** The Contractor assures that it will comply with all applicable federal statutes, regulations, executive orders, and other federal requirements in carrying out any project supported by State of Illinois or federal funds. The Contractor recognizes that federal laws, regulations, policies, and administrative practices may be modified from time to time and those modifications may affect project implementation. All contracts, whether funded in whole or in part with either Federal or State funds, are subject to Federal requirements and regulations, including but not limited to 2 CFR Part 200 and 44 Ill. Admin. Code 7000.40.
- 2) **Remedies.** Agreements for more than the Simplified Acquisition Threshold, currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. § 1908, must address administrative contractual or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

Pursuant to Federal Rule (2) above, when the City expends federal funds the duties and obligations imposed by the Agreement and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law. No action or failure to act by the City or Contractor shall constitute a waiver of any right or duty afforded any of them under the Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

- 3) **Equal Employment Opportunity, 41 C.F.R. Part 60-1.4(b).** During the performance of this Agreement the Contractor agrees as follows:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to, the following:

Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places,

**STATE AND FEDERAL GRANT PROGRAM REQUIRED PROVISIONS AND CERTIFICATIONS FORM**  
**INVITATION TO BID #26-13 GABLES BOULEVARD RECONSTRUCTION PROJECT**

available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- B. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender, or national origin.
- C. The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.
- D. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- E. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- F. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- G. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract (Agreement) or with any of the said rules, regulations, or orders, this contract (Agreement) may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as

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provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

H. The Contractor will include the portion of the sentence immediately preceding subparagraph (A) and the provisions of subparagraphs (A) through (H) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Pursuant to Federal Rule (4) above, when the City expends federal funds on any federally assisted construction contract, the equal opportunity clause is incorporated by reference herein.

4) **Davis-Bacon Act.**

Check the Applicable Provision Below:

When the City expends federal funds, Contractor/subcontractor is responsible for complying with the Davis Bacon Act (40 U.S.C. §§ 3141-3148) as supplemented by Department of Labor regulations at 29 CFR Part 5, determining the applicable prevailing wage requirements pertaining to Contractor/Subcontractor's Work, and Contractor shall strictly comply with the Davis Bacon Act requirements. All transactions regarding this Agreement shall be done in compliance with the Davis Bacon Act (40 U.S.C. §§ 3141-3148) and the requirements of 29 CFR Part 5 as may be applicable. Pursuant to the Davis Bacon Act, in addition to other various requirements, the Contractor is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in the wage determination made by the Secretary of Labor and Contractor shall pay such wages not less than once a week.

**OR**

Davis-Bacon Act wage rates as determined by the U.S. Department of Labor shall not apply for the construction of this project. (Stafford Act does not require Davis-Bacon Wage Act compliance if the Work is funded only with FEMA emergency funding.)

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5) Copeland Anti-Kickback Act (40 U.S.C. 3145; 29 C.F.R. Part 3).

- A. Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- B. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses applicable federal regulation instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these Contract clauses.
- C. Breach. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

6) Contract Work Hours and Safety Standards Act. To the extent applicable (Agreements in excess of \$100,000 involving the employment of mechanics or laborers for construction work), the Contractor shall comply with the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 3701 *et seq.*, regarding labor standards for State or federally assisted sub-agreements, and shall comply with the following requirements:

- A. *Overtime Requirements.* No Contractor or subcontractor contracting for any part of the Agreement work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty (40) hours in such work week.
- B. *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph 5(A) of this section, the Contractor, and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States, for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 5(A) of this section, in the sum of \$27 for each calendar day, or the sum specified in 29 C.F.R. § 5.8(a), on which such individual was required or permitted to work in excess of the standard workweek of forth (40) hours without payment of the overtime wages required by the clause set forth in paragraph 5(A) of this section.

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C. *Withholding for unpaid wages and liquidated damages.* The City shall upon its own action or upon written request of an authorized representative of the U.S. Department of Labor or State of Illinois, withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such Agreement or any other Federal or State contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 5(B) of this section.

D. *Subcontracts.* The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 5(A) through (D) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clause set forth in paragraphs 5(A) through (D).

7) **Rights To Inventions Made Under A Contract Or Agreement.**

Check the Applicable Provision Below:

The federal award meets the definition of “funding agreement” under 37 C.F.R. §401.2(a) and this contract is between the City and a small business firm or nonprofit organization regarding the substitution of parties, assignment, or performance of experimental, developmental, or research work under such funding agreement, both the City and Contractor shall comply with the requirements of 37 C.F.R. Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperating Agreements,” and any implementing regulations issued by the awarding agency.

The federal award does not qualify as a “funding agreement” and/or is not a contract with small business firm or nonprofit organization for the purpose of the substitution of parties, assignment, or performance of experimental, developmental, or research work under such funding agreement.

8) **Clean Air and Clean Water Act.** The Contractor certifies that it is in compliance with all applicable standards, order or regulations issued pursuant to the Clean Air Act (42 USC §7401 *et seq.*) and the Federal Water Pollution Control Act, as amended (33 USC §1251 *et seq.*) and agrees to include those requirements in each subcontract exceeding \$100,000 financed in whole or in part with a federal award or State of Illinois grant assistance. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the appropriate Environmental Protection Agency Regional Office and appropriate federal awarding or State grant awarding agencies.

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9) Debarment. This Agreement is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, the Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). The Contractor must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. The Contractor certifies that it is not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Agreement by any Federal department or agency (2 C.F.R. Part 180 and 45 CFR Part 76), or by the State (See 30 ILCS 708/25(6)(G)), and is not listed on the governmentwide Excluded Parties List System for Award Management (SAM) in accordance with OMB guidelines at 2 C.F.R. Part 180 that implement E.O.s 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. The certification pursuant to this paragraph is a material representation of fact relied upon by the City. If it is later determined that the Contractor did not comply with 2 C.F.R. Part 180, subpart C, 2 C.F.R. Part 3000, subpart C, and 30 ILCS 708 *et seq.*, the Federal Government or State of Illinois may pursue available remedies, including but not limited to suspension and/or debarment.

10) Prohibition Against Lobbying Activities (Byrd Anti-Lobbying Amendment). When this Agreement involves the expenditure of federal funds, Contractors who apply or bid for an award of \$100,000 or more shall file the required Certification Regarding Lobbying required by 49 C.F.R. Part 20. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer of employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

- A. No Federal or State appropriated funds have been paid or will be paid, by or on behalf of the Contractor to any person for influencing or attempting to influence an officer or employee of any government agency, a member of Congress or Illinois General Assembly, an officer or employee of Congress or Illinois General Assembly, or an employee of a member of Congress or Illinois General Assembly in connection with the awarding of any agreement, the making of any grant, the making of any loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment or modification of any agreement, grant, loan or cooperative agreement. 31 U.S.C. § 1352. Additionally, the undersigned Contractor certifies that it has filed the required certification under the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352), if applicable.
- B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any government agency, a member of Congress or Illinois General Assembly, an officer or employee of

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Congress or Illinois General Assembly, or an employee of a member of Congress or Illinois General Assembly in connection with this Agreement, the Contractor shall complete and submit Federal Form LLL, Disclosure of Lobbying Activities Form, in accordance with its instructions, as amended.

- C. Contractor has complied and will comply with Executive Order No. 1 (2007) (EO 1-2007). EO 1-2007 generally prohibits Contractors from hiring the then-serving Governor's family members to lobby procurement activities of the State, or any other unit of local government in Illinois, including local governments, if that procurement may result in a contract valued at over \$25,000. This prohibition also applies to hiring for that same purpose any former State employee who had procurement authority at any time during the one-year period preceding the procurement lobbying activity.
- D. The Contractor shall require that the language of this Certification be included in all subcontracts and sub-subcontracts and that all subcontractors and sub-subcontractors shall certify and disclose accordingly.
- E. Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.

11) Procurement of Recovered Materials. A non-federal entity that is a state agency or agency of a political subdivision and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. To the extent applicable, Contractor agrees to comply with the requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and give preference to the purchase of recycled products for use in this Agreement. In accordance with Section 6002, Contractor must:

- A. Procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired in the preceding fiscal year exceeded \$10,000;
- B. Procure solid waste management services in a manner that maximizes energy and resource recovery; and
- C. Must have established an affirmative procurement program for the procurement of recovered materials identified in the EPA guidelines.

12) Record Retention Requirements. Contractor certifies that it will comply with the record retention requirements detailed in 2 C.F.R. § 200.333. Contractor further certifies that it will retain all records as required by 2 C.F.R. § 200.333 for a period of three years after the City submits its final

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expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

13) DHS Seal, Logo, and Flags. The Contractor shall not use the Department of Homeland Security (DHS) seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials without specific federal agency approval.

14) Contracting with Small and Minority Firms, Women's Business Enterprise, and Labor Surplus Area Firms.

In accordance with 2 C.F.R. § 200.321, Contractor and subcontractors shall take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible, including, but not limited to, the following:

- A. Placing qualified small and minority business and women's business enterprise on solicitation lists;
- B. Assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;
- C. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;
- D. Establishing delivery schedules where the requirements of the contract permit, which encourage participation by small and minority businesses and women's business enterprises; and
- E. Using the services and assistance of the U.S. Small Business Administration, the Minority Business Development Agency of the U.S. Department of Commerce, and State and local governmental small business agencies; and
- F. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in steps a through e of this Paragraph 14.

15) Discrimination Prohibitions. Contractor shall comply with all applicable federal and state of Illinois statutes, regulations, and executive orders relating to nondiscrimination, including, but not limited to:

- A. Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, which prohibits discrimination on the basis of race, color, or national origin;
- B. Title VII of the Civil Rights Act of 1964 and amended by the Equal Employment Opportunity Act of 1972, which prohibits discrimination on the basis of sex;
- C. The Age Discrimination Act of 1975, 42 U.S.C. §§ 6101 through 6107, which prohibits discrimination on the basis of age;
- D. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of handicap;

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- E. Section 503 of the Rehabilitation Act of 1973, pertaining to affirmative action to employ and advance qualified disabled people;
- F. Executive Order 11246, as amended, which pertains to promoting and insuring equal opportunity for all persons, without regard to race, color, religion, sex, or national origin;
- G. Equal Pay Act of 1964, including 29 U.S.C. § 206;
- H. The Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*, which prohibits discrimination on the basis of disability;
- I. Architectural Barriers Act of 1990, pertaining to the design, construction, and alteration of buildings so as to be accessible to and usable by persons with physical disabilities;
- J. Title II of the Genetic Information Nondiscrimination Act of 2008, which prohibits discrimination based on genetic information;
- K. Vietnam Era Veterans Readjustment Act of 1974, which prohibits discrimination against qualified disabled veterans of the Vietnam era;
- L. Any other nondiscrimination provisions in the specific statutes under which federal assistance for the project may be provided including, but not limited to 49 U.S.C. § 5332, which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity;
- M. The Illinois Public Works Employment Discrimination Act, 775 ILCS 10/1 *et seq.*;
- N. The Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.*, including, without limitation, 44 Ill. Admin. Code Part 750, which is incorporated herein.

- 16) International Boycott. Contractor certifies that neither it nor any substantially owned affiliated company is participating or shall participate in an international boycott in violation of the provision of the U.S. Export Administration Act of 1979 (50 U.S.C. Appendix 2401, *et seq.*) or the regulations of the U.S. Department of Commerce promulgated under that Act (15 C.F.R. Parts 730 through 774).
- 17) False or Fraudulent Statements or Claims. The Contractor acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to City in connection with this Agreement, City reserves the right to impose on the Contractor the penalties of 18 U.S.C. Section 1001, 31 U.S.C. Section 3801, and 49 CFR Part 31, as City may deem appropriate. Contractor agrees to include this clause in all state and federal assisted contracts and subcontracts.
- 18) No Obligation by Federal Government. The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the City, Contractor, or any other party pertaining to any matter resulting from this Agreement.
- 19) Energy Conservation. To the extent applicable, the Contractor and its third-party Contractors at all tiers shall comply with mandatory standards and policies relating to energy efficiency that are contained in applicable state energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. Section 6321 *et seq.*

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20) Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment (2 C.F.R. 200.216). The Contractor shall not obligate or expend funding provided under this Agreement to:

- i. Procure or obtain;
- ii. Extend or renew a contract to procure or obtain; or
- iii. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
  - a. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
  - b. Telecommunications or video surveillance services provided by such entities or using such equipment.
  - c. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

21) Domestic Preferences for Procurements (2 C.F.R. 200.322). As appropriate and to the extent consistent with law, the Contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this Paragraph 21 must be included in all subawards including all contracts and purchase orders for work or products under this Agreement.

For purposes of this Paragraph 21:

- i. “Produced in the United States” means, for iron and steel products, that all manufacturing from the initial melting stage through the application of coatings, occurred in the United States.
- ii. “Manufactured Products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

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22) **Bribery**. The Contractor certifies that it has not been convicted of bribery or attempting to bribe an officer or employee of the State of Illinois, nor made an admission of guilt of such conduct which is a matter of record (30 ILCS 500/50-5).

23) **Debt to State**. Grantee certifies that neither it, nor its affiliate(s), is/are barred from receiving an Award because Grantee, or its affiliate(s), is/are delinquent in the payment of any debt to the State, unless Grantee, or its affiliate(s), has/have entered into a deferred payment plan to pay off the debt, and Grantee acknowledges Grantor may declare the Agreement void if the certification is false (30 ILCS 500/50-11).

24) **Education Loan**. The Contractor certifies that it is not barred from receiving State agreements as a result of default on an educational loan (5 ILCS 385/1 *et seq.*).

25) **Dues and Fees**. The Contractor certifies that it is not prohibited from receiving an Award because it pays dues or fees on behalf of its employees or agents or subsidizes or otherwise reimburses them for payment of their dues or fees to any club which unlawfully discriminates (775 ILCS 25/1 *et seq.*).

26) **Pro-Children Act**. The Contractor certifies that it is in compliance with the Pro-Children Act of 2001 in that it prohibits smoking in any portion of its facility used for the provision of health, day care, early childhood development services, education, or library services to children under the age of eighteen (18), which services are supported by Federal or State government assistance (except such portions of the facilities which are used for inpatient substance abuse treatment) (20 USC 7181-7184).

27) **Criminal Convictions**. The Contractor certifies that neither it nor any managerial agent of Grantee has been convicted of a felony under the Sarbanes-Oxley Act of 2002, nor a Class 3 or Class 2 felony under Illinois Securities Law of 1953, or that at least five (5) years have passed since the date of the conviction. Contractor further certifies that it is not barred from receiving an Award under 30 ILCS 500/50-10.5 and acknowledges that the City shall declare the Agreement void if this certification is false (30 ILCS 500/50-10.5).

28) **Illinois Use Tax**. The Contractor certifies in accordance with 30 ILCS 500/50-12 that it is not barred from receiving an Award under this Paragraph. Grantee acknowledges that this Agreement may be declared void if this certification is false.

29) **Environmental Protection Act Violations**. The Contractor certifies in accordance with 30 ILCS 500/50-14 that it is not barred from receiving an Award under this Paragraph. Contractor acknowledges that this Agreement may be declared void if this certification is false.

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30) Goods From Child Labor Act. The Contractor certifies that no foreign-made equipment, materials, or supplies furnished to the City under this Agreement have been produced in whole or in part by the labor of any child under the age of twelve (12) (30 ILCS 584).

31) Force Labor Act. Contractor certifies that it complies with the State of Illinois Prohibition of Goods from Force Labor Act, and certifies that no foreign-made equipment, materials, or supplies furnished to the City under this Agreement have been or will be produced in whole or in part by forced labor, convict labor, or indentured labor under penal sanction (30 ILCS 584).

32) Changed Conditions Affecting Performance. The Contractor shall immediately notify the City of any change in conditions which may significantly affect its ability to perform the Project in accordance with the provisions of this Agreement.

33) Third Party Disputes Or Breaches. The Contractor agrees to pursue all legal rights available to it in the enforcement or defense of any third-party contract, and City reserves the right to concur in any compromise or settlement of any third-party contract claim involving the Contractor. The Contractor will notify City of any current or prospective major dispute pertaining to a third-party contract. If the Contractor seeks to name City as a party to the litigation, the Contractor agrees to inform the City before doing so. City retains a right to a proportionate share of any proceeds derived from any third-party recovery. Unless permitted otherwise by City, the Contractor will credit the Project Account with any liquidated damages recovered. Nothing herein is intended to, nor shall it waive the City's immunity to suit.

34) Non-Waiver. The Contractor agrees that in no event shall any action or inaction on behalf of or by City, including the making by City of any payment under this Agreement, constitute or be construed as a waiver by City of any breach by the Contractor of any terms of this Agreement or any default on the part of the Contractor which may then exist; and any action, including the making of a payment by City, while any such breach or default shall exist, shall in no way impair or prejudice any right or remedy available to City in respect to such breach or default. The remedies available to City under this Agreement are cumulative and not exclusive. The waiver or exercise of any remedy shall not be construed as a waiver of any other remedy available hereunder or under general principles of law or equity.

35) Cargo Preference. Use of United States Flag Vessels. The Contractor agrees to comply with 46 U.S.C. § 55305 and 46 CFR Part 381 and to insert the substance of those regulations in all applicable subcontracts issued pursuant to this Agreement, to the extent those regulations apply to this Agreement.

36) Provisions Required By Law Deemed Inserted. Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise

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any provision is not inserted, or is not correctly inserted, then upon the application of either party the Agreement shall forthwith be physically amended to make such insertion or correction.

- 37) Agreement To Execute Other Required Documents. Contractor and all subcontractors, by entering into the Agreement, understand and agree that if funding for the Work is provided under federal and/or state grant programs there are specific grant program contracting requirements. To the extent any such requirement is not otherwise set forth herein, Contractor agrees to execute such amendments or further agreements as may be necessary to ensure that the City funding for the Work is provided.
- 38) The Illinois Endangered Species Protection Act and the Illinois Natural Area Preservation Act. The Contractor will comply with the Illinois Endangered Species Protection Act and the Illinois Natural Area Preservation Act.
- 39) Illinois Prevailing Wage Act (820 ILCS 130/0.01 et seq.). The Contractor will comply with the Illinois Prevailing Wage Act (820 ILCS 130/), including, but not limited to, the requirement that not less than the prevailing rate of wages applicable to the Work on the Project shall be paid to all laborers, workers, and mechanics performing Work under the Agreement and Contractors bonds shall include a provision as will guarantee the faithful performance of such prevailing wage clause as required by this Agreement.
- 40) Illinois Works Jobs Program Act. The Contractor will comply with the Illinois Works Jobs Program Act (30 ILCS 559/20-1 et seq.).
- 41) Drug-Free Workplace Act of 1988. The Contractor will comply with the Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 701-707).
- 42) Business Enterprise Program for Minorities, Females, and Persons with Disabilities Act (30 ILCS 575/0.01 et seq.). The Contractor will make a reasonably Good Faith Effort to afford members of the Business Enterprise Program a full and fair opportunity to compete for contracts.
- 43) The National Emission Standards for Hazardous Air Pollutants (NESHAP) of the U.S. Clean Air Act. The Contractor will comply with the National Emission Standards for Hazardous Air Pollutants (NESHAP) of the U.S. Clean Air Act.
- 44) Buy America Preference for Infrastructure Projects. In accordance with the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, §§ 70901-52 which includes the Build America, Buy America Act, and strengthens “Made in America Laws,” and consistent with Executive Order 14005, *Ensuring the Future is Made in All of America by All of America’s Workers*, the following Buy America Preference for Infrastructure Projects clause.

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applies  does not apply

(the term "infrastructure" includes, at a minimum, the structures, facilities, and equipment for, in the City of Wheaton, roads, highways, and bridges; public transportation; dams; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property; as well as facilities that generate, transport, and distribute energy):

- A. All iron and steel used in the project shall be produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States; and
- B. All manufactured products used in the project shall be produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
- C. All construction materials shall be manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States. The term "construction materials" as used in this paragraph 43 shall include an article, material, or supply that is or consists primarily of the following:
  - i. Non-ferrous metals;
  - ii. Plastic and polymer-based products (including polyvinylchloride; composite building materials, and polymers used in fiber optic cables);
  - iii. Glass (including optic glass);
  - iv. Lumber; or
  - v. Drywall.

Items consisting of two or more of the listed construction materials that have been combined through a manufacturing process, and items including at least one of the listed materials combined with a material that is not listed through a manufacturing process shall not be treated as a construction material.

The requirements listed in this attachment apply to State and Federally funded projects or projects for which State and/or Federal grant funds are anticipated to be awarded. The Contractor agrees to include these requirements in each contract and subcontract financed or anticipated to be financed in whole or in part with State or Federal assistance.

RETURN WITH SUBMITTAL

EXHIBIT K

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The Contractor/Consultant certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor/Consultant understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.* apply to this certification and disclosure, if any.

Company Name: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

Its: \_\_\_\_\_  
(Title)

State of: \_\_\_\_\_

County of: \_\_\_\_\_

Signed and sworn (or affirmed) to before me on \_\_\_\_\_  
(Date)

By \_\_\_\_\_  
(Name of person making statement)

\_\_\_\_\_  
(Signature of Notary Public)

(Seal)

**Failure to complete and return this form may be considered sufficient reason for rejection of the submittal. Document must be notarized.**

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### EXHIBIT L

#### CITY OF WHEATON BUSINESS ENTERPRISE PROGRAM UTILIZATION PLAN FORM INVITATION TO BID #26-12 GABLES BOULEVARD RECONSTRUCTIOMN PROJECT

#### UTILIZATION PLAN PART I: COMMITMENT AND SIGNATURE

The undersigned Vendor submits this Utilization Plan as part of its bid or offer in accordance with the requirements of solicitation # **26-12 Wheaton Roosevelt Road Sidewalk and Pedestrian Bridge Improvements** and the requirements of the Business Enterprise Program (BEP). The solicitation contains a goal that 28% of the value of the contract will be performed by BEP certified vendors as defined by the Commission on Equity and Inclusion (CEI). The solicitation contains a goal that 0% of the value of the contract will be performed by Veteran Small Business certified vendors (VSB) as defined by the Commission on Equity and Inclusion.

The Utilization Plan consists of the following parts, each of which must be completed and returned as instructed in this Commitment. No alterations of these forms will be permitted. One set of Parts I-IV must be completed for the BEP goal and one set must be completed for the VSB goal:

- Part I: Vendor Commitment (with Signature)
- Part II: Subcontractor Participation Agreement(s)
- Part IV: Utilization Plan Terms and Conditions (These terms and conditions apply to all options below but do not need to be returned.)

The undersigned Vendor acknowledges that (1) Vendor has read, understands, and agrees to BEP policies, rules, and procedures as defined in the Terms and Conditions in Part IV of this document, and (2) Vendor hereby affirms (**select one** of the options below):

- Vendor is a BEP certified firm and plans to fully meet the goal through self-performance or Vendor is a VSB certified firm and plans to fully meet the VSB goal through self-performance. (Return this Part I Signature Page only.)
- Vendor has identified BEP and VSB certified subcontractor(s) to fully meet the established BEP and VSB goals. Only BEP certified subcontractors may be used to meet the BEP goal and only VSB certified subcontracts may be used to meet the VSB goal if Vendor intends to meet the established goal in whole or in part through the use of subcontractors. Subcontractors that are both BEP and VSB certified may only be counted towards the BEP or VSB goal. (Return this Part I Signature page and signed Part II Subcontractor Participation Agreement(s) to equal or exceed the goal.)
- Vendor cannot fully meet the goal but has made Good Faith Effort towards meeting the goal, and hereby requests a waiver or reduction of the goal to       % based on the completed Good Faith Effort. (If requesting a waiver, return this Part I Signature Page and completed Part III Good Faith Effort. If requesting a reduction, return this Part I Signature Page, Part II signed Subcontractor Participation Agreement(s), and completed Part III Good Faith Effort.)

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**CITY OF WHEATON BUSINESS ENTERPRISE PROGRAM UTILIZATION PLAN FORM**  
**INVITATION TO BID #26-12 GABLES BOULEVARD RECONSTRUCTIOMN PROJECT**

The undersigned Vendor understands that all subcontractors identified in this Utilization Plan and Participation Agreement(s) must be certified with the Illinois Commission on Equity and Inclusion (CEI) BEP at the time of submission of all bids/offers and shall perform commercially useful functions as defined in Part IV of this Utilization Plan. **We understand that compliance with this Utilization Plan is a mandated part of this solicitation and that this Utilization Plan will become a part of the contract, if awarded.** Failure to carry out the requirements of this Utilization Plan is a material breach of the resulting contract, which may result in the termination of the contract or such other remedy as the Agency/University deems appropriate.

Vendor Name and d/b/a: \_\_\_\_\_

Signature: \_\_\_\_\_ Print: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_ Email Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

***Failure to complete and return this form will be considered sufficient reason for rejection of the submittal.***

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#### UTILIZATION PLAN PART II: PARTICIPATION AGREEMENT (Letter of Intent)

Instructions: The Prime Vendor is required to submit a separate, signed and **fully completed Participation Agreement** from each Business Enterprise Program (BEP) certified vendor or Veteran Small Business certified vendor (VSB). **Once signed and submitted with the bid/offer, this Participation Agreement, along with the other Parts of this Utilization Plan, will become a mandated part of the contract, if awarded.** The Prime Vendor shall not prohibit or otherwise limit the BEP/VSB certified vendor(s) from providing subcontractor quotes to other potential bidders/offerors.

Project Name: \_\_\_\_\_ Project/Solicitation Number: \_\_\_\_\_

**Name of Prime Vendor:** \_\_\_\_\_

Address: \_\_\_\_\_

City, State and Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

Vendor's Contact responsible for compliance with this Participation Agreement:

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Name of BEP/VSB Certified Vendor: \_\_\_\_\_

Type of Certified Vendor:  BEP  VSB

Address: \_\_\_\_\_

City, State and Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

BEP/VSB Vendor's Contact responsible for compliance with this Participation Agreement:

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Type of Agreement:  Services  Supplies  Both Services and Supplies

(a) Proposed % of Contract to be performed by the BEP/VSB Certified Vendor \_\_\_\_ %

NOTE: The Prime Vendor must indicate the percentage of the estimated contract award that will be subcontracted to the certified BEP/VSB Vendor.

(b) Anticipated start date of the Certified BEP/VSB Vendor: \_\_\_\_\_.

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(c) This participation agreement shall have a term of \_\_\_\_\_ to \_\_\_, with a total period of years and \_\_\_\_months, including renewals, change orders or extensions to the underlying contract.

(d) Description of work to be performed or goods/equipment to be provided by the BEP certified vendor. **This description must include identified Institute for Public Procurement (NIGP) Class or Class Item codes.** All Participation Agreements shall be subject to Agency/University approval. Any changes involving or affecting the identified BEP/VSB certified vendor, scope(s) of work and NIGP Code(s) will not be permitted without notification to the soliciting Agency/University and BEP/VSB Compliance, in writing, and approval of the soliciting Agency/University. *(If more space is needed to fully describe BEP/VSB certified firm's proposed scope of work and/or payment schedule, attach additional sheets)*

**THE UNDERSIGNED PARTIES FURTHER AGREE** that once signed and submitted with the bid/offer, this Participation Agreement, along with the other Parts of this Utilization Plan, will become a material part of the contract, and the BEP/VSB certified vendor will perform the scope of work for the percentage as indicated above. The Undersigned Parties do also certify that they did not affix their signatures to this document until all areas under Description of Service/ Supply and Fee/Cost were completed.

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Vendor (Company Name and d/b/a):

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\_\_\_\_\_  
Name (Signature) / \_\_\_\_\_  
Date

---

\_\_\_\_\_  
Name (Print)

---

\_\_\_\_\_  
Title

---

Certified BEP/VSB (Company Name and d/b/a):

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\_\_\_\_\_  
Name (Signature) / \_\_\_\_\_  
Date

---

\_\_\_\_\_  
Name (Print)

---

\_\_\_\_\_  
Title

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#### CITY OF WHEATON BUSINESS ENTERPRISE PROGRAM UTILIZATION PLAN FORM INVITATION TO BID #26-12 GABLES BOULEVARD RECONSTRUCTION PROJECT

#### UTILIZATION PLAN PART IV: TERMS OF UTILIZATION

##### DEFINITIONS:

"Agency" shall be defined as any State Agency, Board, or Commission under the jurisdiction of the Governor of the State of Illinois.

"University" shall be defined as any University, Department, public institution of higher education, and/or community college district within the State of Illinois.

"Business owned by a person with a disability" or "PBE" means a business concern that is at least 51% owned by one or more persons with a disability and the management and daily business operations of which are controlled by one or more of the persons with disabilities who own it. A not-for-profit agency for persons with disabilities as defined in Section 45-35 of the Illinois Procurement Code is also considered a "business owned by a person with a disability."

"Certification" means a determination made by the Council or by one delegated authority from the Council to make certifications, or by a State agency with statutory authority to make such a certification, that a business entity is a business owned by a minority, woman, or person with a disability for whatever purpose. A business owned and controlled by women shall be certified as a "woman owned business". A business owned and controlled by women who are also minorities shall be certified as both a "woman owned business" and a "minority owned business".

"Commercially Useful Function" means responsibility for the execution of a distinct element of the work of the contract, which is carried out by actually performing, managing, and supervising the work involved, evidencing the responsibilities and risks of a business owner such as negotiating the terms of (sub)contracts, taking on a financial risk commensurate with the contract or its subcontract, responsibility for acquiring the appropriate lines of credit and/or loans, or fulfilling responsibilities as a joint venture partner as described in the joint venture agreement.

"Compliance" means that a contractor has correctly implemented the requirements of this Utilization Plan.

"Contract Specific Goals" means the goals established under the Agency/University's supplier diversity program that are based upon relevant factors, including, but not limited to, the availability of diverse businesses in the scopes of work of the contract.

"Contractor" means any person or business entity that has entered into a contract with the Agency/University, and includes all partners, affiliates, and joint ventures of such person or entity.

"Control" means the exclusive or ultimate and sole control of the business including, but not limited to, capital investment and all other financial matters, property, acquisitions, contract negotiations, legal matters, officer-director-employee selection and comprehensive hiring, operating responsibilities, cost-control matters, income and dividend matters, financial transactions and rights of other shareholders or joint partners. Control shall be real, substantial and continuing, not pro

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forma. Control shall include the power to direct or cause the direction of the management and policies of the business and to make the day-to-day as well as major decisions in matters of policy, management and operations. Control shall be exemplified by possessing the requisite knowledge and expertise to run the particular business and control shall not include simple majority or absentee ownership.

"Council" means the Business Enterprise Council for Minorities, Women and Persons with Disabilities.

"Diverse Firms" shall mean businesses owned by minorities, women, and persons with disabilities. Also to include, qualified service-disabled veteran-owned small businesses and qualified veteran-owned small businesses.

"Woman" shall mean a person who is a citizen or lawful permanent resident of the United States and who is of the female gender.

"Woman-owned business" of "WBE" means a business concern which is at least 51% owned by one or more women, or, in the case of a corporation, at least 51% of the stock in which is owned by one or more women; and the management and daily business operations of which are controlled by one or more of the women who own it.

"Good Faith Efforts" means actions undertaken by a bidder or contractor to achieve a Contract Specific Goal by its scope, intensity, and appropriateness to the objective, that can reasonably be expected to fulfill the program's requirements.

"Joint Venture" means an association of a diverse firm and one or more other firms to carry out a single, for-profit business enterprise, for which each joint venture partner contributes property, capital, efforts, skills and knowledge, and in which the diverse firm is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

"Manufacturer" refers to a company that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

"Minority-owned business" or "MBE" means a business concern which is at least 51% owned by one or more minority persons, or in the case of a corporation, at least 51% of the stock in which is owned by one or more minority persons; and the management and daily business operations of which are controlled by one or more of the minority individuals who own it.

"Minority person" shall mean a person who is a citizen or lawful permanent resident of the United States and who is any of the following:

- (a) American Indian or Alaska Native (a person having origins in any of the original peoples of North and South America, including Central America, and who maintains tribal affiliation or community attachment).

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- (b) Asian (a person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent, including, but not limited to, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam).
- (c) Black or African American (a person having origins in any of the black racial groups of Africa). Terms such as "Haitian" or "Negro" can be used in addition to "Black or African American".
- (d) Hispanic or Latino (a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race).
- (e) American, or other Spanish culture or origin, regardless of race).
- (f) Native Hawaiian or Other Pacific Islander (a person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands).

"NIGP Class and Class Item Codes" identify the scope(s) of work as defined by the National Institute of Governmental Procurements. This five-digit code establishes and defines the detailed scope(s) of work for the contract. The first three digits of the NIGP code represents the Class or broad category of the work to be performed, and the second two digits of the NIGP code identify a more specific focus of work within the Class category.

"Owned" means having all the customary incidents of ownership, including the right of disposition, and the sharing in all risks and profits commensurate with the degree of ownership interest.

"Person with a disability" means a person who is a citizen or lawful resident of the United States and is a person qualifying as being disabled under subdivision Illinois Compiled Statutes 30 ILCS 575/2 subsection A.

"Qualified service-disabled veteran" means a veteran who has been found to have 10% or more service-connected disability by the United States Department of Veterans Affairs or the United States Department of Defense.

"Qualified service-disabled veteran-owned small business" or "SDVOSB" means a small business (i) that is at least 51% owned by one or more qualified service-disabled veterans living in Illinois or, in the case of a corporation, at least 51% of the stock of which is owned by one or more qualified service-disabled veterans living in Illinois; (ii) that has its home office in Illinois; and (iii) for which items (i) and (ii) are factually verified annually by the Commission on Equity and Inclusion.

"Qualified veteran-owned small business" or "VOSB" means a small business (i) that is at least 51% owned by one or more qualified veterans living in Illinois or, in the case of a corporation, at least 51% of the stock of which is owned by one or more qualified veterans living in Illinois; (ii) that has its home office in Illinois; and (iii) for which items (i) and (ii) are factually verified annually by the Commission on Equity and Inclusion.

"Regular Dealer" means a business that owns, operates, or maintains a store, warehouse, or other establishment in which the supplies, equipment, or goods (excluding software licenses) of the

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general character required for the Procurement are bought, kept in stock, and regularly sold or leased in the usual course of business. To be a Regular Dealer, the business must be an established business that engages, as its principal business and under its own name, in the Procurement and sale or lease of the products in question. A business may be a Regular Dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business if the business both owns and operates distribution equipment for the products. Any supplementing of such business' distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. Packagers, manufacturer representatives, or other businesses who arrange or expedite transactions are not Regular Dealers.

"State contracts" means all contracts entered into by the State, any agency or department thereof, or any public institution of higher education, including community college districts, regardless of the source of the funds with which the contracts are paid, which are not subject to federal reimbursement. "State contracts" does not include contracts awarded by a retirement system, pension fund, or investment board subject to Section 1-109.1 of the Illinois Pension Code. This definition shall control over any existing definition under this Act or applicable administrative rule.

"Supplier" refers to a company that owns, operates, or maintains a store, warehouse or other establishment in which materials, supplies, articles or equipment are bought, kept in stock and regularly sold or leased to the public in the usual course of business. A regular distributor or supplier is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for performance of a contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular distributor the firm must engage in, as its principal business and in its own name, the purchase and sale of the products in question. A regular distributor in bulk items such as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it owns or operates distribution equipment.

"Utilization Plan" means a form and additional documentation included in all bids or proposals that demonstrates a vendor's proposed utilization of vendors certified by the Business Enterprise Program to meet the targeted goal. The Utilization Plan shall demonstrate that the Vendor has either: (1) met the entire contract goal or (2) requested a full or partial waiver and made Good Faith Efforts towards meeting the goal.

#### **Business Enterprise Program Aspirational Goal**

The Business Enterprise for Minorities, Women, and Persons with Disabilities Act, 30 ILCS 575, establishes an aspirational goal of awarding not less than 20% of the total dollar amount of State contracts to businesses certified as owned and controlled by minorities, women, and persons with disabilities. 30 ILCS 575/4(a).

Section 45-75 of the Illinois Procurement Code, 30 ILCS 500, establishes a goal to award not less than 3% of the total dollar amount of State contracts to SDVOSBs and VOSBs.

This solicitation includes Business Enterprise Program (BEP) and/or Veterans Business Program

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participation goals and, therefore, requires bidders and offerors to include a BEP Utilization Plan and a VSB Utilization Plan. A “Utilization Plan” includes the form on page 1 of this document, with the Participation Agreement and Schedule(s); any additional documentation required in the instructions that demonstrates a commitment to utilizing certified BEP/VSB subcontractors to meet the targeted, contract-specific goal, described below; and documentation demonstrating Good Faith Effort when requesting a goal waiver or reduction.

A properly completed BEP Utilization Plan and VSB Utilization Plan is due at the time of bid or offer submission. Failure to complete and include a BEP Utilization Plan shall render a bid or offer non-responsive. 30 ILCS 575/4(f). Non-responsive bids and offers will be rejected by the Agency/University.

In addition to the other award criteria established for this solicitation, the Agency/University will award this contract to a Vendor that meets the contract-specific goal or makes Good Faith Efforts to meet the goal. The goal is applicable to the contract, amendments, modifications, extensions, change orders, and allowances. The Vendor’s Utilization Plan must indicate whether the goal will be met by self-performance or by subcontracting. If the prime Vendor is BEP certified, the entire goal can be met by Prime Vendor self-performance, without subcontracting with another certified BEP vendor. If the prime Vendor is VSB certified, the entire VSB goal can be met by Prime Vendor self-performance. However, the prime BEP or VSB Vendor must submit a Utilization Plan indicating that the goal will be met by self-performance. If a prime Vendor subcontracts any portion of a contract to non-BEP/VSB certified subcontractors, the amount paid for goods or services delivered by those subcontractors will not be counted toward the goal.

#### Contract (Specific) Goal to be Achieved by Vendor

This solicitation includes a contract-specific BEP/VSB participation **goal** based on certified BEP/VSB vendors available to perform anticipated services and/or provide supplies required by this solicitation. The availability of certified BEP/VSB vendors was determined using The Institute for Public Procurement (NIGP Class and Class Item) codes listed in the Invitation for Bid (IFB), Request for Proposal (RFP), Request for Qualifications (RFQ), or other solicitation documents.

Prime Vendors must only consider NIGP Class and Class Item codes referenced in solicitation documents when selecting BEP/VSB subcontractors or completing a Good Faith Effort. Subject to State Agency/University approval, the Prime Vendor may utilize additional codes to identify BEP/VSB vendors that will be able to perform a commercially useful function under the resulting contract through direct participation. Indirect participation will not be considered towards BEP/VSB goals. Direct participation includes work that is directly related to the completion of the scope of work of the contract. Indirect participation includes work related to other aspects of the Contractor’s business. The NIGP Class and Class Item codes listed in the solicitation documents, as well as any additional codes selected by the Prime Vendor and approved by the contracting Agency/University, must be entered in Part II: Participation Agreement and Part III: Good Faith Effort Log sections of this

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Utilization Plan. Bidders seeking a Good Faith Effort waiver or goal reduction must contact **all** BEP/VSB vendors identified for respective NIGP Class and Class Item commodity/service codes listed in the solicitation documents.

**The Prime Vendor must also enter into the Participation Agreement its plan to utilize each BEP/VSB subcontractor, including: (a) the proposed percentage of the contract to be performed by each BEP/VSB subcontractor; (b) the anticipated start date for each BEP/VSB subcontractor; (c) the anticipated dates and time periods of utilization of each BEP/VSB subcontractor; and (d) a detailed description of the work to be performed by each BEP/VSB subcontractor, including identified NIGP Class and Class Item commodity/service codes.**

This Utilization Plan must demonstrate that the prime Vendor has either: (1) met the entire contract goal; or (2) requested a full waiver and made Good Faith Efforts towards meeting the entire goal; or (3) requested a goal reduction and made Good Faith Efforts towards meeting a portion of the goal. Submission of Good Faith Effort log and appropriate documentation by Vendor shall be considered as a request for a full or partial goal waiver.

**For a Utilization Plan to be considered, at the time of bid or offer, the submitting prime BEP/VSB vendor, if self-performing, or non-BEP/VSB submitting prime Vendor's proposed BEP/VSB subcontractor(s), must be certified with the Illinois Commission on Equity and Inclusion (CEI) Business Enterprise Program as a BEP certified vendor, and Sheltered Workshops must be registered with the State for procurements containing a State Use Program category.**

1. Where there is a **joint venture** between a certified and non-certified vendor, the Utilization Plan must include an executed Joint Venture Agreement specifying the terms and conditions of the relationship between the parties and their rights and responsibilities to the prospective contract. The Joint Venture Agreement must clearly evidence that the BEP/VSB certified vendor will be responsible for a defined portion of the work and its responsibilities, risks, profits, contributions of capital, and personnel are proportionate to its ownership/interest percentage, as well as identifying the appropriate and specific NIGP Class and Class Item codes. It must include specific details related to the parties' contributions of capital, personnel, equipment, share of costs, insurance coverage, and other items; the scopes to be performed by BEP/VSB certified vendor(s) under its supervision; and the commitment of management, supervisory personnel, and operative personnel employed by the BEP/VSB certified vendor to be dedicated to the performance of the contract. Established Joint Venture Agreements will **only** be credited toward BEP/VSB goal achievements for specific work performed by the BEP Certified Joint Venture Vendor. **Each party to the Joint Venture Agreement must execute the bid or offer prior to submission of the bid or offer to the Agency/University.**

2. An agreement between a prime Vendor and a BEP/VSB certified vendor in which a BEP/VSB certified vendor promises not to provide subcontracting or pricing quotations to other vendors is

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prohibited. The Agency/University may request additional information to demonstrate compliance. Vendor agrees to cooperate promptly with the Agency/University in submitting to interviews, allowing entry to business places, providing documentation, and to soliciting the cooperation of a proposed BEP/VSB certified vendor during investigation. Failure to cooperate by a Vendor and/or BEP/VSB certified vendor may render the bidder or offeror non-responsive or not responsible. **A contract will not be awarded to a Vendor unless that Vendor's Utilization Plan is found responsive.**

**3. BEP/VSB Certified Vendor Locator References:** Firms must be certified with CEI as BEP/VSB certified vendors at the time of bid or qualify for credit toward the goal through participation in the BEP Mentor/Protégé Program. Vendors may consult CEI's BEP Vendor Directory at <https://ceibep.diversitysoftware.com/?TN=ceibep>.

**4. Vendor Assurance:** Vendor shall not discriminate based on race, color, national origin, sexual orientation or sex in the performance of this contract. Failure by Vendor to carry out these requirements is a material breach of the contract, which may result in the termination of the contract or such other remedy, as the Agency/University deems appropriate. **This assurance must be included in each subcontract that Vendor signs with a subcontractor or supplier.**

**5. Calculating BEP/VSB Certified Vendor Participation:** The Utilization Plan and Participation Agreement(s) identify work and/or goods/equipment anticipated to be provided by all BEP/VSB certified vendors and paid for upon satisfactory completion/delivery, based on NIGP Class and Class Item Code(s). **Only the value of payments made for services performed and/or actual supplies/goods/equipment provided by BEP/VSB certified vendors is counted toward the contract goal.** Applicable guidelines for counting payments attributable to contract goals are summarized below.

**5.1.** The value of performed work and/or goods/equipment provided by the BEP/VSB certified vendor for the resulting contract shall be counted towards the goal. The entire amount of that portion of the contract that is performed by the BEP/VSB certified vendor, including supplies purchased or equipment leased by the BEP/VSB certified vendor shall be counted, except supplies purchased and equipment rented from the Prime Vendor submitting this bid or offer.

**5.2.** A BEP certified prime Vendor shall count the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the BEP/VSB certified prime Vendor self-performs toward the goal. A BEP/VSB certified prime Vendor shall also count the dollar value of work subcontracted to other BEP/VSB certified vendors. **Work performed by non-BEP/VSB certified parties shall not be counted toward the goal, including work that a BEP/VSB certified vendor subcontracts to non-BEP/VSB certified vendors.**

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**5.3.** A Vendor shall count toward the goal 100% of its expenditures for materials and supplies required under the contract and obtained from a BEP/VSB certified vendor manufacturer, regular dealer, or supplier. A Vendor shall also count toward the goal the following expenditures to BEP/VSB certified vendors that are not manufacturers, regular dealers, or suppliers:

**5.3.1.** The fees or commissions charged for providing a bona fide service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the contract, provided that the fee or commission is determined by the Agency/University to be reasonable and not excessive as compared with fees customarily allowed for similar services.

**5.3.2.** The fees charged for delivery of materials and supplies required by the contract (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer or a supplier of the materials and supplies being procured, provided that the fee is determined by the Agency/University to be reasonable and not excessive as compared with fees customarily allowed for similar services. The BEP/VSB certified vendor's trucking firm must actually be responsible for the management and supervision of the entire trucking operation for which it is responsible on the contract; and must itself own and operate at least one fully licensed, insured and operational truck used on the contract.

**5.3.3.** The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the contract, provided that the fee or commission is determined by the Agency/University to be reasonable and not excessive as compared with fees customarily allowed for similar services.

**5.4.** BEP/VSB certified vendors who are performing on a contract as second-tier subcontractors (i.e., subcontractors hired by first-tier subcontractors to perform on the contract) may be counted in meeting the established BEP/VSB goal for this contract where the Prime Vendor will provide monthly documentation indicating the utilization of these vendors by reporting the utilization to the BEP at <https://ceibep.diversitysoftware.com/?TN=ceibep> for State Agencies and by contacting the contract administrator for Universities.

**5.5.** A Vendor shall count towards the goal only expenditures to BEP/VSB firms that perform a **commercially useful function constituting direct participation** in the work of the contract.

**5.5.1.** A firm is considered to perform a **commercially useful function** when it is

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responsible for execution of a distinct element of the work of a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved. The BEP/VSB certified vendor must also be responsible, with respect to materials or supplies used on the contract, for negotiating price, determining quality and quantity, ordering the materials or supplies, and installing the materials (where applicable) and paying for the materials or supplies. To determine whether a firm is performing a commercially useful function, the Agency/University shall evaluate the amount of work subcontracted, whether the amount the firm is to be paid under the contract is commensurate with the work it actually performs, the credit claimed for its performance of the work, industry practices, and other relevant factors.

**5.5.2.** A BEP certified vendor does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction or contract through which funds are passed through to obtain BEP/VSB certified vendor participation. In determining whether a BEP/VSB certified vendor is such an extra participant, the Agency/University shall examine industry practices and similar transactions, particularly those in which BEP/VSB certified vendors actually participate in a meaningful way.

**5.6. A Vendor shall not count towards the goal expenditures that are not direct, necessary and related to the work of the contract.** Only the amount of services and/or goods that are directly attributable to the performance of the contract shall be counted. Ineligible expenditures include, but are not limited to, general office overhead and other Vendor support activities, unless allowed by the Agency/University.

**6. Good Faith Effort Procedures:** Prime Vendors must submit in their bid a Utilization Plan and Participation Agreement(s) that meet or exceed the published goal. If a Prime Vendor cannot meet the stated goal, it must fill out and attach Part III of this document, explaining the Good Faith Efforts it undertook to meet the goal, including contacting all certified BEP/VSB vendors that fall under the scope of work/NIGP Class and Class Item codes identified in the solicitation documentation. Utilization Plans and attached documentation are due at the time of bid or offer submission. The Business Enterprise Council ("Council") or its delegate will consider the quality, quantity, and intensity of the Vendor's efforts to meet the BEP goal. The procuring Agency/University will consider the quality, quantity, and intensity of the Vencor's efforts to meet the VSB goal.

The Utilization Plan contains a checklist of actions that the Council or its delegate will consider as evidence of Vendor's Good Faith Efforts to meet the BEP goal and that the Agency/University will consider as evidence of Vendor's Good Faith Efforts to meet the VSB goal. Documentation that alters or replaces the Utilization Plan and/or Participation Agreement(s), other than supplemental documentation, will not be considered during the Utilization Plan review.

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- 6.1.** In evaluating Vendor's Good Faith Efforts, the Council, its delegate, or an Agency/University as applicable may consider whether the ability of other bidders or offerors to meet the contract goal suggests that Good Faith Efforts could have resulted in Vendor meeting the goal.
- 6.2.** If the Council, its delegate, or an Agency/University determines that Vendor has made Good Faith Efforts to meet the BEP and VSB goal, respectively, the Agency/University may award the contract provided that Vendor is otherwise eligible for award.
- 6.3.** If the Council, its delegate, or an Agency/University, as applicable, determines that Good Faith Efforts have not been met, the bid or offer may be determined to be non-responsive by the Chief Procurement Officer.

**7. Contract Compliance:** Compliance with this section is an essential part of the contract. The following administrative procedures and remedies govern Vendor's compliance with the contractual obligations established by the Utilization Plan and Participation Agreement(s). **After approval of the Utilization Plan and Participation Agreement(s) as well as the award of the contract, the Utilization Plan, including all applicable Parts, becomes part of the contract.** If a Prime Vendor requested a waiver due to its inability to obtain BEP/VSB certified vendor participation equal to or exceeding the goal, and the Utilization Plan was approved and contract awarded based upon a determination of Good Faith Effort, the total dollar value of BEP/VSB certified vendor work in the approved Utilization Plan, calculated as a percentage of the total awarded contract value, shall become the final contract goal.

- 7.1.** The Utilization Plan and Participation Agreement(s) may not be amended after contract execution without Agency/University prior written approval.
- 7.2. Vendor may not make modifications to its contractual BEP/VSB certified vendor commitments or substitute BEP/VSB certified vendors without the prior written Agency/University approval.** Unauthorized modifications or substitutions, including performing the work designated for a BEP/VSB certified vendor with Vendor's own forces, shall be a violation of the Utilization Plan and therefore a breach of the contract, cause to terminate the contract, and cause to seek other contract remedies or sanctions. For Agency/University approval of modifications or substitutions, the facts supporting the modifications or substitutions must not have been known nor reasonably should have been known by the parties prior to entering into the contract and/or subcontract. Vendor must negotiate with BEP/VSB certified vendors to resolve problems. Where there has been a mistake or disagreement about the scope of work and/or goods/equipment required by the contract, the BEP/VSB certified vendor can be substituted, but only where

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agreement cannot be reached for a reasonable price or schedule for the correct scope of work, goods and/or equipment. Any subsequent change **must** be submitted to the soliciting Agency/University and BEP Secretary, in writing, and approved by the soliciting Agency/University.

**7.3.** Substitutions of a BEP/VSB certified vendor may be permitted under the following circumstances:

**7.3.1.** Unavailability after receipt of reasonable notice to proceed;

**7.3.2.** Failure of performance;

**7.3.3.** Financial incapacity;

**7.3.4.** Refusal by the BEP/VSB certified vendor to honor the bid or proposal price or scope;

**7.3.5.** Material mistake of fact or law about the elements of the scope of work of a contract where a reasonable price cannot be agreed upon;

**7.3.6.** Failure of the BEP/VSB certified vendor to meet insurance, licensing or bonding requirements;

**7.3.7.** The BEP/VSB certified vendor's withdrawal of its bid or offer; and/or

**7.3.8.** Failure of the BEP/VSB certified vendor to maintain certification.

**7.4.** If it becomes necessary to substitute a BEP/VSB certified vendor, the prime Vendor must notify the Agency/University and BEP Secretary, in writing, of the request to substitute a BEP/VSB certified vendor or otherwise modify the Utilization Plan and Participation Agreement(s). The request must state specific reasons for the substitution or modification. The Agency/University shall the Council or its delegate of the request to substitute a BEP/VSB certified vendor or change the Utilization Plan and Participation Agreement(s). The Agency/University will approve or deny a request for substitution or other change in the Utilization Plan and/or Participation Agreement(s) within five business days of receipt of the request or may request a BEP review of the documentation.

**7.5.** Where Vendor has established the basis for the substitution to the satisfaction of the Agency/University, it must make Good Faith Efforts to meet the contract goal by substituting one or more BEP/VSB certified vendors. Documentation of a replacement

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BEP certified vendor, or of Good Faith Efforts to replace the BEP/VSB certified vendor, must meet the requirements of the initial Utilization Plan. If the goal cannot be reached and Good Faith Efforts have been made, Vendor may substitute with a non-BEP/VSB certified vendor.

- 7.6.** Prime Vendors are encouraged to utilize BEP/VSB certified firms. If a Vendor plans to hire a subcontractor for any scope of work that was not previously disclosed in the Utilization Plan and this increases BEP/VSB participation, Vendor must obtain the approval of the Agency/University to modify the Utilization Plan and must make Good Faith Efforts to ensure that BEP/VSB certified vendors have a fair opportunity to submit a bid or offer on the new scope of work.
- 7.7.** If the Prime Vendor wishes to substitute its BEP/VSB certified subcontractor, a BEP/VSB certified vendor Utilization Plan and Participation Agreement must be executed and submitted to the Agency/University within five (5) business days of Vendor's receipt of the Agency/University approval for the substitution. The Agency/University must supply the new BEP Utilization Plan and Participation Agreement(s) to the BEP Secretary or their designee.
- 7.8.** Vendor shall maintain a record of all relevant data with respect to the utilization of BEP/VSB certified vendors including, but not limited to, payroll records, invoices, canceled checks and books of account for a period of at least three (3) years after the completion of the contract. If the contract administrator is an Agency, Vendor shall submit monthly reports to BEP via the B2G Now Diversity Contract Monitoring System (DCMS) reporting system. **If the contract administrator is a University, Vendor shall contact the contract administrator to obtain reporting requirements.** Full access to these records shall be granted by Vendor within 48 hours of a written demand by the Agency/University, BEP Secretary, or any duly authorized representative thereof, or to any municipal, county, State or federal authorities. The Agency/University shall have the right to obtain from Vendor any additional data reasonably related or necessary to verify any representations by Vendor. After the performance of the final item of work or delivery of material by the BEP certified vendor and final payment to the BEP certified vendor by Vendor, but not later than thirty (30) calendar days after such payment, Vendor shall submit a statement confirming the final payment and the total payments made to the BEP certified vendor under the contract at <https://ceibep.diversitysoftware.com/?TN=ceibep> for contracts administrated by Agencies. For contracts administered by Universities, Vendor shall submit a statement confirming the final payment and the total payments made to the BEP/VSB certified vendor under the contract in the manner prescribed by the University contract administrator. **Vendor's failure to submit monthly reports shall constitute a material breach of this contract and subject Vendor to the remedies and penalties described in**

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**Section 7.10. For contracts administrated by Agencies, The Prime Vendor and BEP subcontractors will receive notification and instructions after the start of the contract for reporting to BEP's DCMS. Failure to report contractual spend or lack of spend monthly reporting may result in a contractual breach.**

**7.9.** The Agency/University will annually review Vendor's compliance with these provisions and the terms of its contract. Executive Order Number 2018-06 requires review of contractual language regarding cancelation of contracts deemed not to be compliant with the BEP. Without limitation, Vendor's failure to comply with these provisions or its contractual commitments as contained in the Utilization Plan and Participation Agreement(s); failure to cooperate in providing information regarding its compliance with these provisions or its Utilization Plan; or provision of false or misleading information or statements concerning compliance, certification status or eligibility of a BEP certified vendor, Good Faith Efforts or any other material fact or representation shall constitute a material breach of this contract and entitle the Agency/University to declare a default, terminate the contract, and/or exercise those remedies provided for in the contract, law and equity.

**7.10.** The Agency/University reserves the right to withhold payment to Vendor to enforce these provisions and Vendor's contractual commitments. Final payment shall not be made pursuant to the contract until Vendor submits sufficient documentation demonstrating compliance with its Utilization Plan and Participation Agreement(s).

**RETURN WITH SUBMITTAL****EXHIBIT K****VENDOR CERTIFICATION FORM****INVITATION TO BID #26-13 GABLES BOULEVARD RECONSTRUCTION PROJECT**

As a condition of entering a contract with the City of Wheaton, and under oath and penalty of perjury and possible termination of contract rights and debarment, the undersigned,

\_\_\_\_\_ being first duly sworn on oath, deposes and states that  
(Officer or Owner of Company)

He/She is \_\_\_\_\_ (sole owner, partner, joint ventured, President, Secretary, etc.) of \_\_\_\_\_ and has the authority to make all certifications required by this affidavit.

**This Business Firm is:** (check one)

Corporation       Partnership       Individual       LLC

Firm Name:

\_\_\_\_\_

Address:

\_\_\_\_\_

Signature:

\_\_\_\_\_

Print Name:

\_\_\_\_\_

Title:

\_\_\_\_\_

Phone #:

\_\_\_\_\_

Fax #:

Email:

Date:

**Operational Contact for this work**

Name:

Phone #:

Email:

**Sales Contact**

Name:

Phone #:

Email:

**RETURN WITH SUBMITTAL****EXHIBIT M****VENDOR CERTIFICATION FORM****INVITATION TO BID #26-13 GABLES BOULEVARD RECONSTRUCTION PROJECT**

As a condition of entering a contract with the City of Wheaton, and under oath and penalty of perjury and possible termination of contract rights and debarment, the undersigned,

\_\_\_\_\_ being first duly sworn on oath, deposes and states that  
(Officer or Owner of Company)

He/She is \_\_\_\_\_ (sole owner, partner, joint ventured, President, Secretary, etc.) of \_\_\_\_\_ and has the authority to make all certifications required by this affidavit.

**This Business Firm is:** (check one)

Corporation       Partnership       Individual       LLC

Firm Name:

\_\_\_\_\_

Address:

\_\_\_\_\_

Signature:

\_\_\_\_\_

Print Name:

\_\_\_\_\_

Title:

\_\_\_\_\_

Phone #:

\_\_\_\_\_

Fax #:

Email:

Date:

**Operational Contact for this work**

Name:

Phone #:

Email:

**Sales Contact**

Name:

Phone #:

Email:

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### VENDOR CERTIFICATION FORM

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#### Billing Contact

Name: \_\_\_\_\_

Phone #: \_\_\_\_\_

Email: \_\_\_\_\_

#### CONFLICT OF INTEREST

Check One:

**There are no conflicts of interest**; and in the event that a conflict of interest is identified anytime during the duration of this award, or reasonable time thereafter, you, your firm, or your firm's ownership, management or staff will immediately notify the City of Wheaton in writing.

**There is an affiliation or business relationship** between you, your management or staff, your firm, or your firm's ownership, and an employee, officer, or elected official of the City of Wheaton who makes recommendations to the City of Wheaton with respect to expenditures of money, employment, and elected or appointed positions. Provide any and all affiliations or business relationships that might cause a conflict of interest or any potential conflict of interest. Include the name of each City of Wheaton affiliate with whom you, your firm, or your firm's ownership, management, or staff, has an affiliation or a business relationship.

#### CONFLICT OF INTEREST DISCLOSURE\*

**Name of each City of Wheaton affiliate with whom you, your firm, or your firm's ownership, management, or staff, has an affiliation or a business relationship.**

Name of City of Wheaton affiliate:

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Relationship:

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Other:

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**\*Disclosing a potential conflict does not disqualify vendors. In the event vendors do not disclose potential conflicts of interest and they are detected by the City; vendor will be exempt from doing business with the City.**

#### PAYMENT OF TAXES

Vendor is not delinquent in the payment of any tax administered by the Illinois Department of Revenue, or if it is:

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### INVITATION TO BID #26-13 GABLES BOULEVARD RECONSTRUCTION PROJECT

- a. it is contesting its liability for the tax or the amount of tax in accordance with procedures established by the approved Revenue Act; or
- b. it has entered into an agreement with the Department of Revenue for payment of all taxes due and is currently in compliance with that agreement.

### FEDERAL HIGHWAY ADMINISTRATION RULES ON CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING

Vendor is in full compliance with the Federal Highway Administration Rules on Controlled Substances and Alcohol Use and Testing, 49 CFR Parts 40 and 382 and that

\_\_\_\_\_ is/are currently participating.

(Name of employee/driver or “all employee drivers”) in a drug and alcohol testing program pursuant to the aforementioned rules.

### SUBSTANCE ABUSE

*(Check one)*

- 4A. has in place a written program which meets or exceeds the program requirements of the Substance Abuse Prevention on Public Works Projects Act (Public Act 95-0635), and has provided a written copy thereof to the City of Wheaton; or
- 4B. has in place a collective bargaining agreement which deals with the subject matter of the Substance Abuse Prevention on Public Works Projects Act (Public Act 95-0635).
- 4C. Not applicable to this contract.

### BID RIGGING AND BID ROTATING

Vendor is not barred from contracting with any unit of state or local government as a result of a violation of either Section 33E-3 or 33E-4 of the Illinois Criminal Code, or of any similar offense of “bid-rigging” or “bid-rotating” of any state of the United States.

### EMPLOYMENT OF ILLINOIS WORKERS ON PUBLIC WORKS ACT

Vendor agrees that, to the extent required by the Employment of Illinois Workers on Public Works Act (30 ILCS 570/1 et seq.), as now existing or hereafter amended, the undersigned shall comply with the Illinois labor employment requirements as set forth in the Act.

### ILLINOIS PREVAILING WAGE ACT

Vendor is, to the extent required, in compliance with all requirements of the Illinois Prevailing Wage Act, 820 ILCS 130/0.01 et seq.

### USA PATRIOT ACT

Vendor is not barred from bidding and/or contracting with a unit of state or local government as a result of a violation of the USA Patriot Act of 2001, 107 Public Law 56 (October 26, 2001)(the “Patriot Act”) and the USA

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#### INVITATION TO BID #26-13 GABLES BOULEVARD RECONSTRUCTION PROJECT

Freedom Act, H.R. 2048, Pub. L. 114-23 which restored and modified the Patriot Act, or other statutes, orders, rules, and regulations of the United States government and its various executive departments, agencies and offices related to the subject matter of the Patriot Act, including, but not limited to, Executive Order 13224 effective September 24, 2001. Contractor also certifies that it is not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by the United States Treasury Department as a Specially Designated National and Blocked Person, or for or on behalf of any person, group, entity, or nation designated in Presidential Executive Order 13224 as a person who commits, threatens to commit, or supports terrorism;

and Contractor further certifies that it is not engaged in this transaction directly or indirectly on behalf of or facilitating this transaction directly or indirectly on behalf of, any such person, group, entity or nation.

#### **AMERICANS WITH DISABILITIES ACT**

Vendor agrees, to the extent required by the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§12101 *et seq.*, the undersigned shall utilize standards and/or methods that do not discriminate against the disabled.

#### **ILLINOIS STEEL PRODUCTS PROCUREMENT ACT**

Vendor agrees, when applicable, that steel products 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.*

#### **PUBLIC WORKS EMPLOYMENT DISCRIMINATION ACT**

Vendor shall comply with the Public Works Employment Discrimination Act, 775 ILCS 10/0.01 *et seq.*

#### **SAFETY**

Vendor shall comply with all local, state, and federal safety standards.

#### **DRUG FREE WORKPLACE**

In compliance with State of Illinois Compiled Statutes, Chapter 30-580 (30 ILCS 580/30), the Contractor certifies and agrees that it will provide a drug free workplace by:

1. Publishing a Statement:

- A. Notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance, including cannabis, is prohibited in the Contractor's workplace.
- B. Specifying the actions that will be taken against employees for violations of such prohibition.
- C. Notifying the employee that, as a condition of employment on such Agreement, the employee will:
  - i. Abide by the terms of the statement; and
  - ii. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction.

2. Establishing a Drug Free Awareness Program to inform employees about:

- A. The dangers of drug abuse in the workplace;
- B. The Contractor's policy for maintaining a drug free workplace;
- C. Available counseling, rehabilitation, or assistance programs; and

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- D. Penalties imposed for drug violations.
- 3. Providing a copy of the Statement required by Section 1 to each employee engaged in the performance of the Agreement and to post the Statement in a prominent place in the workplace.
- 4. Notifying the contracting agency within ten (10) days after receiving notice under part (C), subsection (ii) of paragraph 1 above, from an employee or otherwise receiving actual notice of such conviction.
- 5. Imposing a sanction on or requiring the satisfactory participation in a Drug Abuse Assistance or Rehabilitation Program, by any employee who is so convicted, as required by Section 5 of the Drug Free Workplace Act.
- 6. Assisting employees in selecting a course of action in the event drug counseling, treatment, and rehabilitation are required and indicating that a trained referral team is in place.
- 7. Making a good faith effort to continue to maintain a drug free workplace through implementation of the Drug Free Workplace Act.

Failure to abide by this certification shall subject the Contractor to the penalties provided in the "Drug-Free Workplace Act."

#### **EQUAL EMPLOYMENT OPPORTUNITY CLAUSE**

Section I: This EQUAL EMPLOYMENT OPPORTUNITY CLAUSE is required by the Illinois Human Rights Act and the Rules and Regulations of the Illinois Department of Human Rights published at 44 Illinois Administrative Code Section 750 et seq; also known as Title 44: Government Contracts, Grantmaking, Procurement and Property Management, Subtitle B: Supplemental Procurement Rules, Chapter X: Department of Human Rights, Part 750: Procedures Applicable to all Agencies.

Section II: In the event of the Contractor's non-compliance with the provisions of this Equal Employment Opportunity Clause or the Illinois Human Rights Act, the Contractor may be declared ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and the contract may be cancelled or voided in whole or in part, and other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation. During the performance of this contract, the Contractor agrees as follows:

That he or she will not discriminate against any employee or applicant for employment because of 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, work authorization status and further that he or she will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any underutilization.

That, if he or she hires additional employees in order to perform this contract or any portion of this contract, he or she will determine the availability (in accordance with this Part) of minorities and women in the areas from

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### VENDOR CERTIFICATION FORM

### INVITATION TO BID #26-13 GABLES BOULEVARD RECONSTRUCTION PROJECT

which he or she may reasonably recruit, and he or she will hire for each job classification for which employees are hired in a way that minorities and women are not underutilized.

That, in all solicitations or advertisements for employees placed by him or her or on his or her behalf, he or she will state that all applicants will be afforded equal opportunity without discrimination because of 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.

That he or she will send to each labor organization or representative of workers with which he or she has or is bound by a collective bargaining or other agreement or understanding, a notice advising the labor or representative of the Contractor's obligations under the Act and this Part. If any labor organization or representative fails or refuses to cooperate with the contractor in his or her efforts to comply with the Act and this Part, the contractor will promptly notify the Department and the contracting agency and will recruit employees from other sources when necessary to fulfill its obligations under the contract.

That he or she will submit reports as required by this Part, furnish all relevant information as may from time to time be requested by the Department or the contracting agency, and in all respects comply with the Act and this Part.

That he or she will permit access to all relevant books, records, accounts, and work sites by personnel of the contracting agency and the Department for purposes of investigation to ascertain compliance with the Act and the Department's Rules and Regulations.

That he or she will include verbatim or by reference the provisions of this clause in every subcontract awarded under which any portion of the contract obligations are undertaken or assumed, so that the provisions will be binding upon the subcontractor. In the same manner as with other provisions of this contract, the Contractor will be liable for compliance with applicable provisions of this clause by subcontractors; and further it will promptly notify the contracting agency and the Department in the event any subcontractor fails or refuses to comply with the provisions. In addition, the Contractor will not utilize any subcontractor declared by the Illinois Human Rights Commission to be ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations.

Section III: For the purposes of subsection 7 of Section II, "subcontract" means any agreement, arrangement or understanding, written or otherwise, between the Contractor and any person under which any portion of the Contractor's obligations under one or more public contracts is performed, undertaken or assumed; the term "subcontract," however, shall not include any agreement, arrangement or understanding in which the parties stand in the relationship of an employer and an employee, or between a Contractor or other organization and its customers.

### ACKNOWLEDGED AND AGREED TO:

Company Name: \_\_\_\_\_

**RETURN WITH SUBMITTAL**

**EXHIBIT M**

**VENDOR CERTIFICATION FORM**

**INVITATION TO BID #26-13 GABLES BOULEVARD RECONSTRUCTION PROJECT**

By: \_\_\_\_\_  
(Signature)

Its: \_\_\_\_\_  
(Title)

State of: \_\_\_\_\_

County of: \_\_\_\_\_

Signed and sworn (or affirmed) to before me on \_\_\_\_\_  
(Date)

By \_\_\_\_\_  
(Name of person making statement)

\_\_\_\_\_  
(Signature of Notary Public)

(Seal)

***Failure to complete and return this form may be considered sufficient reason for rejection of the submittal. Document must be notarized.***

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### EXHIBIT L

#### CITY OF WHEATON BUSINESS ENTERPRISE PROGRAM UTILIZATION PLAN FORM INVITATION TO BID #26-12 GABLES BOULEVARD RECONSTRUCTIOMN PROJECT

#### UTILIZATION PLAN PART I: COMMITMENT AND SIGNATURE

The undersigned Vendor submits this Utilization Plan as part of its bid or offer in accordance with the requirements of solicitation # **26-12 Wheaton Roosevelt Road Sidewalk and Pedestrian Bridge Improvements** and the requirements of the Business Enterprise Program (BEP). The solicitation contains a goal that 28% of the value of the contract will be performed by BEP certified vendors as defined by the Commission on Equity and Inclusion (CEI). The solicitation contains a goal that 0% of the value of the contract will be performed by Veteran Small Business certified vendors (VSB) as defined by the Commission on Equity and Inclusion.

The Utilization Plan consists of the following parts, each of which must be completed and returned as instructed in this Commitment. No alterations of these forms will be permitted. One set of Parts I-IV must be completed for the BEP goal and one set must be completed for the VSB goal:

- Part I: Vendor Commitment (with Signature)
- Part II: Subcontractor Participation Agreement(s)
- Part IV: Utilization Plan Terms and Conditions (These terms and conditions apply to all options below but do not need to be returned.)

The undersigned Vendor acknowledges that (1) Vendor has read, understands, and agrees to BEP policies, rules, and procedures as defined in the Terms and Conditions in Part IV of this document, and (2) Vendor hereby affirms (**select one** of the options below):

- Vendor is a BEP certified firm and plans to fully meet the goal through self-performance or Vendor is a VSB certified firm and plans to fully meet the VSB goal through self-performance. (Return this Part I Signature Page only.)
- Vendor has identified BEP and VSB certified subcontractor(s) to fully meet the established BEP and VSB goals. Only BEP certified subcontractors may be used to meet the BEP goal and only VSB certified subcontracts may be used to meet the VSB goal if Vendor intends to meet the established goal in whole or in part through the use of subcontractors. Subcontractors that are both BEP and VSB certified may only be counted towards the BEP or VSB goal. (Return this Part I Signature page and signed Part II Subcontractor Participation Agreement(s) to equal or exceed the goal.)
- Vendor cannot fully meet the goal but has made Good Faith Effort towards meeting the goal, and hereby requests a waiver or reduction of the goal to       % based on the completed Good Faith Effort. (If requesting a waiver, return this Part I Signature Page and completed Part III Good Faith Effort. If requesting a reduction, return this Part I Signature Page, Part II signed Subcontractor Participation Agreement(s), and completed Part III Good Faith Effort.)

**RETURN WITH SUBMITTAL**

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**CITY OF WHEATON BUSINESS ENTERPRISE PROGRAM UTILIZATION PLAN FORM**  
**INVITATION TO BID #26-12 GABLES BOULEVARD RECONSTRUCTIOMN PROJECT**

The undersigned Vendor understands that all subcontractors identified in this Utilization Plan and Participation Agreement(s) must be certified with the Illinois Commission on Equity and Inclusion (CEI) BEP at the time of submission of all bids/offers and shall perform commercially useful functions as defined in Part IV of this Utilization Plan. **We understand that compliance with this Utilization Plan is a mandated part of this solicitation and that this Utilization Plan will become a part of the contract, if awarded.** Failure to carry out the requirements of this Utilization Plan is a material breach of the resulting contract, which may result in the termination of the contract or such other remedy as the Agency/University deems appropriate.

Vendor Name and d/b/a: \_\_\_\_\_

Signature: \_\_\_\_\_ Print: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_ Email Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

***Failure to complete and return this form will be considered sufficient reason for rejection of the submittal.***

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#### UTILIZATION PLAN PART II: PARTICIPATION AGREEMENT (Letter of Intent)

Instructions: The Prime Vendor is required to submit a separate, signed and **fully completed Participation Agreement** from each Business Enterprise Program (BEP) certified vendor or Veteran Small Business certified vendor (VSB). **Once signed and submitted with the bid/offer, this Participation Agreement, along with the other Parts of this Utilization Plan, will become a mandated part of the contract, if awarded.** The Prime Vendor shall not prohibit or otherwise limit the BEP/VSB certified vendor(s) from providing subcontractor quotes to other potential bidders/offerors.

Project Name: \_\_\_\_\_ Project/Solicitation Number: \_\_\_\_\_

Name of Prime Vendor: \_\_\_\_\_

Address: \_\_\_\_\_

City, State and Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

Vendor's Contact responsible for compliance with this Participation Agreement:

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Name of BEP/VSB Certified Vendor: \_\_\_\_\_

Type of Certified Vendor:  BEP  VSB

Address: \_\_\_\_\_

City, State and Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

BEP/VSB Vendor's Contact responsible for compliance with this Participation Agreement:

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Type of Agreement:  Services  Supplies  Both Services and Supplies

(a) Proposed % of Contract to be performed by the BEP/VSB Certified Vendor \_\_\_\_ %

NOTE: The Prime Vendor must indicate the percentage of the estimated contract award that will be subcontracted to the certified BEP/VSB Vendor.

(b) Anticipated start date of the Certified BEP/VSB Vendor: \_\_\_\_\_.

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(c) This participation agreement shall have a term of \_\_\_\_\_ to \_\_\_, with a total period of years and \_\_\_\_months, including renewals, change orders or extensions to the underlying contract.

(d) Description of work to be performed or goods/equipment to be provided by the BEP certified vendor. **This description must include identified Institute for Public Procurement (NIGP) Class or Class Item codes.** All Participation Agreements shall be subject to Agency/University approval. Any changes involving or affecting the identified BEP/VSB certified vendor, scope(s) of work and NIGP Code(s) will not be permitted without notification to the soliciting Agency/University and BEP/VSB Compliance, in writing, and approval of the soliciting Agency/University. *(If more space is needed to fully describe BEP/VSB certified firm's proposed scope of work and/or payment schedule, attach additional sheets)*

**THE UNDERSIGNED PARTIES FURTHER AGREE** that once signed and submitted with the bid/offer, this Participation Agreement, along with the other Parts of this Utilization Plan, will become a material part of the contract, and the BEP/VSB certified vendor will perform the scope of work for the percentage as indicated above. The Undersigned Parties do also certify that they did not affix their signatures to this document until all areas under Description of Service/ Supply and Fee/Cost were completed.

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Vendor (Company Name and d/b/a):

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\_\_\_\_\_  
Name (Signature) / \_\_\_\_\_  
Date

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\_\_\_\_\_  
Name (Print)

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\_\_\_\_\_  
Title

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Certified BEP/VSB (Company Name and d/b/a):

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\_\_\_\_\_  
Name (Signature) / \_\_\_\_\_  
Date

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\_\_\_\_\_  
Name (Print)

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\_\_\_\_\_  
Title

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#### UTILIZATION PLAN PART IV: TERMS OF UTILIZATION

##### DEFINITIONS:

"Agency" shall be defined as any State Agency, Board, or Commission under the jurisdiction of the Governor of the State of Illinois.

"University" shall be defined as any University, Department, public institution of higher education, and/or community college district within the State of Illinois.

"Business owned by a person with a disability" or "PBE" means a business concern that is at least 51% owned by one or more persons with a disability and the management and daily business operations of which are controlled by one or more of the persons with disabilities who own it. A not-for-profit agency for persons with disabilities as defined in Section 45-35 of the Illinois Procurement Code is also considered a "business owned by a person with a disability."

"Certification" means a determination made by the Council or by one delegated authority from the Council to make certifications, or by a State agency with statutory authority to make such a certification, that a business entity is a business owned by a minority, woman, or person with a disability for whatever purpose. A business owned and controlled by women shall be certified as a "woman owned business". A business owned and controlled by women who are also minorities shall be certified as both a "woman owned business" and a "minority owned business".

"Commercially Useful Function" means responsibility for the execution of a distinct element of the work of the contract, which is carried out by actually performing, managing, and supervising the work involved, evidencing the responsibilities and risks of a business owner such as negotiating the terms of (sub)contracts, taking on a financial risk commensurate with the contract or its subcontract, responsibility for acquiring the appropriate lines of credit and/or loans, or fulfilling responsibilities as a joint venture partner as described in the joint venture agreement.

"Compliance" means that a contractor has correctly implemented the requirements of this Utilization Plan.

"Contract Specific Goals" means the goals established under the Agency/University's supplier diversity program that are based upon relevant factors, including, but not limited to, the availability of diverse businesses in the scopes of work of the contract.

"Contractor" means any person or business entity that has entered into a contract with the Agency/University, and includes all partners, affiliates, and joint ventures of such person or entity.

"Control" means the exclusive or ultimate and sole control of the business including, but not limited to, capital investment and all other financial matters, property, acquisitions, contract negotiations, legal matters, officer-director-employee selection and comprehensive hiring, operating responsibilities, cost-control matters, income and dividend matters, financial transactions and rights of other shareholders or joint partners. Control shall be real, substantial and continuing, not pro

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forma. Control shall include the power to direct or cause the direction of the management and policies of the business and to make the day-to-day as well as major decisions in matters of policy, management and operations. Control shall be exemplified by possessing the requisite knowledge and expertise to run the particular business and control shall not include simple majority or absentee ownership.

"Council" means the Business Enterprise Council for Minorities, Women and Persons with Disabilities.

"Diverse Firms" shall mean businesses owned by minorities, women, and persons with disabilities. Also to include, qualified service-disabled veteran-owned small businesses and qualified veteran-owned small businesses.

"Woman" shall mean a person who is a citizen or lawful permanent resident of the United States and who is of the female gender.

"Woman-owned business" of "WBE" means a business concern which is at least 51% owned by one or more women, or, in the case of a corporation, at least 51% of the stock in which is owned by one or more women; and the management and daily business operations of which are controlled by one or more of the women who own it.

"Good Faith Efforts" means actions undertaken by a bidder or contractor to achieve a Contract Specific Goal by its scope, intensity, and appropriateness to the objective, that can reasonably be expected to fulfill the program's requirements.

"Joint Venture" means an association of a diverse firm and one or more other firms to carry out a single, for-profit business enterprise, for which each joint venture partner contributes property, capital, efforts, skills and knowledge, and in which the diverse firm is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

"Manufacturer" refers to a company that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

"Minority-owned business" or "MBE" means a business concern which is at least 51% owned by one or more minority persons, or in the case of a corporation, at least 51% of the stock in which is owned by one or more minority persons; and the management and daily business operations of which are controlled by one or more of the minority individuals who own it.

"Minority person" shall mean a person who is a citizen or lawful permanent resident of the United States and who is any of the following:

- (a) American Indian or Alaska Native (a person having origins in any of the original peoples of North and South America, including Central America, and who maintains tribal affiliation or community attachment).

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- (b) Asian (a person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent, including, but not limited to, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam).
- (c) Black or African American (a person having origins in any of the black racial groups of Africa). Terms such as "Haitian" or "Negro" can be used in addition to "Black or African American".
- (d) Hispanic or Latino (a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race).
- (e) American, or other Spanish culture or origin, regardless of race).
- (f) Native Hawaiian or Other Pacific Islander (a person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands).

"NIGP Class and Class Item Codes" identify the scope(s) of work as defined by the National Institute of Governmental Procurements. This five-digit code establishes and defines the detailed scope(s) of work for the contract. The first three digits of the NIGP code represents the Class or broad category of the work to be performed, and the second two digits of the NIGP code identify a more specific focus of work within the Class category.

"Owned" means having all the customary incidents of ownership, including the right of disposition, and the sharing in all risks and profits commensurate with the degree of ownership interest.

"Person with a disability" means a person who is a citizen or lawful resident of the United States and is a person qualifying as being disabled under subdivision Illinois Compiled Statutes 30 ILCS 575/2 subsection A.

"Qualified service-disabled veteran" means a veteran who has been found to have 10% or more service-connected disability by the United States Department of Veterans Affairs or the United States Department of Defense.

"Qualified service-disabled veteran-owned small business" or "SDVOSB" means a small business (i) that is at least 51% owned by one or more qualified service-disabled veterans living in Illinois or, in the case of a corporation, at least 51% of the stock of which is owned by one or more qualified service-disabled veterans living in Illinois; (ii) that has its home office in Illinois; and (iii) for which items (i) and (ii) are factually verified annually by the Commission on Equity and Inclusion.

"Qualified veteran-owned small business" or "VOSB" means a small business (i) that is at least 51% owned by one or more qualified veterans living in Illinois or, in the case of a corporation, at least 51% of the stock of which is owned by one or more qualified veterans living in Illinois; (ii) that has its home office in Illinois; and (iii) for which items (i) and (ii) are factually verified annually by the Commission on Equity and Inclusion.

"Regular Dealer" means a business that owns, operates, or maintains a store, warehouse, or other establishment in which the supplies, equipment, or goods (excluding software licenses) of the

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general character required for the Procurement are bought, kept in stock, and regularly sold or leased in the usual course of business. To be a Regular Dealer, the business must be an established business that engages, as its principal business and under its own name, in the Procurement and sale or lease of the products in question. A business may be a Regular Dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business if the business both owns and operates distribution equipment for the products. Any supplementing of such business' distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. Packagers, manufacturer representatives, or other businesses who arrange or expedite transactions are not Regular Dealers.

"State contracts" means all contracts entered into by the State, any agency or department thereof, or any public institution of higher education, including community college districts, regardless of the source of the funds with which the contracts are paid, which are not subject to federal reimbursement. "State contracts" does not include contracts awarded by a retirement system, pension fund, or investment board subject to Section 1-109.1 of the Illinois Pension Code. This definition shall control over any existing definition under this Act or applicable administrative rule.

"Supplier" refers to a company that owns, operates, or maintains a store, warehouse or other establishment in which materials, supplies, articles or equipment are bought, kept in stock and regularly sold or leased to the public in the usual course of business. A regular distributor or supplier is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for performance of a contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular distributor the firm must engage in, as its principal business and in its own name, the purchase and sale of the products in question. A regular distributor in bulk items such as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it owns or operates distribution equipment.

"Utilization Plan" means a form and additional documentation included in all bids or proposals that demonstrates a vendor's proposed utilization of vendors certified by the Business Enterprise Program to meet the targeted goal. The Utilization Plan shall demonstrate that the Vendor has either: (1) met the entire contract goal or (2) requested a full or partial waiver and made Good Faith Efforts towards meeting the goal.

#### **Business Enterprise Program Aspirational Goal**

The Business Enterprise for Minorities, Women, and Persons with Disabilities Act, 30 ILCS 575, establishes an aspirational goal of awarding not less than 20% of the total dollar amount of State contracts to businesses certified as owned and controlled by minorities, women, and persons with disabilities. 30 ILCS 575/4(a).

Section 45-75 of the Illinois Procurement Code, 30 ILCS 500, establishes a goal to award not less than 3% of the total dollar amount of State contracts to SDVOSBs and VOSBs.

This solicitation includes Business Enterprise Program (BEP) and/or Veterans Business Program

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participation goals and, therefore, requires bidders and offerors to include a BEP Utilization Plan and a VSB Utilization Plan. A “Utilization Plan” includes the form on page 1 of this document, with the Participation Agreement and Schedule(s); any additional documentation required in the instructions that demonstrates a commitment to utilizing certified BEP/VSB subcontractors to meet the targeted, contract-specific goal, described below; and documentation demonstrating Good Faith Effort when requesting a goal waiver or reduction.

A properly completed BEP Utilization Plan and VSB Utilization Plan is due at the time of bid or offer submission. Failure to complete and include a BEP Utilization Plan shall render a bid or offer non-responsive. 30 ILCS 575/4(f). Non-responsive bids and offers will be rejected by the Agency/University.

In addition to the other award criteria established for this solicitation, the Agency/University will award this contract to a Vendor that meets the contract-specific goal or makes Good Faith Efforts to meet the goal. The goal is applicable to the contract, amendments, modifications, extensions, change orders, and allowances. The Vendor’s Utilization Plan must indicate whether the goal will be met by self-performance or by subcontracting. If the prime Vendor is BEP certified, the entire goal can be met by Prime Vendor self-performance, without subcontracting with another certified BEP vendor. If the prime Vendor is VSB certified, the entire VSB goal can be met by Prime Vendor self-performance. However, the prime BEP or VSB Vendor must submit a Utilization Plan indicating that the goal will be met by self-performance. If a prime Vendor subcontracts any portion of a contract to non-BEP/VSB certified subcontractors, the amount paid for goods or services delivered by those subcontractors will not be counted toward the goal.

#### Contract (Specific) Goal to be Achieved by Vendor

This solicitation includes a contract-specific BEP/VSB participation **goal** based on certified BEP/VSB vendors available to perform anticipated services and/or provide supplies required by this solicitation. The availability of certified BEP/VSB vendors was determined using The Institute for Public Procurement (NIGP Class and Class Item) codes listed in the Invitation for Bid (IFB), Request for Proposal (RFP), Request for Qualifications (RFQ), or other solicitation documents.

Prime Vendors must only consider NIGP Class and Class Item codes referenced in solicitation documents when selecting BEP/VSB subcontractors or completing a Good Faith Effort. Subject to State Agency/University approval, the Prime Vendor may utilize additional codes to identify BEP/VSB vendors that will be able to perform a commercially useful function under the resulting contract through direct participation. Indirect participation will not be considered towards BEP/VSB goals. Direct participation includes work that is directly related to the completion of the scope of work of the contract. Indirect participation includes work related to other aspects of the Contractor’s business. The NIGP Class and Class Item codes listed in the solicitation documents, as well as any additional codes selected by the Prime Vendor and approved by the contracting Agency/University, must be entered in Part II: Participation Agreement and Part III: Good Faith Effort Log sections of this

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Utilization Plan. Bidders seeking a Good Faith Effort waiver or goal reduction must contact **all** BEP/VSB vendors identified for respective NIGP Class and Class Item commodity/service codes listed in the solicitation documents.

**The Prime Vendor must also enter into the Participation Agreement its plan to utilize each BEP/VSB subcontractor, including: (a) the proposed percentage of the contract to be performed by each BEP/VSB subcontractor; (b) the anticipated start date for each BEP/VSB subcontractor; (c) the anticipated dates and time periods of utilization of each BEP/VSB subcontractor; and (d) a detailed description of the work to be performed by each BEP/VSB subcontractor, including identified NIGP Class and Class Item commodity/service codes.**

This Utilization Plan must demonstrate that the prime Vendor has either: (1) met the entire contract goal; or (2) requested a full waiver and made Good Faith Efforts towards meeting the entire goal; or (3) requested a goal reduction and made Good Faith Efforts towards meeting a portion of the goal. Submission of Good Faith Effort log and appropriate documentation by Vendor shall be considered as a request for a full or partial goal waiver.

**For a Utilization Plan to be considered, at the time of bid or offer, the submitting prime BEP/VSB vendor, if self-performing, or non-BEP/VSB submitting prime Vendor's proposed BEP/VSB subcontractor(s), must be certified with the Illinois Commission on Equity and Inclusion (CEI) Business Enterprise Program as a BEP certified vendor, and Sheltered Workshops must be registered with the State for procurements containing a State Use Program category.**

1. Where there is a **joint venture** between a certified and non-certified vendor, the Utilization Plan must include an executed Joint Venture Agreement specifying the terms and conditions of the relationship between the parties and their rights and responsibilities to the prospective contract. The Joint Venture Agreement must clearly evidence that the BEP/VSB certified vendor will be responsible for a defined portion of the work and its responsibilities, risks, profits, contributions of capital, and personnel are proportionate to its ownership/interest percentage, as well as identifying the appropriate and specific NIGP Class and Class Item codes. It must include specific details related to the parties' contributions of capital, personnel, equipment, share of costs, insurance coverage, and other items; the scopes to be performed by BEP/VSB certified vendor(s) under its supervision; and the commitment of management, supervisory personnel, and operative personnel employed by the BEP/VSB certified vendor to be dedicated to the performance of the contract. Established Joint Venture Agreements will **only** be credited toward BEP/VSB goal achievements for specific work performed by the BEP Certified Joint Venture Vendor. **Each party to the Joint Venture Agreement must execute the bid or offer prior to submission of the bid or offer to the Agency/University.**

2. An agreement between a prime Vendor and a BEP/VSB certified vendor in which a BEP/VSB certified vendor promises not to provide subcontracting or pricing quotations to other vendors is

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prohibited. The Agency/University may request additional information to demonstrate compliance. Vendor agrees to cooperate promptly with the Agency/University in submitting to interviews, allowing entry to business places, providing documentation, and to soliciting the cooperation of a proposed BEP/VSB certified vendor during investigation. Failure to cooperate by a Vendor and/or BEP/VSB certified vendor may render the bidder or offeror non-responsive or not responsible. **A contract will not be awarded to a Vendor unless that Vendor's Utilization Plan is found responsive.**

**3. BEP/VSB Certified Vendor Locator References:** Firms must be certified with CEI as BEP/VSB certified vendors at the time of bid or qualify for credit toward the goal through participation in the BEP Mentor/Protégé Program. Vendors may consult CEI's BEP Vendor Directory at <https://ceibep.diversitysoftware.com/?TN=ceibep>.

**4. Vendor Assurance:** Vendor shall not discriminate based on race, color, national origin, sexual orientation or sex in the performance of this contract. Failure by Vendor to carry out these requirements is a material breach of the contract, which may result in the termination of the contract or such other remedy, as the Agency/University deems appropriate. **This assurance must be included in each subcontract that Vendor signs with a subcontractor or supplier.**

**5. Calculating BEP/VSB Certified Vendor Participation:** The Utilization Plan and Participation Agreement(s) identify work and/or goods/equipment anticipated to be provided by all BEP/VSB certified vendors and paid for upon satisfactory completion/delivery, based on NIGP Class and Class Item Code(s). **Only the value of payments made for services performed and/or actual supplies/goods/equipment provided by BEP/VSB certified vendors is counted toward the contract goal.** Applicable guidelines for counting payments attributable to contract goals are summarized below.

**5.1.** The value of performed work and/or goods/equipment provided by the BEP/VSB certified vendor for the resulting contract shall be counted towards the goal. The entire amount of that portion of the contract that is performed by the BEP/VSB certified vendor, including supplies purchased or equipment leased by the BEP/VSB certified vendor shall be counted, except supplies purchased and equipment rented from the Prime Vendor submitting this bid or offer.

**5.2.** A BEP certified prime Vendor shall count the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the BEP/VSB certified prime Vendor self-performs toward the goal. A BEP/VSB certified prime Vendor shall also count the dollar value of work subcontracted to other BEP/VSB certified vendors. **Work performed by non-BEP/VSB certified parties shall not be counted toward the goal, including work that a BEP/VSB certified vendor subcontracts to non-BEP/VSB certified vendors.**

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**5.3.** A Vendor shall count toward the goal 100% of its expenditures for materials and supplies required under the contract and obtained from a BEP/VSB certified vendor manufacturer, regular dealer, or supplier. A Vendor shall also count toward the goal the following expenditures to BEP/VSB certified vendors that are not manufacturers, regular dealers, or suppliers:

**5.3.1.** The fees or commissions charged for providing a bona fide service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the contract, provided that the fee or commission is determined by the Agency/University to be reasonable and not excessive as compared with fees customarily allowed for similar services.

**5.3.2.** The fees charged for delivery of materials and supplies required by the contract (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer or a supplier of the materials and supplies being procured, provided that the fee is determined by the Agency/University to be reasonable and not excessive as compared with fees customarily allowed for similar services. The BEP/VSB certified vendor's trucking firm must actually be responsible for the management and supervision of the entire trucking operation for which it is responsible on the contract; and must itself own and operate at least one fully licensed, insured and operational truck used on the contract.

**5.3.3.** The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the contract, provided that the fee or commission is determined by the Agency/University to be reasonable and not excessive as compared with fees customarily allowed for similar services.

**5.4.** BEP/VSB certified vendors who are performing on a contract as second-tier subcontractors (i.e., subcontractors hired by first-tier subcontractors to perform on the contract) may be counted in meeting the established BEP/VSB goal for this contract where the Prime Vendor will provide monthly documentation indicating the utilization of these vendors by reporting the utilization to the BEP at <https://ceibep.diversitysoftware.com/?TN=ceibep> for State Agencies and by contacting the contract administrator for Universities.

**5.5.** A Vendor shall count towards the goal only expenditures to BEP/VSB firms that perform a **commercially useful function constituting direct participation** in the work of the contract.

**5.5.1.** A firm is considered to perform a **commercially useful function** when it is

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responsible for execution of a distinct element of the work of a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved. The BEP/VSB certified vendor must also be responsible, with respect to materials or supplies used on the contract, for negotiating price, determining quality and quantity, ordering the materials or supplies, and installing the materials (where applicable) and paying for the materials or supplies. To determine whether a firm is performing a commercially useful function, the Agency/University shall evaluate the amount of work subcontracted, whether the amount the firm is to be paid under the contract is commensurate with the work it actually performs, the credit claimed for its performance of the work, industry practices, and other relevant factors.

**5.5.2.** A BEP certified vendor does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction or contract through which funds are passed through to obtain BEP/VSB certified vendor participation. In determining whether a BEP/VSB certified vendor is such an extra participant, the Agency/University shall examine industry practices and similar transactions, particularly those in which BEP/VSB certified vendors actually participate in a meaningful way.

**5.6. A Vendor shall not count towards the goal expenditures that are not direct, necessary and related to the work of the contract.** Only the amount of services and/or goods that are directly attributable to the performance of the contract shall be counted. Ineligible expenditures include, but are not limited to, general office overhead and other Vendor support activities, unless allowed by the Agency/University.

**6. Good Faith Effort Procedures:** Prime Vendors must submit in their bid a Utilization Plan and Participation Agreement(s) that meet or exceed the published goal. If a Prime Vendor cannot meet the stated goal, it must fill out and attach Part III of this document, explaining the Good Faith Efforts it undertook to meet the goal, including contacting all certified BEP/VSB vendors that fall under the scope of work/NIGP Class and Class Item codes identified in the solicitation documentation. Utilization Plans and attached documentation are due at the time of bid or offer submission. The Business Enterprise Council ("Council") or its delegate will consider the quality, quantity, and intensity of the Vendor's efforts to meet the BEP goal. The procuring Agency/University will consider the quality, quantity, and intensity of the Vencor's efforts to meet the VSB goal.

The Utilization Plan contains a checklist of actions that the Council or its delegate will consider as evidence of Vendor's Good Faith Efforts to meet the BEP goal and that the Agency/University will consider as evidence of Vendor's Good Faith Efforts to meet the VSB goal. Documentation that alters or replaces the Utilization Plan and/or Participation Agreement(s), other than supplemental documentation, will not be considered during the Utilization Plan review.

**RETURN WITH SUBMITTAL**

**EXHIBIT L**

**CITY OF WHEATON BUSINESS ENTERPRISE PROGRAM UTILIZATION PLAN FORM**  
**INVITATION TO BID #26-12 GABLES BOULEVARD RECONSTRUCTIOMN PROJECT**

- 6.1.** In evaluating Vendor's Good Faith Efforts, the Council, its delegate, or an Agency/University as applicable may consider whether the ability of other bidders or offerors to meet the contract goal suggests that Good Faith Efforts could have resulted in Vendor meeting the goal.
- 6.2.** If the Council, its delegate, or an Agency/University determines that Vendor has made Good Faith Efforts to meet the BEP and VSB goal, respectively, the Agency/University may award the contract provided that Vendor is otherwise eligible for award.
- 6.3.** If the Council, its delegate, or an Agency/University, as applicable, determines that Good Faith Efforts have not been met, the bid or offer may be determined to be non-responsive by the Chief Procurement Officer.

**7. Contract Compliance:** Compliance with this section is an essential part of the contract. The following administrative procedures and remedies govern Vendor's compliance with the contractual obligations established by the Utilization Plan and Participation Agreement(s). **After approval of the Utilization Plan and Participation Agreement(s) as well as the award of the contract, the Utilization Plan, including all applicable Parts, becomes part of the contract.** If a Prime Vendor requested a waiver due to its inability to obtain BEP/VSB certified vendor participation equal to or exceeding the goal, and the Utilization Plan was approved and contract awarded based upon a determination of Good Faith Effort, the total dollar value of BEP/VSB certified vendor work in the approved Utilization Plan, calculated as a percentage of the total awarded contract value, shall become the final contract goal.

- 7.1.** The Utilization Plan and Participation Agreement(s) may not be amended after contract execution without Agency/University prior written approval.
- 7.2. Vendor may not make modifications to its contractual BEP/VSB certified vendor commitments or substitute BEP/VSB certified vendors without the prior written Agency/University approval.** Unauthorized modifications or substitutions, including performing the work designated for a BEP/VSB certified vendor with Vendor's own forces, shall be a violation of the Utilization Plan and therefore a breach of the contract, cause to terminate the contract, and cause to seek other contract remedies or sanctions. For Agency/University approval of modifications or substitutions, the facts supporting the modifications or substitutions must not have been known nor reasonably should have been known by the parties prior to entering into the contract and/or subcontract. Vendor must negotiate with BEP/VSB certified vendors to resolve problems. Where there has been a mistake or disagreement about the scope of work and/or goods/equipment required by the contract, the BEP/VSB certified vendor can be substituted, but only where

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#### CITY OF WHEATON BUSINESS ENTERPRISE PROGRAM UTILIZATION PLAN FORM INVITATION TO BID #26-12 GABLES BOULEVARD RECONSTRUCTIOMN PROJECT

agreement cannot be reached for a reasonable price or schedule for the correct scope of work, goods and/or equipment. Any subsequent change **must** be submitted to the soliciting Agency/University and BEP Secretary, in writing, and approved by the soliciting Agency/University.

**7.3.** Substitutions of a BEP/VSB certified vendor may be permitted under the following circumstances:

**7.3.1.** Unavailability after receipt of reasonable notice to proceed;

**7.3.2.** Failure of performance;

**7.3.3.** Financial incapacity;

**7.3.4.** Refusal by the BEP/VSB certified vendor to honor the bid or proposal price or scope;

**7.3.5.** Material mistake of fact or law about the elements of the scope of work of a contract where a reasonable price cannot be agreed upon;

**7.3.6.** Failure of the BEP/VSB certified vendor to meet insurance, licensing or bonding requirements;

**7.3.7.** The BEP/VSB certified vendor's withdrawal of its bid or offer; and/or

**7.3.8.** Failure of the BEP/VSB certified vendor to maintain certification.

**7.4.** If it becomes necessary to substitute a BEP/VSB certified vendor, the prime Vendor must notify the Agency/University and BEP Secretary, in writing, of the request to substitute a BEP/VSB certified vendor or otherwise modify the Utilization Plan and Participation Agreement(s). The request must state specific reasons for the substitution or modification. The Agency/University shall the Council or its delegate of the request to substitute a BEP/VSB certified vendor or change the Utilization Plan and Participation Agreement(s). The Agency/University will approve or deny a request for substitution or other change in the Utilization Plan and/or Participation Agreement(s) within five business days of receipt of the request or may request a BEP review of the documentation.

**7.5.** Where Vendor has established the basis for the substitution to the satisfaction of the Agency/University, it must make Good Faith Efforts to meet the contract goal by substituting one or more BEP/VSB certified vendors. Documentation of a replacement

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### EXHIBIT L

#### CITY OF WHEATON BUSINESS ENTERPRISE PROGRAM UTILIZATION PLAN FORM INVITATION TO BID #26-12 GABLES BOULEVARD RECONSTRUCTIOMN PROJECT

BEP certified vendor, or of Good Faith Efforts to replace the BEP/VSB certified vendor, must meet the requirements of the initial Utilization Plan. If the goal cannot be reached and Good Faith Efforts have been made, Vendor may substitute with a non-BEP/VSB certified vendor.

- 7.6.** Prime Vendors are encouraged to utilize BEP/VSB certified firms. If a Vendor plans to hire a subcontractor for any scope of work that was not previously disclosed in the Utilization Plan and this increases BEP/VSB participation, Vendor must obtain the approval of the Agency/University to modify the Utilization Plan and must make Good Faith Efforts to ensure that BEP/VSB certified vendors have a fair opportunity to submit a bid or offer on the new scope of work.
- 7.7.** If the Prime Vendor wishes to substitute its BEP/VSB certified subcontractor, a BEP/VSB certified vendor Utilization Plan and Participation Agreement must be executed and submitted to the Agency/University within five (5) business days of Vendor's receipt of the Agency/University approval for the substitution. The Agency/University must supply the new BEP Utilization Plan and Participation Agreement(s) to the BEP Secretary or their designee.
- 7.8.** Vendor shall maintain a record of all relevant data with respect to the utilization of BEP/VSB certified vendors including, but not limited to, payroll records, invoices, canceled checks and books of account for a period of at least three (3) years after the completion of the contract. If the contract administrator is an Agency, Vendor shall submit monthly reports to BEP via the B2G Now Diversity Contract Monitoring System (DCMS) reporting system. **If the contract administrator is a University, Vendor shall contact the contract administrator to obtain reporting requirements.** Full access to these records shall be granted by Vendor within 48 hours of a written demand by the Agency/University, BEP Secretary, or any duly authorized representative thereof, or to any municipal, county, State or federal authorities. The Agency/University shall have the right to obtain from Vendor any additional data reasonably related or necessary to verify any representations by Vendor. After the performance of the final item of work or delivery of material by the BEP certified vendor and final payment to the BEP certified vendor by Vendor, but not later than thirty (30) calendar days after such payment, Vendor shall submit a statement confirming the final payment and the total payments made to the BEP certified vendor under the contract at <https://ceibep.diversitysoftware.com/?TN=ceibep> for contracts administrated by Agencies. For contracts administered by Universities, Vendor shall submit a statement confirming the final payment and the total payments made to the BEP/VSB certified vendor under the contract in the manner prescribed by the University contract administrator. **Vendor's failure to submit monthly reports shall constitute a material breach of this contract and subject Vendor to the remedies and penalties described in**

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**EXHIBIT L**

**CITY OF WHEATON BUSINESS ENTERPRISE PROGRAM UTILIZATION PLAN FORM  
INVITATION TO BID #26-12 GABLES BOULEVARD RECONSTRUCTIOMN PROJECT**

**Section 7.10. For contracts administrated by Agencies, The Prime Vendor and BEP subcontractors will receive notification and instructions after the start of the contract for reporting to BEP's DCMS. Failure to report contractual spend or lack of spend monthly reporting may result in a contractual breach.**

**7.9.** The Agency/University will annually review Vendor's compliance with these provisions and the terms of its contract. Executive Order Number 2018-06 requires review of contractual language regarding cancelation of contracts deemed not to be compliant with the BEP. Without limitation, Vendor's failure to comply with these provisions or its contractual commitments as contained in the Utilization Plan and Participation Agreement(s); failure to cooperate in providing information regarding its compliance with these provisions or its Utilization Plan; or provision of false or misleading information or statements concerning compliance, certification status or eligibility of a BEP certified vendor, Good Faith Efforts or any other material fact or representation shall constitute a material breach of this contract and entitle the Agency/University to declare a default, terminate the contract, and/or exercise those remedies provided for in the contract, law and equity.

**7.10.** The Agency/University reserves the right to withhold payment to Vendor to enforce these provisions and Vendor's contractual commitments. Final payment shall not be made pursuant to the contract until Vendor submits sufficient documentation demonstrating compliance with its Utilization Plan and Participation Agreement(s).

**RETURN WITH SUBMITTAL****EXHIBIT M****VENDOR CERTIFICATION FORM****INVITATION TO BID #26-13 GABLES BOULEVARD RECONSTRUCTION PROJECT**

As a condition of entering a contract with the City of Wheaton, and under oath and penalty of perjury and possible termination of contract rights and debarment, the undersigned,

\_\_\_\_\_ being first duly sworn on oath, deposes and states that  
(Officer or Owner of Company)

He/She is \_\_\_\_\_ (sole owner, partner, joint ventured, President, Secretary, etc.) of \_\_\_\_\_ and has the authority to make all certifications required by this affidavit.

**This Business Firm is:** (check one)

Corporation       Partnership       Individual       LLC

Firm Name:

\_\_\_\_\_

Address:

\_\_\_\_\_

Signature:

\_\_\_\_\_

Print Name:

\_\_\_\_\_

Title:

\_\_\_\_\_

Phone #:

\_\_\_\_\_

Fax #:

Email:

Date:

**Operational Contact for this work**

Name:

Phone #:

Email:

**Sales Contact**

Name:

Phone #:

Email:

## RETURN WITH SUBMITTAL

### EXHIBIT M

### VENDOR CERTIFICATION FORM

### INVITATION TO BID #26-13 GABLES BOULEVARD RECONSTRUCTION PROJECT

#### Billing Contact

Name: \_\_\_\_\_

Phone #: \_\_\_\_\_

Email: \_\_\_\_\_

#### CONFLICT OF INTEREST

Check One:

**There are no conflicts of interest**; and in the event that a conflict of interest is identified anytime during the duration of this award, or reasonable time thereafter, you, your firm, or your firm's ownership, management or staff will immediately notify the City of Wheaton in writing.

**There is an affiliation or business relationship** between you, your management or staff, your firm, or your firm's ownership, and an employee, officer, or elected official of the City of Wheaton who makes recommendations to the City of Wheaton with respect to expenditures of money, employment, and elected or appointed positions. Provide any and all affiliations or business relationships that might cause a conflict of interest or any potential conflict of interest. Include the name of each City of Wheaton affiliate with whom you, your firm, or your firm's ownership, management, or staff, has an affiliation or a business relationship.

#### CONFLICT OF INTEREST DISCLOSURE\*

**Name of each City of Wheaton affiliate with whom you, your firm, or your firm's ownership, management, or staff, has an affiliation or a business relationship.**

Name of City of Wheaton affiliate:

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Relationship:

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Other:

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**\*Disclosing a potential conflict does not disqualify vendors. In the event vendors do not disclose potential conflicts of interest and they are detected by the City; vendor will be exempt from doing business with the City.**

#### PAYMENT OF TAXES

Vendor is not delinquent in the payment of any tax administered by the Illinois Department of Revenue, or if it is:

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### VENDOR CERTIFICATION FORM

#### INVITATION TO BID #26-13 GABLES BOULEVARD RECONSTRUCTION PROJECT

- a. it is contesting its liability for the tax or the amount of tax in accordance with procedures established by the approved Revenue Act; or
- b. it has entered into an agreement with the Department of Revenue for payment of all taxes due and is currently in compliance with that agreement.

#### FEDERAL HIGHWAY ADMINISTRATION RULES ON CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING

Vendor is in full compliance with the Federal Highway Administration Rules on Controlled Substances and Alcohol Use and Testing, 49 CFR Parts 40 and 382 and that

\_\_\_\_\_ is/are currently participating.

(Name of employee/driver or “all employee drivers”) in a drug and alcohol testing program pursuant to the aforementioned rules.

#### SUBSTANCE ABUSE

*(Check one)*

4A. has in place a written program which meets or exceeds the program requirements of the Substance Abuse Prevention on Public Works Projects Act (Public Act 95-0635), and has provided a written copy thereof to the City of Wheaton; or

4B. has in place a collective bargaining agreement which deals with the subject matter of the Substance Abuse Prevention on Public Works Projects Act (Public Act 95-0635).

4C. Not applicable to this contract.

#### BID RIGGING AND BID ROTATING

Vendor is not barred from contracting with any unit of state or local government as a result of a violation of either Section 33E-3 or 33E-4 of the Illinois Criminal Code, or of any similar offense of “bid-rigging” or “bid-rotating” of any state of the United States.

#### EMPLOYMENT OF ILLINOIS WORKERS ON PUBLIC WORKS ACT

Vendor agrees that, to the extent required by the Employment of Illinois Workers on Public Works Act (30 ILCS 570/1 et seq.), as now existing or hereafter amended, the undersigned shall comply with the Illinois labor employment requirements as set forth in the Act.

#### ILLINOIS PREVAILING WAGE ACT

Vendor is, to the extent required, in compliance with all requirements of the Illinois Prevailing Wage Act, 820 ILCS 130/0.01 et seq.

#### USA PATRIOT ACT

Vendor is not barred from bidding and/or contracting with a unit of state or local government as a result of a violation of the USA Patriot Act of 2001, 107 Public Law 56 (October 26, 2001)(the “Patriot Act”) and the USA

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Freedom Act, H.R. 2048, Pub. L. 114-23 which restored and modified the Patriot Act, or other statutes, orders, rules, and regulations of the United States government and its various executive departments, agencies and offices related to the subject matter of the Patriot Act, including, but not limited to, Executive Order 13224 effective September 24, 2001. Contractor also certifies that it is not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by the United States Treasury Department as a Specially Designated National and Blocked Person, or for or on behalf of any person, group, entity, or nation designated in Presidential Executive Order 13224 as a person who commits, threatens to commit, or supports terrorism;

and Contractor further certifies that it is not engaged in this transaction directly or indirectly on behalf of or facilitating this transaction directly or indirectly on behalf of, any such person, group, entity or nation.

#### **AMERICANS WITH DISABILITIES ACT**

Vendor agrees, to the extent required by the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§12101 *et seq.*, the undersigned shall utilize standards and/or methods that do not discriminate against the disabled.

#### **ILLINOIS STEEL PRODUCTS PROCUREMENT ACT**

Vendor agrees, when applicable, that steel products 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.*

#### **PUBLIC WORKS EMPLOYMENT DISCRIMINATION ACT**

Vendor shall comply with the Public Works Employment Discrimination Act, 775 ILCS 10/0.01 *et seq.*

#### **SAFETY**

Vendor shall comply with all local, state, and federal safety standards.

#### **DRUG FREE WORKPLACE**

In compliance with State of Illinois Compiled Statutes, Chapter 30-580 (30 ILCS 580/30), the Contractor certifies and agrees that it will provide a drug free workplace by:

1. Publishing a Statement:

- A. Notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance, including cannabis, is prohibited in the Contractor's workplace.
- B. Specifying the actions that will be taken against employees for violations of such prohibition.
- C. Notifying the employee that, as a condition of employment on such Agreement, the employee will:
  - i. Abide by the terms of the statement; and
  - ii. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction.

2. Establishing a Drug Free Awareness Program to inform employees about:

- A. The dangers of drug abuse in the workplace;
- B. The Contractor's policy for maintaining a drug free workplace;
- C. Available counseling, rehabilitation, or assistance programs; and

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- D. Penalties imposed for drug violations.
- 3. Providing a copy of the Statement required by Section 1 to each employee engaged in the performance of the Agreement and to post the Statement in a prominent place in the workplace.
- 4. Notifying the contracting agency within ten (10) days after receiving notice under part (C), subsection (ii) of paragraph 1 above, from an employee or otherwise receiving actual notice of such conviction.
- 5. Imposing a sanction on or requiring the satisfactory participation in a Drug Abuse Assistance or Rehabilitation Program, by any employee who is so convicted, as required by Section 5 of the Drug Free Workplace Act.
- 6. Assisting employees in selecting a course of action in the event drug counseling, treatment, and rehabilitation are required and indicating that a trained referral team is in place.
- 7. Making a good faith effort to continue to maintain a drug free workplace through implementation of the Drug Free Workplace Act.

Failure to abide by this certification shall subject the Contractor to the penalties provided in the "Drug-Free Workplace Act."

#### **EQUAL EMPLOYMENT OPPORTUNITY CLAUSE**

Section I: This EQUAL EMPLOYMENT OPPORTUNITY CLAUSE is required by the Illinois Human Rights Act and the Rules and Regulations of the Illinois Department of Human Rights published at 44 Illinois Administrative Code Section 750 et seq; also known as Title 44: Government Contracts, Grantmaking, Procurement and Property Management, Subtitle B: Supplemental Procurement Rules, Chapter X: Department of Human Rights, Part 750: Procedures Applicable to all Agencies.

Section II: In the event of the Contractor's non-compliance with the provisions of this Equal Employment Opportunity Clause or the Illinois Human Rights Act, the Contractor may be declared ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and the contract may be cancelled or voided in whole or in part, and other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation. During the performance of this contract, the Contractor agrees as follows:

That he or she will not discriminate against any employee or applicant for employment because of 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, work authorization status and further that he or she will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any underutilization.

That, if he or she hires additional employees in order to perform this contract or any portion of this contract, he or she will determine the availability (in accordance with this Part) of minorities and women in the areas from

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### EXHIBIT M

### VENDOR CERTIFICATION FORM

### INVITATION TO BID #26-13 GABLES BOULEVARD RECONSTRUCTION PROJECT

which he or she may reasonably recruit, and he or she will hire for each job classification for which employees are hired in a way that minorities and women are not underutilized.

That, in all solicitations or advertisements for employees placed by him or her or on his or her behalf, he or she will state that all applicants will be afforded equal opportunity without discrimination because of 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.

That he or she will send to each labor organization or representative of workers with which he or she has or is bound by a collective bargaining or other agreement or understanding, a notice advising the labor or representative of the Contractor's obligations under the Act and this Part. If any labor organization or representative fails or refuses to cooperate with the contractor in his or her efforts to comply with the Act and this Part, the contractor will promptly notify the Department and the contracting agency and will recruit employees from other sources when necessary to fulfill its obligations under the contract.

That he or she will submit reports as required by this Part, furnish all relevant information as may from time to time be requested by the Department or the contracting agency, and in all respects comply with the Act and this Part.

That he or she will permit access to all relevant books, records, accounts, and work sites by personnel of the contracting agency and the Department for purposes of investigation to ascertain compliance with the Act and the Department's Rules and Regulations.

That he or she will include verbatim or by reference the provisions of this clause in every subcontract awarded under which any portion of the contract obligations are undertaken or assumed, so that the provisions will be binding upon the subcontractor. In the same manner as with other provisions of this contract, the Contractor will be liable for compliance with applicable provisions of this clause by subcontractors; and further it will promptly notify the contracting agency and the Department in the event any subcontractor fails or refuses to comply with the provisions. In addition, the Contractor will not utilize any subcontractor declared by the Illinois Human Rights Commission to be ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations.

Section III: For the purposes of subsection 7 of Section II, "subcontract" means any agreement, arrangement or understanding, written or otherwise, between the Contractor and any person under which any portion of the Contractor's obligations under one or more public contracts is performed, undertaken or assumed; the term "subcontract," however, shall not include any agreement, arrangement or understanding in which the parties stand in the relationship of an employer and an employee, or between a Contractor or other organization and its customers.

### ACKNOWLEDGED AND AGREED TO:

Company Name: \_\_\_\_\_

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### EXHIBIT N

### VENDOR INFORMATION REPORTING FORM

### INVITATION TO BID #26-13 GABLES BOULEVARD RECONSTRUCTION PROJECT

Business Name/Name of Sole Proprietor/General Contractor: \_\_\_\_\_

Are you a Subcontractor for the above project:  Yes  No Subcontractor Name: \_\_\_\_\_

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. Answers to the following questions 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. Vendors/Contractors seeking contract award are required to return this completed form with their submittal to 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.

1. A “minority-owned business” means a business which is at least 51% owned by one or more minority persons, or in the case of a corporation, at least 51% of the stock in which is owned by one or more minority persons; and the management and daily business operations of which are controlled by one or more of the minority individuals who own it. 30 ILCS 575/2(A)(3)

A “women-owned business” means a business which is at least 51% owned by one or more women, or, in the case of a corporation, at least 51% of the stock in which is owned by one or more women; and the management and daily business operations of which are controlled by one or more of the women who own it. 30 ILCS 575/2(A)(4)

A “veteran-owned business” means a small business (i) that is at least 51% owned by one or more qualified veterans living in Illinois or, in the case of a corporation, at least 51% of the stock of which is owned by one or more qualified veterans living in Illinois; (ii) that has its home office in Illinois; and (iii) for which items (i) and (ii) are factually verified annually by the Illinois Department of Central Management Services. 30 ILCS 500/45-57(e).

Is your business a

Minority-owned business as defined by 30 ILCS 575/2(A)(3)	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Women-owned business as defined by 30 ILCS 575/2(A)(4)	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Veteran-owned business as defined by 30 ILCS 500/45-57(e)	<input type="checkbox"/> Yes	<input type="checkbox"/> No

A business may indicate a “yes” answer for more than one category.

2. Has your business received certification from a certifying agency/organization? If not please check "not certified." If certified, please check all applicable certifications and indicate for which category(ies) identified in Question 1 your business is certified.

Not Certified

CMS - Illinois Department of Central Management Services Business Enterprise Program

Minority-owned  Women-owned  Veteran-owned

CMSDC-Chicago Minority Supplier Development Council

Minority-owned  Women-owned  Veteran-owned

City of Chicago

Minority-owned  Women-owned  Veteran-owned

## RETURN WITH SUBMITTAL

### EXHIBIT N VENDOR INFORMATION REPORTING FORM INVITATION TO BID #26-13 GABLES BOULEVARD RECONSTRUCTION PROJECT

Cook County

Minority-owned

Women-owned

Veteran-owned

CTA-Chicago Transit Authority

Minority-owned

Women-owned

Veteran-owned

METRA

Minority-owned

Women-owned

Veteran-owned

PACE

Minority-owned

Women-owned

Veteran-owned

IDOT-Illinois Department of Transportation

Minority-owned

Women-owned

Veteran-owned

WBDC-Women's Business Development Center

Minority-owned

Women-owned

Veteran-owned

Mid-States Minority Supplier Development Center

Minority-owned

Women-owned

Veteran-owned

Self-certifying

Minority-owned

Women-owned

Veteran-owned

Other (Please specify): \_\_\_\_\_

3. If you answered "self-certifying" to Question 2, does your business qualify as a small business under the Federal Government's Small Business Administration (SBA) Standards? Please consult the U.S. Small Business Administration website's most current Table of Small Business Size Standards Matched to North American Industry Classification System codes located at [sba.gov/document/support--table-size-standards](https://sba.gov/document/support--table-size-standards) to provide the following information.

Yes, self-certifying, SBA status indicated for business name listed on this form in SAM profile at SAM.gov.

Yes, self-certifying SBA qualified small business because the average annual receipts for my business's NAICS U.S. industry title [INSERT INDUSTRY TITLE] \_\_\_\_\_, with an NAICS code of [INSERT NAICS CODE] \_\_\_\_\_ are less than the size standards (in millions of dollars) as listed in the U.S. Small Business Administration's Table of Small Business Size Standards, dated August 19, 2019.

Yes, self-certifying SBA qualified small business because the average total employment for my business's NAICS U.S. industry title [INSERT INDUSTRY TITLE] \_\_\_\_\_, with an NAICS code of [INSERT NAICS CODE] \_\_\_\_\_ is less than the size standard (in number of employees) as listed in the U.S. Small Business Administration's Table of Small Business Size Standards, dated August 19, 2019.

No, self-certifying but not an SBA qualified small business.

**RETURN WITH SUBMITTAL**

**EXHIBIT N**

**VENDOR INFORMATION REPORTING FORM**

**INVITATION TO BID #26-13 GABLES BOULEVARD RECONSTRUCTION PROJECT**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Business Name: \_\_\_\_\_

Business Address: \_\_\_\_\_

***Failure to complete and return this form will be considered sufficient reason for rejection of the submittal.***

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## **Statement of Non-Participation**

### **INVITATION TO BID #26-13 – GABLES BOULEVARD RECONSTRUCTION PROJECT**

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If you do not intend to submit a response for this project, please complete this form and return it to:

Tony Sperkowski at [asperkowski@wheaton.il.us](mailto:asperkowski@wheaton.il.us)

We do not wish to participate in this bid/proposal for the following reasons:

- Insufficient time to adequately prepare a respond.
- We do not provide this product or service. Remove us from the Vendors list.
- Our schedule will not permit us to perform in a timely manner.
- We are unable to meet bond requirements.
- We are unable to meet insurance requirements.
- Other (explain below):

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Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

Signature: \_\_\_\_\_

Name of person submitting form: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Date: \_\_\_\_\_

## Request for Taxpayer Identification Number and Certification

Go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9) for instructions and the latest information.

**Give form to the requester. Do not send to the IRS.**

**Before you begin.** For guidance related to the purpose of Form W-9, see *Purpose of Form*, below.

<b>Print or type. See Specific Instructions on page 3.</b>	<p>1 Name of entity/individual. An entry is required. (For a sole proprietor or disregarded entity, enter the owner's name on line 1, and enter the business/disregarded entity's name on line 2.)</p> <p>2 Business name/disregarded entity name, if different from above.</p> <p>3a Check the appropriate box for federal tax classification of the entity/individual whose name is entered on line 1. Check only <b>one</b> of the following seven boxes.</p> <p><input type="checkbox"/> Individual/sole proprietor    <input type="checkbox"/> C corporation    <input type="checkbox"/> S corporation    <input type="checkbox"/> Partnership    <input type="checkbox"/> Trust/estate</p> <p><input type="checkbox"/> LLC. Enter the tax classification (C = C corporation, S = S corporation, P = Partnership) _____</p> <p><b>Note:</b> Check the "LLC" box above and, in the entry space, enter the appropriate code (C, S, or P) for the tax classification of the LLC, unless it is a disregarded entity. A disregarded entity should instead check the appropriate box for the tax classification of its owner.</p> <p><input type="checkbox"/> Other (see instructions) _____</p> <p>3b If on line 3a you checked "Partnership" or "Trust/estate," or checked "LLC" and entered "P" as its tax classification, and you are providing this form to a partnership, trust, or estate in which you have an ownership interest, check this box if you have any foreign partners, owners, or beneficiaries. See instructions _____ <input type="checkbox"/></p> <p>4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):</p> <p>Exempt payee code (if any) _____</p> <p>Exemption from Foreign Account Tax Compliance Act (FATCA) reporting code (if any) _____</p> <p>(Applies to accounts maintained outside the United States.)</p>
5 Address (number, street, and apt. or suite no.). See instructions.	Requester's name and address (optional)
6 City, state, and ZIP code	
7 List account number(s) here (optional)	

**Part I Taxpayer Identification Number (TIN)**

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

**Note:** If the account is in more than one name, see the instructions for line 1. See also *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number										
			-				-			
or										
Employer identification number										
			-							

## Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and, generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

**Sign Here** Signature of U.S. person **Date**

## General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9).

## What's New

Line 3a has been modified to clarify how a disregarded entity completes this line. An LLC that is a disregarded entity should check the appropriate box for the tax classification of its owner. Otherwise, it should check the "LLC" box and enter its appropriate tax classification.

New line 3b has been added to this form. A flow-through entity is required to complete this line to indicate that it has direct or indirect foreign partners, owners, or beneficiaries when it provides the Form W-9 to another flow-through entity in which it has an ownership interest. This change is intended to provide a flow-through entity with information regarding the status of its indirect foreign partners, owners, or beneficiaries, so that it can satisfy any applicable reporting requirements. For example, a partnership that has any indirect foreign partners may be required to complete Schedules K-2 and K-3. See the Partnership Instructions for Schedules K-2 and K-3 (Form 1065).

## Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS is giving you this form because they

must obtain your correct taxpayer identification number (TIN), which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid).
- Form 1099-DIV (dividends, including those from stocks or mutual funds).
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds).
- Form 1099-NEC (nonemployee compensation).
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers).
- Form 1099-S (proceeds from real estate transactions).
- Form 1099-K (merchant card and third-party network transactions).
- Form 1098 (home mortgage interest), 1098-E (student loan interest), and 1098-T (tuition).
- Form 1099-C (canceled debt).
- Form 1099-A (acquisition or abandonment of secured property).

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

**Caution:** If you don't return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See *What is backup withholding*, later.

**By signing the filled-out form, you:**

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued);
2. Certify that you are not subject to backup withholding; or
3. Claim exemption from backup withholding if you are a U.S. exempt payee; and
4. Certify to your non-foreign status for purposes of withholding under chapter 3 or 4 of the Code (if applicable); and
5. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting is correct. See *What Is FATCA Reporting*, later, for further information.

**Note:** If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien;
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States;
- An estate (other than a foreign estate); or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Establishing U.S. status for purposes of chapter 3 and chapter 4 withholding.** Payments made to foreign persons, including certain distributions, allocations of income, or transfers of sales proceeds, may be subject to withholding under chapter 3 or chapter 4 of the Code (sections 1441–1474). Under those rules, if a Form W-9 or other certification of non-foreign status has not been received, a withholding agent, transferee, or partnership (payor) generally applies presumption rules that may require the payor to withhold applicable tax from the recipient, owner, transferor, or partner (payee). See Pub. 515, Withholding of Tax on Nonresident Aliens and Foreign Entities.

The following persons must provide Form W-9 to the payor for purposes of establishing its non-foreign status.

- In the case of a disregarded entity with a U.S. owner, the U.S. owner of the disregarded entity and not the disregarded entity.
- In the case of a grantor trust with a U.S. grantor or other U.S. owner, generally, the U.S. grantor or other U.S. owner of the grantor trust and not the grantor trust.
- In the case of a U.S. trust (other than a grantor trust), the U.S. trust and not the beneficiaries of the trust.

See Pub. 515 for more information on providing a Form W-9 or a certification of non-foreign status to avoid withholding.

**Foreign person.** If you are a foreign person or the U.S. branch of a foreign bank that has elected to be treated as a U.S. person (under Regulations section 1.1441-1(b)(2)(iv) or other applicable section for chapter 3 or 4 purposes), do not use Form W-9. Instead, use the appropriate Form W-8 or Form 8233 (see Pub. 515). If you are a qualified foreign pension fund under Regulations section 1.897(l)-1(d), or a partnership that is wholly owned by qualified foreign pension funds, that is treated as a non-foreign person for purposes of section 1445 withholding, do not use Form W-9. Instead, use Form W-8EXP (or other certification of non-foreign status).

**Nonresident alien who becomes a resident alien.** Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a saving clause. Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items.

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

**Example.** Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if their stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first Protocol) and is relying on this exception to claim an exemption from tax on their scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity, give the requester the appropriate completed Form W-8 or Form 8233.

## Backup Withholding

**What is backup withholding?** Persons making certain payments to you must under certain conditions withhold and pay to the IRS 24% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include, but are not limited to, interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, payments made in settlement of payment card and third-party network transactions, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

**Payments you receive will be subject to backup withholding if:**

1. You do not furnish your TIN to the requester;
2. You do not certify your TIN when required (see the instructions for Part II for details);
3. The IRS tells the requester that you furnished an incorrect TIN;
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only); or
5. You do not certify to the requester that you are not subject to backup withholding, as described in item 4 under "By signing the filled-out form" above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See *Exempt payee code*, later, and the separate Instructions for the Requester of Form W-9 for more information.

See also *Establishing U.S. status for purposes of chapter 3 and chapter 4 withholding*, earlier.

## What Is FATCA Reporting?

The Foreign Account Tax Compliance Act (FATCA) requires a participating foreign financial institution to report all U.S. account holders that are specified U.S. persons. Certain payees are exempt from FATCA reporting. See *Exemption from FATCA reporting code*, later, and the Instructions for the Requester of Form W-9 for more information.

## Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you are no longer tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account, for example, if the grantor of a grantor trust dies.

## Penalties

**Failure to furnish TIN.** If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

**Civil penalty for false information with respect to withholding.** If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

**Criminal penalty for falsifying information.** Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

**Misuse of TINs.** If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

## Specific Instructions

### Line 1

You must enter one of the following on this line; **do not** leave this line blank. The name should match the name on your tax return.

If this Form W-9 is for a joint account (other than an account maintained by a foreign financial institution (FFI)), list first, and then circle, the name of the person or entity whose number you entered in Part I of Form W-9. If you are providing Form W-9 to an FFI to document a joint account, each holder of the account that is a U.S. person must provide a Form W-9.

• **Individual.** Generally, enter the name shown on your tax return. If you have changed your last name without informing the Social Security Administration (SSA) of the name change, enter your first name, the last name as shown on your social security card, and your new last name.

**Note for ITIN applicant:** Enter your individual name as it was entered on your Form W-7 application, line 1a. This should also be the same as the name you entered on the Form 1040 you filed with your application.

• **Sole proprietor.** Enter your individual name as shown on your Form 1040 on line 1. Enter your business, trade, or “doing business as” (DBA) name on line 2.

• **Partnership, C corporation, S corporation, or LLC, other than a disregarded entity.** Enter the entity’s name as shown on the entity’s tax return on line 1 and any business, trade, or DBA name on line 2.

• **Other entities.** Enter your name as shown on required U.S. federal tax documents on line 1. This name should match the name shown on the charter or other legal document creating the entity. Enter any business, trade, or DBA name on line 2.

• **Disregarded entity.** In general, a business entity that has a single owner, including an LLC, and is not a corporation, is disregarded as an entity separate from its owner (a disregarded entity). See Regulations section 301.7701-2(c)(2). A disregarded entity should check the appropriate box for the tax classification of its owner. Enter the owner’s name on line 1. The name of the owner entered on line 1 should never be a disregarded entity. The name on line 1 should be the name shown on the income tax return on which the income should be reported. For

example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a single owner that is a U.S. person, the U.S. owner’s name is required to be provided on line 1. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity’s name on line 2. If the owner of the disregarded entity is a foreign person, the owner must complete an appropriate Form W-8 instead of a Form W-9. This is the case even if the foreign person has a U.S. TIN.

### Line 2

If you have a business name, trade name, DBA name, or disregarded entity name, enter it on line 2.

### Line 3a

Check the appropriate box on line 3a for the U.S. federal tax classification of the person whose name is entered on line 1. Check only one box on line 3a.

IF the entity/individual on line 1 is a(n) ...	THEN check the box for ...
• Corporation	Corporation.
• Individual or	Individual/sole proprietor.
• Sole proprietorship	
• LLC classified as a partnership for U.S. federal tax purposes or	Limited liability company and enter the appropriate tax classification:
• LLC that has filed Form 8832 or 2553 electing to be taxed as a corporation	P = Partnership, C = C corporation, or S = S corporation.
• Partnership	Partnership.
• Trust/estate	Trust/estate.

### Line 3b

Check this box if you are a partnership (including an LLC classified as a partnership for U.S. federal tax purposes), trust, or estate that has any foreign partners, owners, or beneficiaries, and you are providing this form to a partnership, trust, or estate, in which you have an ownership interest. You must check the box on line 3b if you receive a Form W-8 (or documentary evidence) from any partner, owner, or beneficiary establishing foreign status or if you receive a Form W-9 from any partner, owner, or beneficiary that has checked the box on line 3b.

**Note:** A partnership that provides a Form W-9 and checks box 3b may be required to complete Schedules K-2 and K-3 (Form 1065). For more information, see the Partnership Instructions for Schedules K-2 and K-3 (Form 1065).

If you are required to complete line 3b but fail to do so, you may not receive the information necessary to file a correct information return with the IRS or furnish a correct payee statement to your partners or beneficiaries. See, for example, sections 6698, 6722, and 6724 for penalties that may apply.

### Line 4 Exemptions

If you are exempt from backup withholding and/or FATCA reporting, enter in the appropriate space on line 4 any code(s) that may apply to you.

#### Exempt payee code.

- Generally, individuals (including sole proprietors) are not exempt from backup withholding.
- Except as provided below, corporations are exempt from backup withholding for certain payments, including interest and dividends.
- Corporations are not exempt from backup withholding for payments made in settlement of payment card or third-party network transactions.
- Corporations are not exempt from backup withholding with respect to attorneys’ fees or gross proceeds paid to attorneys, and corporations that provide medical or health care services are not exempt with respect to payments reportable on Form 1099-MISC.

The following codes identify payees that are exempt from backup withholding. Enter the appropriate code in the space on line 4.

1—An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2).

2—The United States or any of its agencies or instrumentalities.

3—A state, the District of Columbia, a U.S. commonwealth or territory, or any of their political subdivisions or instrumentalities.

4—A foreign government or any of its political subdivisions, agencies, or instrumentalities.

5—A corporation.

6—A dealer in securities or commodities required to register in the United States, the District of Columbia, or a U.S. commonwealth or territory.

7—A futures commission merchant registered with the Commodity Futures Trading Commission.

8—A real estate investment trust.

9—An entity registered at all times during the tax year under the Investment Company Act of 1940.

10—A common trust fund operated by a bank under section 584(a).

11—A financial institution as defined under section 581.

12—A middleman known in the investment community as a nominee or custodian.

13—A trust exempt from tax under section 664 or described in section 4947.

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 13.

IF the payment is for . . .	THEN the payment is exempt for . . .
• Interest and dividend payments	All exempt payees except for 7.
• Broker transactions	Exempt payees 1 through 4 and 6 through 11 and all C corporations. S corporations must not enter an exempt payee code because they are exempt only for sales of noncovered securities acquired prior to 2012.
• Barter exchange transactions and patronage dividends	Exempt payees 1 through 4.
• Payments over \$600 required to be reported and direct sales over \$5,000 <sup>1</sup>	Generally, exempt payees 1 through 5. <sup>2</sup>
• Payments made in settlement of payment card or third-party network transactions	Exempt payees 1 through 4.

<sup>1</sup> See Form 1099-MISC, Miscellaneous Information, and its instructions.

<sup>2</sup> However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney reportable under section 6045(f), and payments for services paid by a federal executive agency.

**Exemption from FATCA reporting code.** The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements. A requester may indicate that a code is not required by providing you with a Form W-9 with "Not Applicable" (or any similar indication) entered on the line for a FATCA exemption code.

A—An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37).

B—The United States or any of its agencies or instrumentalities.

C—A state, the District of Columbia, a U.S. commonwealth or territory, or any of their political subdivisions or instrumentalities.

D—A corporation the stock of which is regularly traded on one or more established securities markets, as described in Regulations section 1.1472-1(c)(1)(i).

E—A corporation that is a member of the same expanded affiliated group as a corporation described in Regulations section 1.1472-1(c)(1)(i).

F—A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state.

G—A real estate investment trust.

H—A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940.

I—A common trust fund as defined in section 584(a).

J—A bank as defined in section 581.

K—A broker.

L—A trust exempt from tax under section 664 or described in section 4947(a)(1).

M—A tax-exempt trust under a section 403(b) plan or section 457(g) plan.

**Note:** You may wish to consult with the financial institution requesting this form to determine whether the FATCA code and/or exempt payee code should be completed.

## Line 5

Enter your address (number, street, and apartment or suite number). This is where the requester of this Form W-9 will mail your information returns. If this address differs from the one the requester already has on file, enter "NEW" at the top. If a new address is provided, there is still a chance the old address will be used until the payor changes your address in their records.

## Line 6

Enter your city, state, and ZIP code.

## Part I. Taxpayer Identification Number (TIN)

**Enter your TIN in the appropriate box.** If you are a resident alien and you do not have, and are not eligible to get, an SSN, your TIN is your IRS ITIN. Enter it in the entry space for the Social security number. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN.

If you are a single-member LLC that is disregarded as an entity separate from its owner, enter the owner's SSN (or EIN, if the owner has one). If the LLC is classified as a corporation or partnership, enter the entity's EIN.

**Note:** See *What Name and Number To Give the Requester*, later, for further clarification of name and TIN combinations.

**How to get a TIN.** If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local SSA office or get this form online at [www.SSA.gov](http://www.SSA.gov). You may also get this form by calling 800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at [www.irs.gov/EIN](http://www.irs.gov/EIN). Go to [www.irs.gov/Forms](http://www.irs.gov/Forms) to view, download, or print Form W-7 and/or Form SS-4. Or, you can go to [www.irs.gov/OrderForms](http://www.irs.gov/OrderForms) to place an order and have Form W-7 and/or Form SS-4 mailed to you within 15 business days.

If you are asked to complete Form W-9 but do not have a TIN, apply for a TIN and enter "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, you will generally have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

**Note:** Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon. See also *Establishing U.S. status for purposes of chapter 3 and chapter 4 withholding*, earlier, for when you may instead be subject to withholding under chapter 3 or 4 of the Code.

**Caution:** A disregarded U.S. entity that has a foreign owner must use the appropriate Form W-8.

## Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if item 1, 4, or 5 below indicates otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on line 1 must sign. Exempt payees, see *Exempt payee code*, earlier.

**Signature requirements.** Complete the certification as indicated in items 1 through 5 below.

**1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.** You must give your correct TIN, but you do not have to sign the certification.

**2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983.** You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

**3. Real estate transactions.** You must sign the certification. You may cross out item 2 of the certification.

**4. Other payments.** You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments made in settlement of payment card and third-party network transactions, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

**5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), ABLE accounts (under section 529A), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions.** You must give your correct TIN, but you do not have to sign the certification.

## What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account) other than an account maintained by an FFI	The actual owner of the account or, if combined funds, the first individual on the account <sup>1</sup>
3. Two or more U.S. persons (joint account maintained by an FFI)	Each holder of the account
4. Custodial account of a minor (Uniform Gift to Minors Act)	The minor <sup>2</sup>
5. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee <sup>1</sup>
b. So-called trust account that is not a legal or valid trust under state law	The actual owner <sup>1</sup>
6. Sole proprietorship or disregarded entity owned by an individual	The owner <sup>3</sup>
7. Grantor trust filing under Optional Filing Method 1 (see Regulations section 1.671-4(b)(2)(i)(A)) <sup>**</sup>	The grantor*

For this type of account:	Give name and EIN of:
8. Disregarded entity not owned by an individual	The owner
9. A valid trust, estate, or pension trust	Legal entity <sup>4</sup>
10. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
11. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
12. Partnership or multi-member LLC	The partnership
13. A broker or registered nominee	The broker or nominee
14. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
15. Grantor trust filing Form 1041 or under the Optional Filing Method 2, requiring Form 1099 (see Regulations section 1.671-4(b)(2)(i)(B)) <sup>**</sup>	The trust

<sup>1</sup> List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

<sup>2</sup> Circle the minor's name and furnish the minor's SSN.

<sup>3</sup> You must show your individual name on line 1, and enter your business or DBA name, if any, on line 2. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

<sup>4</sup> List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.)

**\*Note:** The grantor must also provide a Form W-9 to the trustee of the trust.

**\*\*** For more information on optional filing methods for grantor trusts, see the Instructions for Form 1041.

**Note:** If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

## Secure Your Tax Records From Identity Theft

Identity theft occurs when someone uses your personal information, such as your name, SSN, or other identifying information, without your permission to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax return preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity, or a questionable credit report, contact the IRS Identity Theft Hotline at 800-908-4490 or submit Form 14039.

For more information, see Pub. 5027, Identity Theft Information for Taxpayers.

Victims of identity theft who are experiencing economic harm or a systemic problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 877-777-4778 or TTY/TDD 800-829-4059.

**Protect yourself from suspicious emails or phishing schemes.**

Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to [phishing@irs.gov](mailto:phishing@irs.gov). You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration (TIGTA) at 800-366-4484. You can forward suspicious emails to the Federal Trade Commission at [spam@uce.gov](mailto:spam@uce.gov) or report them at [www.ftc.gov/complaint](http://www.ftc.gov/complaint). You can contact the FTC at [www.ftc.gov/idtheft](http://www.ftc.gov/idtheft) or 877-IDTHEFT (877-438-4338). If you have been the victim of identity theft, see [www.IdentityTheft.gov](http://www.IdentityTheft.gov) and Pub. 5027.

Go to [www.irs.gov/IdentityTheft](http://www.irs.gov/IdentityTheft) to learn more about identity theft and how to reduce your risk.

## Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. commonwealths and territories for use in administering their laws. The information may also be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payors must generally withhold a percentage of taxable interest, dividends, and certain other payments to a payee who does not give a TIN to the payor. Certain penalties may also apply for providing false or fraudulent information.