

RESOLUTION 11-38

Passed April 25, 2011

**AUTHORIZING THE MAYOR OF THE CITY OF DEKALB, ILLINOIS TO SIGN A CONSULTING SERVICES AGREEMENT WITH FEHR-GRAHAM & ASSOCIATES, FOR A RAIL FREIGHT STUDY IN AN AMOUNT NOT TO EXCEED \$39,000.00.**

**WHEREAS**, the DeKalb Area Transportation Study (DSATS) wishes to determine the feasibility of extending rail service to large, vacant industrial/commercial property parcels by conducting a Rail Freight Study; and,

**WHEREAS**, the Fehr-Graham & Associates proposal of thirty-nine thousand dollars (\$39,000.00) was the lowest qualified proposal of two submitted in response to the Request for Proposals (RFP) mailed out in March, 2011; now,

**THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL** of the City of DeKalb Illinois as follows:

**Section 1.** That the Mayor of the City of DeKalb be authorized and directed to execute a Consulting Services Agreement with Fehr-Graham & Associates, for a Rail Freight Study, in an amount not to exceed thirty-nine thousand dollars (\$39,000.00), a copy of which is attached hereto and made a part hereof as Exhibit "A."

**Section 2.** That the City Clerk of the City of DeKalb be authorized and directed to attest the Mayor's signature.

**PASSED BY THE CITY COUNCIL** of the City of DeKalb, Illinois, at a regular meeting thereof held on the 25<sup>th</sup> day of April, 2011 and approved by me as Mayor on the same day. Passed on roll call vote: 6-0-1. Aye: Teresinski, Verbic, Gallagher, Naylor, Baker, Kammes. Nay: None. Abstain: Simpson.

**ATTEST:**

  
STEVE KAPITAN, City Clerk



  
KRIS POVLSSEN, Mayor

CITY CLERK FILES:  
Number: RES 11-38  
Date: 4/25/11



SOLUTIONS SINCE 1973

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www.fehr-graham.com

## ORDER FOR PROFESSIONAL ENGINEERING OR SURVEYING SERVICES

Client Mr. Joel Maurer, PE  
Assistant Public Works Director  
City of DeKalb  
223 South Fourth Street  
DeKalb, IL 60115

815.748.2000

Description of Services:

City of DeKalb - DeKalb-Cortland Freight Study

Fehr-Graham & Associates will provide professional engineering services by completing the desired freight study as outlined in our April 8, 2011, proposal.

COST: You will be billed on a time and material basis as per the annually established fee schedule. The fee for performing the above services is estimated to be \$39,000, as follows:

Review Likely Sites	\$ 6,000
Review Economic Benefits & Development Constraints	\$ 9,000
Investigate Rail Shipping Opportunities	\$12,000
Work Deliverables – Electronic & Hard Copy Study Documents	\$12,000

The attached General Conditions are incorporated into and made a part of this Agreement.

ACCEPTED AND AGREED TO:

I/we, the undersigned, authorize Fehr-Graham & Associates, to provide services as outlined above, and also agree that I/we are familiar with and **ACCEPT THE TERMS OF THE ATTACHED GENERAL CONDITIONS.**

CLIENT:

ENGINEER:



Signature: [Handwritten Signature]  
Title: MAYOR KRIS POVLSEN

By: [Handwritten Signature]  
Title: Member

Date Accepted

4-27-11

Date Proposed

April 13, 2011

ATTEST:

Signature: [Handwritten Signature]  
STEVE KAPITAN  
CITY CLERK

MWG 11-288

Engineer's Copy

Any documents generated by the Engineer are for the exclusive use of the Client and any use by third parties or use beyond the intended purpose of the document shall be at the sole risk of the Client. To the fullest extent permitted by law, the Client shall indemnify, defend and hold harmless the Engineer for any loss or damage arising out of the unauthorized use of such documents.

13. No claim may be asserted by either party against the other party unless an action on the claim is commenced within two (2) years after the date of the Engineer's final invoice to the Client.
14. If a Client's Purchase Order form or acknowledgment or similar form is issued to identify the agreement, authorize work, open accounts for invoicing, provide notices, or document change orders, the preprinted terms and condition of said Purchase Order shall be superceded by the terms hereof.
15. Standard of Care – Services performed by Engineer under this agreement will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions. No other representation expressed or implied, and no warranty or guarantee is included or intended in any report, opinion or document under this agreement.
16. Liability Insurance – Consultant will maintain such liability insurance as is appropriate for the professional services rendered as described in this Order. Consultant shall provide Certificates of Insurance to Client, upon Client's request, in writing.
17. Indemnification and Limitation of Liability – Client and Consultant each agree to indemnify and hold the other harmless, including their respective officers, employees, agents, members, and representatives, from and against liability for all claims, costs, losses, damages and expense, including reasonable attorney's fees, to the extent such claims, losses, damages or expenses are caused by the indemnifying party's acts, errors or omissions.

The Client understands that for the compensation herein provided Engineer cannot expose itself to liabilities disproportionate to the nature and scope hereunder. Therefore, the Client agrees to limit Engineer's liability to the Client arising from Engineer's professional acts, errors or omissions, such that the total aggregate liability of Engineer shall not exceed \$50,000 or Engineer's total fee for services rendered on this Project, whichever is less.

18. Allocation of Risk – Engineer and Client acknowledge that, prior to the start of this Agreement, Engineer has not generated, handled, stored, treated, transported, disposed of, or in any way whatsoever taken responsibility for any toxic substance or other material found, identified, or as yet unknown at the Project premises. Engineer and Client further acknowledge and understand that the evaluation, management, and other actions involving toxic or hazardous substances that may be undertaken as part of the Services to be performed by Engineer, including subsurface excavation or sampling, entails uncertainty and risk of injury or damage. Engineer and Client further acknowledge and understand that Engineer has not been retained to serve as an insurer of the safety of the Project to the Client, third parties, or the public.

Client acknowledges that the discovery of certain conditions and/or taking of preventative measures relative to these conditions may result in a reduction of the property's value. Accordingly, Client waives any claim against Engineer and agrees to indemnify, defend, and hold harmless Engineer and its subcontractors, consultants, agents, officers, directors, and employees from any claim or liability for injury or loss allegedly arising from procedures associated with environmental site assessment (ESA) activities or the discovery of actual or suspected hazardous materials or conditions. Client releases Engineer from any claim for damages resulting from or arising out of any pre-existing environmental conditions at the site where the work is being performed which was not directly or indirectly caused by and did not result from, in whole or in part, any act or omission of Engineer or subcontractor, their representatives, agents, employees, and invitees.

If, while performing the Services set forth in any Scope of Services, pollutants are discovered that pose unanticipated or extraordinary risks, it is hereby agreed that the Scope of Services, schedule, and costs will be reconsidered and that this Agreement shall immediately become subject to renegotiation or termination. Client further agrees that such discovery of unanticipated hazardous risks may require Engineer to take immediate measures to protect health and safety or report such discovery as may be required by law or regulation. Engineer shall promptly notify Client upon discovery of such risks. Client, however, hereby authorizes Engineer to take all measures Engineer believes necessary to protect Engineer and Client personnel and the public. Furthermore, Client agrees to compensate Engineer for any additional costs associated with such measures.

19. In the event of legal action to construe or enforce the provisions of this work order, the prevailing party shall be entitled to collect reasonable attorney fees, court costs and related expenses from the losing party and the court having jurisdiction of the dispute shall be authorized to determine the amount of such fees, costs and expenses and enter judgment thereof.
20. Termination – The obligation to provide further services under this Agreement may be terminated by either party upon seven (7) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. In the event of any termination, Engineer will be paid for all services rendered to the date of receipt of written notice of termination, at Engineer's established chargeout rates, plus for all Reimbursable Expenses including a 15% markup.
21. Provision Severable – The unenforceability or invalidity of any provisions hereof shall not render any other provisions herein contained unenforceable or invalid.
22. Governing Law and Choice of Venue – Client and Consultant agree that this Agreement will be governed by, construed, and enforced in accordance with the laws of the State of Illinois which is the principal place of business of Consultant. If there is a lawsuit, Client and Consultant agree that the dispute shall be submitted to the jurisdiction of the Courts of the 15<sup>th</sup> Judicial Circuit, Stephenson County, Illinois.