

AUTHORIZING AN AGREEMENT FOR CONSTRUCTION ENGINEERING SERVICES WITH FEHR GRAHAM & ASSOCIATES, LLC FOR THE 2023 GENERAL STREET MAINTENANCE PROGRAM WITH A FEE NOT TO EXCEED \$163,600.

WHEREAS, the City of DeKalb (the "City") is a home rule unit of local government and may exercise any power and perform any function pertaining to its government and affairs pursuant to Article VII, Section 6, of the Illinois Constitution of 1970; and

WHEREAS, the City Engineer recommends the approval of an agreement with Fehr Graham & Associates, LLC ("Fehr Graham") to perform construction engineering services for the 2023 General Street Maintenance Program for a fee in an amount not to exceed \$163,600 in the form attached and incorporated as Exhibit A (the "Agreement"); and

WHEREAS, the City's corporate authorities find that approving the Agreement is in the City's best interests for the protection of the public health, safety, morals and welfare; and

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF DEKALB, ILLINOIS:

SECTION 1: The City's corporate authorities approve, authorize and direct the City Manager to execute the Agreement with Fehr Graham for construction engineering services for the 2023 Street Maintenance for a fee not to exceed \$163,600 in the same or substantially similar form as the attached and incorporated Exhibit A, subject to such changes as the City Manager deems to be in the City's best interests, and to take all actions necessary to effectuate the Agreement.

SECTION 2: This resolution and each of its terms shall be the effective legislative act of a home rule municipality without regard to whether such resolution should (a) contain terms contrary to the provision of current or subsequent non-preemptive state law, or (b) legislate in a manner or regarding a matter not delegated to municipalities by state law. It is the intent of the City's corporate authorities that to the extent that the terms of this resolution should be inconsistent with any non-preemptive state law, that this resolution shall supersede state law in that regard within its jurisdiction.

SECTION 3: This resolution shall be in full force and effect from and after its passage and approval as provided by law.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois, at a Regular meeting thereof held on the 24th day of April 2023 and approved by me as Mayor on the same day. Passed by a 7-0-1 roll call vote. Aye: Larson, Smith, Perkins, McAdams, Verbic, Faivre, Barnes. Nay: None. Absent: Morris.




COHEN BARNES, Mayor

ATTEST:



Ruth A. Scott, Executive Assistant

AGREEMENT FOR PROFESSIONAL SERVICES

Client Mr. Zachary Gill, PE
City Engineer
City of DeKalb
1216 Market Street
DeKalb, IL 60115

815.748.2331

Description of Services:

City of DeKalb - 2023 Various General Maintenance Streets Program: Phase III Construction Engineering – DeKalb, IL

Fehr Graham is pleased to provide Phase III Construction Engineering Services for the 2023 Various General Maintenance Streets Program.

COST: Fehr Graham is prepared to complete the above-described services on a time and materials basis as per the following schedule of fees.

Construction Engineering	\$153,600
Materials Testing	<u>\$10,000</u>
TOTAL	\$163,600

Construction engineering costs are based on the City of DeKalb's award of the project. Construction Engineering fees will not exceed 6% of actual construction costs as per the agreement.

Subconsultant invoices (i.e Testing Service Corporation, Materials Testing) will be marked up 15% for administrative and management costs. Payment for the services rendered will be requested via a monthly invoice.

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 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:

Signature

Name

Title

Date Accepted

CONSULTANT:

By

Name

Title

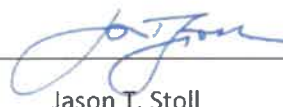
Date Proposed



Bill Nicklas

City Manager

4/24/2023



Jason T. Stoll

Principal

April 13, 2023

GENERAL CONDITIONS TO AGREEMENT FOR PROFESSIONAL SERVICES

1. The Client requests the professional services of Fehr Graham hereinafter called "The Consultant" as described herein.
2. The Consultant agrees to furnish and perform the professional service described in this Agreement in accordance with accepted professional standards. Consultant agrees to provide said services in a timely manner, provided, however, that Consultant shall not be responsible for delays in completing said services that cannot reasonably be foreseen on date hereof or for delays which are caused by factors beyond his control or delays resulting from the actions or inaction of any governmental agency. Consultant makes no warranty, expressed or implied, as to his findings, recommendations, plans and specifications or professional advice except that they were made or prepared in accordance with the generally accepted engineering practices.
3. It is agreed that the professional services described in the Agreement shall be performed for Client's account and that Client will be billed monthly for said services. A 1½% per month service charge will be incurred by Client for any payment due herein and not paid within 30 days of such billing which is equal to an ANNUAL PERCENTAGE RATE OF 18%. Partial payments will be first credited to the accrued service charges and then to the principal.
4. The Client and the Consultant each binds himself, his partners, successors, executors, and assigns to the other party to this agreement and to the partners, successor, executors, and assigns of such other party in respect to this agreement.
5. The Client shall be responsible for payment of all costs and expenses incurred by the Consultant for his account, including any such monies that the Consultant may advance for Client's account for purposes consistent with this Agreement.
6. The Consultant reserves the right to withdraw this Agreement if not accepted within 30 days.
7. A claim for lien will be filed within 75 days of the date of an invoice for services (last day of services rendered) unless the account is paid in full or other prior arrangements have been made. All attorney fees incurred by the Consultant due to the filing of said lien or the foreclosure thereof shall be borne by the Client.

In the event suit must be filed by Consultant for the collection of fees for services rendered, Client will pay all reasonable attorney's fees and court costs.

If Client defaults in payment of fees or costs due under the terms of this Agreement and Consultant incurs legal expenses as a result of such failure, Client shall be responsible for payment for Consultant's reasonable attorney fees and costs so incurred.

8. The Consultant shall present, for the consideration of the Client, engineering and technical alternatives, based upon its knowledge and experience in accordance with accepted professional standards, with selection of alternatives and final decisions as requested by the client to be the sole responsibility of the Client.
9. Construction Phase Activities (When applicable) - In connection with observations of the work of the Contractor(s) while it is in progress the Consultant shall make visits to the site at intervals appropriate to the various stages of construction as the Consultant deems necessary in Agreement to observe as an experienced and qualified design professional the progress and quality of the various aspects of the Contractor(s)'s work. Based on information obtained during such visits and on such observation, the Consultant shall endeavor to determine in general if such work is proceeding in accordance with the Contract Documents and the Consultant shall keep the Client informed of the progress of the work.

The purpose of the Consultant's visits to the site will be to enable the Consultant to better carry out the duties and responsibilities assigned to and undertaken by the Consultant during the Construction Phase, and, in addition, by exercise of the Consultant's efforts as an experienced and qualified design professional, to provide for the Client a greater degree of confidence that the completed work of the Contractor(s) will conform generally to the Contract Documents and that the integrity of the design concept as reflected in the Contract Documents has been implemented and preserved by the Contractor(s). The Consultant shall not, during such visits or as a result of such observations of Contractor(s)' work in progress, supervise, direct or have control over Contractor(s)' work nor shall the Consultant have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor(s), for safety precautions and programs incident to the work of Contractor(s) or for any failure of Contractor(s) to comply with laws, rules, regulations, ordinances, codes, or orders applicable to Contractor(s) furnishing and performing their work. Accordingly, the Consultant can neither guarantee the performance of the construction contracts by Contractor(s) nor assume responsibility for Contractor(s)' failure to furnish and perform their work in accordance with the Contract Documents.

10. Estimates of Fees – When fees are on a time and material basis the estimated costs required to complete the services to be performed are made on the basis of the Consultant's experience, qualifications, and professional judgment, but are not guaranteed. If the costs appear likely to exceed the estimate in excess of 20%, the Consultant will notify the Client before proceeding. If the Client does not object to the additional costs within seven (7) days of notification, the increased costs shall be deemed approved by the Client.
11. The Consultant is responsible for the safety on site of his own employees. This provision shall not be construed to relieve the Client or the Contractor(s) from their responsibility for maintaining a safe work site. Neither the professional services of the Consultant, nor the presence of his employees or subcontractors shall be construed to imply that the Consultant has any responsibility for any activities on site performed by personnel other than the Consultant's employees or subcontractors.
12. Original survey data, field notes, maps, computations, studies, reports, drawings, specifications and other documents generated by the Consultant are instruments of service and shall remain the property of the Consultant. The Consultant shall provide copies to the Client of all documents specified in the Description of Services.

Any documents generated by the Consultant 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 Consultant 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 Consultant'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 superseded by the terms hereof.
15. Standard of Care – Services performed by Consultant 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 Agreement. 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 Consultant cannot expose itself to liabilities disproportionate to the nature and scope hereunder. Therefore, the Client agrees to limit Consultant's liability to the Client arising from Consultant's professional acts, errors or omissions, such that the total aggregate liability of Consultant shall not exceed \$50,000 or Consultant's total fee for services rendered on this Project, whichever is less.

18. Allocation of Risk – Consultant and Client acknowledge that, prior to the start of this Agreement, Consultant 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. Consultant 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 Consultant, including subsurface excavation or sampling, entails uncertainty and risk of injury or damage. Consultant and Client further acknowledge and understand that Consultant 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 Consultant and agrees to indemnify, defend, and hold harmless Consultant 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 Consultant 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 Consultant 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 Consultant to take immediate measures to protect health and safety or report such discovery as may be required by law or regulation. Consultant shall promptly notify Client upon discovery of such risks. Client, however, hereby authorizes Consultant to take all measures Consultant believes necessary to protect Consultant and Client personnel and the public. Furthermore, Client agrees to compensate Consultant for any additional costs associated with such measures.

19. In the event of legal action to construe or enforce the provisions of this agreement, 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, Consultant will be paid for all services rendered to the date of receipt of written notice of termination, at Consultant'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. If there is a lawsuit, Client and Consultant agree that the dispute shall be submitted to the jurisdiction of the Illinois District Court in and for Stephenson County, Illinois.



Local Public Agency	County	Section Number
City of DeKalb	DeKalb	23-00000-00-GM

The services to be performed by the consulting engineer, pertaining to the various items of work included in the estimated cost of the maintenance operations (BLR 14222), shall consist of the following:

PRELIMINARY ENGINEERING shall include:

Investigation of the condition of the streets or highways for determination (in consultation with the local highway authority) of the maintenance operations to be included in the maintenance program; preparation of the maintenance resolution (BLR 14220 for municipalities and counties), maintenance estimate of cost and, if applicable, proposal; attendance at meetings of the governing body as may reasonably be required; attendance at public letting; preparation of the contract, quotations, and/or acceptance (BLR 12330) form. Also, preparation of the maintenance expenditure statement which must be submitted to IDOT within 3 months of the end of the maintenance period.

ENGINEERING INSPECTION shall include:

Furnishing the engineering field inspection, including preparation of payment estimate for contract, material proposal and/or deliver and install proposal and/or checking material invoices of those maintenance operations requiring engineering field inspection. For operations requiring material testing ensure the testing is completed by a qualified firm.

For furnishing preliminary engineering, the engineer will be paid a base fee PLUS a negotiated fee percentage. Only one base fee can be charged per maintenance period. For furnishing engineering inspection, the engineer will be paid a negotiated fee percentage. The negotiated preliminary engineering fee percentage for each maintenance group shown in the "Schedule of Fees" shall be applied to the total estimated costs of that group. The negotiated fee for engineering inspection for each maintenance group shall be applied to the total final cost of that group for the times which required engineering inspections. In no case shall this be construed to include supervision of the contractor operations.

SCHEDULE OF FEES

Total of all Maintenance Operations:

☐ ≤ \$20,000 Base Fee ☒ > \$20,000 Base Fee = \$1,250.00

PLUS					
Maintenance Engineering Category	Preliminary Engineering		Engineering Inspection		Operation(s) to be Inspected
	Maximum Fee %	Negotiated Fee %	Maximum Fee %	Negotiated Fee %	
I	NA	NA	NA	NA	NA
IIA	2%		1%		
IIB	3%		3%		
III	4%		4%		
IV	5%		6%	6%	

The LPA certifies that the selection of the ENGINEER was performed in accordance with the Local Government Professional Service Selection Act 50 (ILCS 510/1-510/8) and procedures outlined in Chapter 5 of the DEPARTMENT's Bureau of Local Roads and Streets Manual.

BY:

Local Public Agency Signature

Date

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Title

City Engineer

BY:

Consulting Engineer Signature

Date

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Title

Principal

P.E. Seal

Date

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Approved:

Regional Engineer, IDOT

Date

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Instructions for BLR 05520

NOTE: Form instructions should not be included when the form is submitted.

This form shall be used by a Local Public Agency (LPA) to establish an agreement with a licensed professional engineer to provide engineering services for maintenance work funded in whole or in part with MFT funds.

For more information, see Chapter 5 of the Bureau of Local Roads and Street Manual (BLRS Manual).

For signature requirements, refer to Chapter 2, Section 3.05(b) of the BLRS Manual.

Local Public Agency	Insert the name of the LPA
County	Insert the name of the county in which the LPA is located.
Section Number	Insert the section number assigned to this project.
Schedule of Fees	If the total of maintenance operations from BLR 14222 is less than \$20,000 then check the box for less than \$20,000 and insert the amount of base fee being charged by the consultant - this cannot exceed \$1,250.00. If the maintenance operations are equal to or greater than \$20,000 the base fee will be \$1,250.00 so that box should be checked. ONLY ONE BASE FEE IS ALLOWED PER MAINTENANCE PERIOD.
Plus	For each maintenance engineering category, there is an acceptable fee listed for preliminary engineering and engineering inspection. The acceptable fee % is the maximum that can be charged for the maintenance engineering category. Under negotiated fee % an amount needs to be inserted for the amount being charged by the consultant. The negotiated fee % cannot exceed the amount listed in the acceptable fee. For maintenance category IIA, only items that require inspection will be allowed to be charged for engineering inspection. Under operation to be inspected list the maintenance operation number from the estimate of cost which applies to the maintenance category.
Local Public Agency Signature	The LPA official will sign and date here, and insert their title.
Consulting Engineer Signature	The consulting engineer will sign and date here, and insert their title along with their PE seal and license expiration date.
IDOT Signature	Upon approval the IDOT regional engineer will sign and date here.

A minimum of three (3) signed originals must be submitted to the Regional Engineer's District office. Following the IDOT's approval, distribution will be as follows:

Local Public Agency Clerk
District
Engineer (Municipal, Consultant, County)

April 13, 2023

Mr. Zachary Gill, PE
City Engineer
City of DeKalb
1216 Market Street
DeKalb, IL 60115

**Re: Proposal for Professional Engineering Services
City of DeKalb – 2023 Various General Maintenance Streets Program
Phase III Construction Engineering**

Dear Mr. Gill,

Thank you for considering Fehr Graham for your professional engineering needs. We understand the scope of the project came from the bid opening on March 29th, 2023. This includes the base bid, alternate bid #1, and alternate bid #3 (streets referenced below). It is noted that Motor Fuel Tax (MFT) funds will be designated for the construction engineering costs. Accordingly, the required Bureau of Local Roads and Streets (BLR) forms are attached to this proposal.

Base Bid

1. Tilton Park Drive from 1st Street to 1st Street.
2. McCormick Drive from 1st Street to the Cul-de-Sac.
3. Judy Lane from Ridge Drive to Royal Drive.
4. Greenwood Acres Drive from Sylvan Lane to Bethany Road.
5. Knolls Subdivision (North Half).
6. West Dresser Road & Annie Glidden Road Pavement Striping.

Alternate Bid #1

1. East Locust Street from 7th Street to 10th Street.
2. Oak Street from 4th Street to 7th Street.

Alternate Bid #3

1. Bethany Road from Sangamon Road to North First Street.

SCOPE OF SERVICES

The Scope of Services will include Construction Engineering Services and Materials Testing. The following gives more information.

Construction Engineering Services

- » Provide the City of DeKalb with an experienced Resident Engineer to ensure compliance with the project specifications as construction proceeds.
- » Maintain a daily record of the Contractor's activities throughout construction including sufficient information to permit the verification of the nature and cost of changes in plans and authorized extra work.
- » Prepare and submit partial and final payment estimates, change orders, records, and other reports/correspondence as requested by the City of DeKalb.

515 Lincoln Highway | Rochelle, IL 61068 | p:815.562.9087 | f:815.562.4233 | fehrgraham.com

Insight. Experience. Results.

Materials Testing

- » Hot-mix asphalt density testing for the new roadway surface.
- » Portland cement concrete testing (air, slump, strength).

EXCLUSIONS

The following items are **not** included in the scope of services proposed here:

- » NPDES erosion control inspections.
- » Stormwater management and design.
- » Boundary and ROW Surveys.
- » Land Acquisition, easement negotiating, and land appraisal services.
- » Wetland Remediation.
- » Traffic Studies.
- » Project Development Report (PDR).
- » Roadway reconstruction, widening, or other capital transportation improvements beyond pavement resurfacing.
- » Environmental Assessments and Studies.
- » Archeologic Surveys.
- » Deep Soil Borings.
- » Utility design or relocations.
- » NPDES erosion control inspections.
- » Off-site improvements or other upgrades not specifically identified above.
- » Public hearing attendance.
- » As-built surveys.

SCHEDULE

Fehr Graham is available to initiate this project immediately upon receipt of formal authorization to proceed. The estimated time for the completion of the construction work is mid-July. All work is expected to be completed within the current budget year, with work concluding prior to December 31, 2023.

FEES

Fehr Graham is prepared to complete the above-described services on a time and materials basis as per the following schedule of fees.

Construction Engineering	\$153,600
Materials Testing	<u>\$10,000</u>
TOTAL	\$163,600

Construction engineering costs are based on the City of DeKalb's award of the project. Construction Engineering fees will not exceed 6% of actual construction costs as per the agreement.

Subconsultant invoices (i.e. Testing Service Corporation, Materials Testing) will be marked up 15% for administrative and management costs. Payment for the services rendered will be requested via a monthly invoice.

April 13, 2023

Mr. Zachary Gill, PE

2023 Various General Maintenance Streets Program - Phase III Construction Engineering

Page 3

AUTHORIZATION

I trust that the information we have provided is in line with your expectations. If this proposal meets your expectations, please sign, and return the attached Agreement for Professional Services, which will serve as your official authorization for us to proceed. We are looking forward to working with the City of DeKalb on this project. If you have any questions or need anything further, please let me know.

Respectfully submitted,



Jason T. Stoll, PE
Principal

JTS:sjm

Enclosures: Agreement for Professional Services
 BLR 05520 Maintenance Engineering to be Performed by Consulting Engineer
 Fehr Graham Employee Rate Sheet

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