

AGREEMENT BETWEEN THE COUNTY OF DUPAGE, ILLINOIS
AND FEHR GRAHAM FOR PROFESSIONAL ENGINEERING SERVICES
FOR A CAPITAL ASSESSMENT OF STORMWATER FACILITIES

This Professional Service Agreement (“AGREEMENT”), is made this 13th day of February, 2024 between COUNTY OF DUPAGE, a body corporate and politic, with offices at 421 North County Farm Road, Wheaton, Illinois (hereinafter referred to as the COUNTY) and Fehr Graham, an Illinois corporation licensed to do business in the State of Illinois, with offices at 230 Woodlawn Avenue, Aurora, Illinois 60506; (hereinafter referred to as the CONSULTANT). The COUNTY and the CONSULTANT are hereafter sometimes individually referred to as a “party” or together as the “parties.”

R E C I T A L S

WHEREAS, the COUNTY by virtue of its power set forth in “Counties Code” (55 ILCS 5/5-1001 et seq.) and its authority to manage and mitigate the effects of urbanization on stormwater drainage in DuPage County pursuant to Chapter 55, paragraph 5/5-1062.3 is authorized to enter into this AGREEMENT; and

WHEREAS, pursuant to said authority, the COUNTY owns and is responsible for operation and maintenance of multiple flood control facilities countywide; and

WHEREAS, the COUNTY’S flood control facilities require inspection, maintenance, and long-term planning to ensure they are operating and functioning as intended; and

WHEREAS, the COUNTY requires professional services to assess the COUNTY’S current funding and maintenance projections and prepare a long-term maintenance plan that ensures the COUNTY continues to meet its obligations associated with these facilities; and

WHEREAS, the CONSULTANT has experience and expertise in this area and is in the business of providing such professional services required by the County and is willing to perform the required services for an amount not to exceed one hundred sixty five thousand dollars and no cents (\$165,000.00).

WHEREAS, the CONSULTANT acknowledges that it is qualified to perform the services covered by this AGREEMENT and is in good standing and has not been barred from performing professional services; and

WHEREAS, the COUNTY has adopted a Stormwater Ordinance. The CONSULTANT acknowledges the necessary oversight to ensure compliance with the Stormwater Ordinance in the event PROJECT necessitates this scope of work.

NOW, THEREFORE, in consideration of the premises, the mutual covenants, terms, and conditions herein set forth, and the understandings of each party to the other, the parties do hereby mutually covenant, promise and agree as follows:

1.0 INCORPORATION AND CONSTRUCTION.

- 1.1 All recitals set forth above are incorporated herein and made part thereof, the same constituting the factual basis for this AGREEMENT.
- 1.2 The headings of the paragraphs and subparagraphs of this AGREEMENT are inserted for convenience of reference only and shall not be deemed to constitute part of this AGREEMENT or to affect the construction hereof.
- 1.3 The exhibits referenced in this AGREEMENT shall be deemed incorporated herein and a part thereof.

2.0 SCOPE OF SERVICES.

- 2.1 Services are to be provided by the CONSULTANT according to the specifications in the Scope of Work, specified as Exhibit "A", attached hereto, which exhibit is hereby incorporated by reference. The CONSULTANT shall complete all of the work set forth in said exhibit for the compensation set forth in Section 7.0, below, unless otherwise modified as provided herein. Services are to be provided by the CONSULTANT upon request by the COUNTY as approved Work Order(s) with a not to exceed amount for each Work Order. The CONSULTANT agrees to obtain all necessary permits requested by the COUNTY when required to do so.
- 2.2 The CONSULTANT shall prepare and distribute meeting minutes within seven (7) days following meetings between the COUNTY or other groups and the CONSULTANT concerning the PROJECT or Work Order(s).
- 2.3 The COUNTY may, from time to time, request changes in the Scope of Work in this AGREEMENT or approved Work Order(s). Any such changes, including any increase or decrease in CONSULTANT'S compensation or Scope of Work, shall be documented by an amendment to this AGREEMENT in accordance with Section 14.0 of this AGREEMENT, except as allowed in Paragraph 15.3, below. For Work Orders, changes shall be documented by an amendment to the originally approved Work Order, or by issuance of a new Work Order to cover the changes in scope provided that the increase does not increase the total compensation set forth in this AGREEMENT.
- 2.4 The relationship of CONSULTANT to COUNTY is that of independent contractor, and nothing in this AGREEMENT is intended nor shall be construed to create an agency, employment, joint venture relationship, or any other relationship allowing COUNTY to exercise control or direction over the manner or method by which CONSULTANT or its vendors/sub-contractors/sub-consultants provide services hereunder. Neither the CONSULTANT nor the CONSULTANT's employees shall be entitled to receive any COUNTY benefits. The CONSULTANT shall be solely

responsible for the payment of all taxes and withholdings required by law which may become due with regard to any compensation paid by the COUNTY to the CONSULTANT.

- 2.5 Services deemed to be a professional service under this AGREEMENT shall be performed and/or supervised by individuals licensed to practice by the State of Illinois in the applicable professional discipline.
- 2.6 Neither the CONSULTANT, nor the CONSULTANT'S employees, shall be retained as expert witnesses by the COUNTY except as by separate agreement.

3.0 NOTICE TO PROCEED.

- 3.1 Authorization to proceed shall be given on behalf of the COUNTY by the Director of Stormwater Management hereinafter referred to as the "Director"), in the form of a written Notice to Proceed following execution of the AGREEMENT by the County Board Chair. Authorization to proceed with various tasks **described in Exhibit A** will be given to the CONSULTANT by representatives of the Stormwater Management Department.
- 3.2 In addition to the Notice to Proceed, the Director, or his/her designee, may, on behalf of the COUNTY, approve, deny, receive, accept or reject any submission, notices or invoices from or by CONSULTANT, as provided for in this AGREEMENT, including, but not limited to, acts performed in accordance with Paragraphs 3.3, 4.1, 5.2, 6.1, 7.3, 7.4, 8.2, 8.3., 15.3 and 21.2, as well as any requirements contained in Exhibits B and C attached hereto.
- 3.3 The CONSULTANT shall not perform additional work related to a submittal until the COUNTY has completed its review of the submittal unless otherwise directed in writing by the Director or his designee. The CONSULTANT may continue to work on items unrelated to the submittal under review by the COUNTY.

4.0 TECHNICAL SUBCONSULTANTS

- 4.1 The prior written approval of the COUNTY shall be required before the CONSULTANT hires any sub-consultant(s) to complete COUNTY-ordered technical or professional tasks or services under the terms of this AGREEMENT. COUNTY approval of sub-consultant(s) includes approval of any new employee rates (Exhibit C) and/or fee schedules as referenced in Paragraph 7.3.
- 4.2 The CONSULTANT shall supervise any sub-consultant(s) hired by the CONSULTANT, and the CONSULTANT shall be solely responsible for any and

all work performed by said sub-consultant(s) in the same manner and with the same liability as if performed by the CONSULTANT.

- 4.3 The CONSULTANT shall require any sub-consultant hired for the performance of any work or activity in connection to this AGREEMENT to agree and covenant that the sub-consultant also meets the terms of Sections 8.0 and 13.0 and Paragraphs 26.4 of this AGREEMENT and shall fully comply therewith while engaged by the CONSULTANT in services for the COUNTY on the PROJECT or Work Orders.

5.0 TIME FOR PERFORMANCE

- 5.1 The CONSULTANT shall commence work to meet the requirements or professional services on the PROJECT or Work Order after the COUNTY issues its written Notice to Proceed for any approved Work Order(s). The COUNTY is not liable and will not pay the CONSULTANT for any work performed before the date of the Notice to Proceed.
- 5.2 Unless otherwise defined in the Scope of Work, The CONSULTANT shall submit a schedule for completion of each Work Order within ten (10) days of the written approval of said Work Order(s) by the COUNTY. The schedule is subject to approval by the COUNTY. All of the services required hereunder shall be completed by November 30, 2024 unless the term of this AGREEMENT is extended.
- 5.3 If the CONSULTANT is delayed at any time in the progress of the work by any act or neglect of the COUNTY or by any employee of COUNTY or by changes ordered by the COUNTY, or any other causes beyond the CONSULTANT'S control then the sole remedy and allowance made shall be an extension of time for completion. Such extension shall be that which is determined reasonable by the COUNTY upon consultation with CONSULTANT. The CONSULTANT shall accept and bear all other costs, expenses and liabilities that may result from such delay.

6.0 DELIVERABLES.

- 6.1 The CONSULTANT shall provide the COUNTY on or before the expiration of this AGREEMENT, or within fourteen (14) days following a notice of termination, or when the Director directs, the deliverables specified in Exhibit "B" [or] approved Work Order(s), [or] as otherwise agreed to by the COUNTY and CONSULTANT.

7.0 COMPENSATION.

7.1 The COUNTY shall pay the CONSULTANT for services rendered and shall only pay in accordance with the provisions of this AGREEMENT. The COUNTY shall not be obligated to pay for any services not in compliance with this AGREEMENT.

7.2 Total payments to the CONSULTANT under the terms of this AGREEMENT shall not, under any circumstances, exceed one hundred sixty-five thousand dollars and no cents (\$165,000.00). This amount is a "not to exceed" amount. In the event the COUNTY directs CONSULTANT to do work which would cause the stated amount to be exceeded, the CONSULTANT shall not be responsible for such work until this AGREEMENT is modified pursuant to Article 14.0.

7.3

For work performed, the COUNTY will pay on a basis at a 2.8 direct labor multiplier applied to the actual hourly rates of CONSULTANT's staff and/or the fee schedule(s) as incorporated herein. The multiplier includes the CONSULTANT's cost of overhead, profit and incidental costs. A schedule of the hourly rates for CONSULTANT's staff, and approved sub-consultant's technical or professional staff, identified by position or assignment, is attached and incorporated hereto as Exhibit "C." The CONSULTANT may request adjustments to the hourly rate ranges and additions or deletions to the position classifications to/from Exhibit C which will be subject to approval by the COUNTY provided the adjustment(s) to not exceed the total compensation as stated herein. The COUNTY retains the authority to limit the maximum rate per classification for any additions to classifications listed on Exhibit C, including Exhibit C for approved sub-consultant(s), when invoices are submitted for the approved work.

7.3.a For each rate category shall holiday (o/w/h) rates not exceed fifty percent (50%) of the stated normal rate for that category.

The o/w/h rate, when allowed, shall only be permitted if any CONSULTANT personnel have worked more than 40 hours in a given week (Sunday-Saturday) on the PROJECT or Work Order(s).

7.3.b If this AGREEMENT or a modification thereto authorizes the CONSULTANT to alter its fees, such fee changes shall be subject to the following unless otherwise provided in the AGREEMENT: (i) The CONSULTANT may only change the fees stated in Exhibit C once per calendar year; (ii) fees may not be changed prior to one hundred twenty (120) days from the date of execution of this AGREEMENT or from the date of any previous fee change; and (iii) the CONSULTANT shall provide the COUNTY with forty-five (45) days' notice of any proposed fee change.

The CONSULTANT shall not invoice the COUNTY at an increased fee without compliance to the notice requirements listed above

- 7.4 Direct expenses are costs for supplies and materials to be paid for by the COUNTY for completion of all work defined in Exhibit A. For direct expenses, including supplies, materials, photocopying, postage/shipping, and other costs directly related to the specific reports and presentations as required by the COUNTY, the COUNTY shall pay on an actual cost basis without any markup added.

7.4.a For all direct expenses costing more than \$25.00, the CONSULTANT shall include with its invoice to the COUNTY, as documentation of such expenses, copies of receipts from the Consultant's vendors indicating the price(s) paid by Consultant for such expensed materials and/or items.

7.4.b CONSULTANT shall not include computer and vehicle charges (including mileage) as direct expenses.

- 7.5 If the scope of work for this AGREEMENT includes the use of job classifications covered by the prevailing rate of wages, the prevailing rate must be reflected in the cost estimate for this AGREEMENT. The rates have been ascertained and certified by the Illinois Department of Labor for the locality in which work is to be performed. If the Illinois Department of Labor revises the prevailing rates of wages to be paid, as listed in the specification of rates, the CONSULTANT may not pay less than the revised rates of wages. Current wage rate information shall be obtained by visiting the Illinois Department of Labor web site at <http://www.state.il.us/agency/idol/> or calling 312-793-2814. It is the responsibility of the CONSULTANT to review the rates applicable to the work in this AGREEMENT, at regular intervals, in order to insure the timely payment of current rates. Provision of this information to the CONSULTANT, by means of the Illinois Department of Labor web site, satisfies the notification of revisions by the COUNTY to the CONSULTANT pursuant to the Act, and the CONSULTANT agrees that no additional notice is required. The CONSULTANT shall notify each of its sub-consultants of the revised rates of wages.

- 7.6 The CONSULTANT shall submit invoices, for services rendered including any allowable expenses, to the COUNTY. All invoices shall include a remittance address. The COUNTY shall not be required to pay the CONSULTANT more often than monthly. Each invoice shall be submitted in a format agreed to in advance by the COUNTY. Separate invoices shall be submitted for each approved Work Order and each invoice shall also include a progress report that describes work completed for the invoice period, anticipated work for the next invoice period, outstanding issues or items that require a response, whether the work is progressing according

to the approved schedule, and a discussion of the budget status. The CONSULTANT shall be required to submit a monthly progress report to the COUNTY even if a monthly invoice is not submitted to the COUNTY. The CONSULTANT shall provide the COUNTY with a valid taxpayer identification number prior to making any request for compensation. Payment will not be made for services completed or expenses incurred more than six-months (180 days) prior to submission of any invoice and any statute of limitations to the contrary is hereby waived. When requested by the COUNTY, the CONSULTANT shall submit certified time sheets as additional documentation for the invoiced services.

- 7.7 Upon approval of properly documented invoices, the COUNTY shall reimburse the CONSULTANT the amount invoiced for services completed in accordance with this AGREEMENT, provided that the amount invoiced together with the amounts of previous partial payments do not exceed the total compensation specified in this AGREEMENT. The COUNTY may not deny a properly documented claim for compensation, in whole or in part, without cause. The COUNTY shall pay all invoices pursuant to 50 ILCS 505, "Local Government Prompt Payment Act.
- 7.8 In the event of any overcharge by the CONSULTANT, the CONSULTANT shall refund the COUNTY within thirty (30) days of discovery of said overcharge by the CONSULTANT or notice to the CONSULTANT by the COUNTY. The COUNTY reserves the right to offset any overcharges against any amounts due and owing the CONSULTANT under this or any other AGREEMENT between the parties. The COUNTY shall be entitled to the statutory interest rate for judgments under Illinois law for any overcharges not timely refunded (or credited) in accord with this provision, which interest shall be in addition to any other remedies the COUNTY may have under the law or this AGREEMENT.
- 7.9 Upon acceptance of all deliverables specified in Exhibit B of this AGREEMENT [or] by approved Work Order(s), final payment shall be made to the CONSULTANT, including any retainage.

8.0 CONSULTANT'S INSURANCE

8.1 The CONSULTANT shall maintain, at its sole expense, insurance coverage including:

8.1.a **Worker's Compensation Insurance** in the statutory amounts.

8.1.b **Employer's Liability Insurance** in an amount not less than one million dollars (\$1,000,000.00) each accident/injury and one million dollars (\$1,000,000.00) each employee/disease.

8.1.c Commercial (Comprehensive) General Liability Insurance, (including contractual liability) with a limit of not less than three million dollars (\$3,000,000.00) aggregate; including limits of not less than two million dollars (\$2,000,000.00) per occurrence, and one million dollars (\$1,000,000.00) excess liability. **An Endorsement must also be provided naming the County of DuPage c/o the Director of Transportation/County Engineer, DuPage County Division of Transportation, its' Officers, Elected Officials and employees, 421 N. County Farm Rd., Wheaton, IL 60187, as an additional insured. This additional insured endorsement is to be on a primary and non-contributory basis and include a waiver of subrogation endorsement.**

8.1.d Commercial (Comprehensive) Automobile Liability Insurance with minimum limits of at least one million dollars (\$1,000,000.00) for any one person and one million dollars (\$1,000,000.00) for any one occurrence of death, bodily injury or property damage in the aggregate annually. **An Endorsement must also be provided naming the County of DuPage c/o the Director of Transportation/County Engineer, DuPage County Division of Transportation, its' Officers, Elected Officials and employees, 421 N. County Farm Rd., Wheaton, IL 60187, as an additional insured. This additional insured endorsement is to be on a primary and non-contributory basis and include a waiver of subrogation endorsement.**

8.1.e Professional Liability Insurance (Errors and Omissions) shall be provided with minimum limits of at least one million dollars (\$1,000,000.00) per incident/two million dollars (\$2,000,000.00) aggregate during the term of this AGREEMENT and shall be maintained in the form of an additional endorsement for a period of four (4) years after the date of the final payment for this AGREEMENT. The CONSULTANT shall provide the COUNTY endorsements at the beginning of each year evidencing same or a new carrier policy that has a retroactive date prior to the date of this AGREEMENT.

- 8.2 It shall be the duty of the CONSULTANT to provide to the COUNTY copies of the CONSULTANT'S Certificates of Insurance, as well as all applicable coverage and cancellation endorsements before issuance of a Notice to Proceed. It is the further duty of the CONSULTANT to immediately notify the COUNTY if any insurance required under this AGREEMENT has been cancelled, materially changed, or renewal has been refused, and the CONSULTANT shall immediately suspend all work in progress and take the necessary steps to purchase, maintain and provide the required insurance coverage. If a suspension of work should occur due to insurance requirements, upon verification by the COUNTY of the CONSULTANT curing any breach of its required insurance coverage, the COUNTY shall notify the CONSULTANT that the CONSULTANT can resume work under this AGREEMENT. The CONSULTANT shall accept and bear all

costs that may result from the cancellation of this AGREEMENT due to CONSULTANT'S failure to provide and maintain the required insurance.

- 8.3 The coverage limits required under subparagraphs 8.1.c and 8.1.d above may be satisfied through a combination of primary and excess coverage. The insurance required to be purchased and maintained by the CONSULTANT shall be provided by an insurance company acceptable to the COUNTY, and except for the insurance required in subparagraph 8.1.e licensed to do business in the State of Illinois; and shall include at least the specific coverage and be written for not less than the limits of the liability specified herein or required by law or regulation whichever is greater; and shall be so endorsed that the coverage afforded will not be canceled or materially changed until at least thirty (30) days prior written notice has been given to the COUNTY except for cancellation due to non-payment of premium for which at least fifteen (15) days prior written notice (five days allowed for mailing time) has been given to the COUNTY. If the CONSULTANT is satisfying insurance required through a combination of primary and excess coverage, the CONSULTANT shall require that said excess/umbrella liability policy include in the "Who is Insured" pages of the excess/umbrella policy wording such as "Any other person or organization you have agreed in a written contract to provide additional insurance" or wording to that effect. The CONSULTANT shall provide a copy of said section of the excess/umbrella liability policy upon request by the COUNTY.
- 8.4 The CONSULTANT shall require all approved sub-consultants, anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable under this AGREEMENT to maintain the same insurance required of the CONSULTANT, including naming the COUNTY as an additional insured in the same coverage types and amounts as the CONSULTANT, per Section 8.0. The COUNTY retains the right to obtain evidence of sub-consultants insurance coverage at any time.

9.0 INDEMNIFICATION

- 9.1 The CONSULTANT shall indemnify, hold harmless and defend the COUNTY, its officials, officers, agents, and employees from and against all liability, claims, suits, demands, proceedings and actions, including costs, fees and expense of defense, arising from, growing out of, or related to, any loss, damage, injury, death, or loss or damage to property resulting from, or connected with, the CONSULTANT'S negligent or willful acts, errors or omissions in its performance under this AGREEMENT.
- 9.2 Nothing contained herein shall be construed as prohibiting the COUNTY, its officials, directors, officer and employees from defending through the selection and use of their own agents, attorneys and experts, any claims, suits, demands,

proceedings and actions brought against them. Pursuant to Illinois law, any attorney representing the COUNTY, under this paragraph or paragraph 9.1, who is not already an Assistant State's Attorney, is to be appointed a Special Assistant State's Attorney, in accordance with the applicable law. The COUNTY'S participation in its defense shall not remove the CONSULTANT'S duty to indemnify, defend, and hold the COUNTY harmless, as set forth above.

- 9.3 Any indemnity as provided in this AGREEMENT shall not be limited by reason of the enumeration of any insurance coverage herein provided. The CONSULTANT'S indemnification of the COUNTY shall survive the termination, or expiration, of this AGREEMENT.
- 9.4 The COUNTY does not waive, by these indemnity requirements, any defenses or protections under the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/1 et seq.) or otherwise available to it, or to the CONSULTANT, under the law.

10.0 SATISFACTORY PERFORMANCE

- 10.1 The COUNTY is entering into an AGREEMENT with this CONSULTANT because the CONSULTANT professes to the COUNTY that it will employ the standard of care within its profession in the performance of the services herein contracted. Accordingly, the CONSULTANT'S and sub-consultant(s) standard of performance under the terms of this AGREEMENT shall be that which is to the satisfaction of the COUNTY and meets the quality and standards commonly provided by similar professional engineering firms practicing in the COUNTY and the State of Illinois.
- 10.2 In the event there are no similar professional firms practicing in DuPage County, Illinois, with respect to the type of work for which this CONSULTANT has been engaged, the CONSULTANT'S services shall be performed in a manner consistent with the customary skill and care of its profession.
- 10.3 If any errors, omissions, or acts, intentional or negligent, are made by the CONSULTANT, or its' sub-consultant(s), in any phase of the work, the correction of which requires additional field or office work, the CONSULTANT shall be required to perform such additional work as may be necessary to remedy same without undue delay and without charge to the COUNTY. In the event any errors or omissions are detected after the expiration or termination of the AGREEMENT, the CONSULTANT may at the COUNTY'S option have the responsibility to cure same under this provision.

- 10.4 Acceptance of the work shall not relieve the CONSULTANT of the responsibility for the quality of its work, nor its liability for loss or damage resulting from any errors, omissions, or negligent or willful acts by the CONSULTANT or its sub-consultants.

11.0 BREACH OF CONTRACT

- 11.1 In the event of any breach of this AGREEMENT, the non-breaching party shall give notice to the breaching party stating with particularity the nature of the alleged breach, and the breaching party shall be allowed a reasonable opportunity to cure said breach. Either party's failure to timely cure any breach of this AGREEMENT shall relieve the other party of the requirement to give thirty (30) days' notice for termination of this AGREEMENT in accordance with Paragraph 16.1, below, and in such a case, ten (10) days' written notice to the breaching party is sufficient notice. Notwithstanding the above term, the CONSULTANT'S failure to maintain insurance in accordance with Section 8.0, above, or in the event of any of the contingencies described in Paragraph 16.1 below, shall be grounds for the COUNTY'S immediate termination of this AGREEMENT. Any breach of any covenant or term of this AGREEMENT by one or more of the CONSULTANT'S sub-consultants shall be deemed a breach by CONSULTANT subject to the terms of this AGREEMENT.

12.0 OWNERSHIP OF DOCUMENTS

- 12.1 The CONSULTANT agrees that any and all deliverables prepared for the COUNTY under the terms of this AGREEMENT shall be properly arranged, indexed and delivered to the COUNTY as provided in paragraph 6.1. An electronic copy of all applicable deliverables, in a format designated by the COUNTY'S representative, shall be provided to the COUNTY.
- 12.2 The documents and materials made or maintained under this AGREEMENT shall be and will remain the property of the COUNTY which shall have the right to use same without restriction or limitation and without compensation to the CONSULTANT other than as provided in this AGREEMENT. The CONSULTANT waives any copyright interest in said deliverables.
- 12.3 The COUNTY acknowledges that the use of information that becomes the property of the COUNTY pursuant to Paragraph 12.2, for purposes other than those contemplated in this AGREEMENT, shall be at the COUNTY'S sole risk.
- 12.4 The CONSULTANT may, at its sole expense, reproduce and maintain copies of deliverables provided to the COUNTY.

13.0 COMPLIANCE WITH THE LAW AND OTHER AUTHORITIES

- 13.1 The CONSULTANT, and sub-consultant(s), shall comply with Federal, State and Local statutes, ordinances and regulations and obtain permits, licenses, or other mandated approvals, whenever applicable.
- 13.2 The CONSULTANT, and sub-consultant(s), shall not discriminate against any worker, job applicant, employee or any member of the public, because of race, creed, color, sex, age, handicap, or national origin, or otherwise commit an unfair employment practice. The CONSULTANT, and sub-consultant(s), shall comply with the provisions of the Illinois Human Rights Act, as amended, 775 ILCS 5/-101, et seq., and with all rules and regulations established by the Department of Human Rights.
- 13.3 The CONSULTANT, by its signature on this AGREEMENT, certifies that it has not been barred from being awarded a contract or subcontract under the Illinois Procurement Code, 30 ILCS 500/1-1, et seq.; and further certifies that it has not been barred from contracting with a unit of State or local government as a result of a violation of Section 33E-3 or 33E-4 of the Illinois Criminal Code (Illinois Compiled Statutes, Chapter 720, paragraph 5/33E-3).
- 13.4 The CONSULTANT, by its signature on this AGREEMENT, certifies that no payment, gratuity or offer of employment, except as permitted by the Illinois State Gift Ban Act and the County of DuPage Ethics Ordinance, was made by or to the CONSULTANT, or CONSULTANT'S personnel, in relation to this AGREEMENT. The CONSULTANT has also executed the attached Ethics Disclosure Statement that is made a part hereof and agrees to update contribution information on an ongoing basis during the life of the AGREEMENT as required by said Ordinance.
- 13.5 The CONSULTANT covenants that it has no conflicting public or private interest and shall not acquire directly or indirectly any such interest which would conflict in any manner with the performance of the CONSULTANT'S services under this AGREEMENT.
- 13.6 **In accordance with the Vendor Information Reporting Act (35 ILCS 200/18-50.2), the COUNTY is required to collect and electronically publish data from all consultants and subconsultants as to: (1) whether they are a minority-owned, women-owned or veteran-owned business as defined by the Business Enterprise for Minorities, Women and Persons with Disabilities Act (30 ILCS 575/.01 et seq.); and (2) whether the consultant or any subconsultants are self-certifying or whether they hold certifications for those above-referenced categories. If self-certifying, the consultants and subconsultants shall disclose whether they qualify as a small business under federal Small Business Administration standards. In compliance**

with the Vendor Information Reporting Act, within 60 calendar days of the COUNTY'S award of the contract for work covered under this AGREEMENT, the awarded consultant, and each subconsultant, must complete the Awarded Vendor Questionnaire (found at <https://mwv.dupageco.org/>).

- 13.7 The CONSULTANT acknowledges knowledge of the COUNTY'S Procurement Ordinance, which is hereby incorporated in this AGREEMENT, and has had an opportunity to review it. The CONSULTANT agrees to submit changes for Scope of Work or compensation in accordance with said Ordinance.

14.0 MODIFICATION OR AMENDMENT

- 14.1 The parties may modify or amend terms of this AGREEMENT only by a written document duly approved and executed by both parties.
- 14.2 The CONSULTANT agrees to submit changes for Scope of Work or compensation on a COUNTY designated form.

15.0 TERM OF THIS AGREEMENT

- 15.1 The term of this AGREEMENT shall begin on the date the AGREEMENT is fully executed, and shall continue in full force and effect until the earlier of the following occurs:
- (a) The termination of this AGREEMENT in accordance with the terms of Section 16.0, or
 - (b) The expiration of this AGREEMENT on November 30, 2024, or to a new date agreed upon by the parties, or
 - (c) The completion by the CONSULTANT and the COUNTY of their respective obligations under this AGREEMENT, in the event such completion occurs before November 30, 2024.
- 15.2 The CONSULTANT shall not perform any work under this AGREEMENT after the expiration date set forth in Paragraph 15.1(b), above or after the early termination of this AGREEMENT. The COUNTY is not liable and will not reimburse the CONSULTANT for any work performed after the expiration or termination date of the AGREEMENT. However, nothing herein shall be construed so as to relieve the COUNTY of its obligation to pay the CONSULTANT for work

satisfactorily performed prior to expiration or termination of the AGREEMENT and delivered in accordance with Paragraph 6.1, above.

- 15.3 The term for performing this AGREEMENT may be amended by a Change Order, or other COUNTY designated form, signed by both parties without formal amendment pursuant to paragraph 14.1 above.

16.0 TERMINATION

- 16.1 Except as otherwise set forth in this AGREEMENT, either party shall have the right to terminate this AGREEMENT for any cause or without cause thirty (30) days after having served written notice upon the other party, except in the event of CONSULTANT'S failure to maintain suitable insurance at the requisite coverage amounts, insolvency, bankruptcy or receivership, or if the CONSULTANT is barred from contracting with any unit of government, or is subsequently convicted or charged with a violation of any of the statutes or ordinances identified in Section 13.0, above, in which case termination shall be effective immediately upon receipt of notice from COUNTY at COUNTY'S election.
- 16.2 Upon such termination, the liabilities of the parties to this AGREEMENT shall cease, but they shall not be relieved of the duty to perform their obligations up to the date of termination, or to pay for services rendered prior to termination. There shall be no termination expenses.
- 16.3 Upon termination of the AGREEMENT, all data, work products, reports and documents produced because of this AGREEMENT shall become the property of the COUNTY. Further, the CONSULTANT shall provide all deliverables within fourteen (14) days of termination of this AGREEMENT in accordance with the other provisions of this AGREEMENT.

17.0 ENTIRE AGREEMENT

- 17.1 This AGREEMENT, including matters incorporated herein, contains the entire agreement between the parties.
- 17.2 There are no other covenants, warranties, representations, promises, conditions or understandings; either oral or written, other than those contained herein.
- 17.3 This AGREEMENT may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original and all of which shall constitute the same instrument.

- 17.4 In event of a conflict between the terms or conditions of this AGREEMENT and any term or condition found in any exhibit or attachment, the terms and conditions of this AGREEMENT shall prevail.

18.0 ASSIGNMENT

- 18.1 Either party may assign this AGREEMENT provided, however, the other party shall first approve such assignment, in writing.

19.0 SEVERABILITY

- 19.1 In the event, any provision of this AGREEMENT is held to be unenforceable or invalid for any reason, the enforceability thereof shall not affect the remainder of the AGREEMENT. The remainder of this AGREEMENT shall be construed as if not containing the particular provision and shall continue in full force, effect, and enforceability, in accordance with its terms.
- 19.2 In the event of the contingency described in Paragraph 19.1, above, the parties shall make a good faith effort to amend this AGREEMENT pursuant to Paragraph 14.1, above, in order to remedy and, or, replace any provision declared unenforceable or invalid.

20.0 GOVERNING LAW

- 20.1 The laws of the State of Illinois shall govern this AGREEMENT as to both interpretation and performance.
- 20.2 The venue for resolving any disputes concerning the parties' respective performance under this AGREEMENT shall be the Judicial Circuit Court for DuPage County.

21.0 NOTICES.

- 21.1 Any required notice shall be sent to the following addresses and parties:

Fehr Graham
230 Woodlawn Avenue
Aurora, Illinois 60506
ATTN: Mark Halm, PE, BCEE
Phone: 630.897.4651

Email: mhalm@fehrgraham.com

DuPage County Department of Stormwater Management
421 N. County Farm Road
Wheaton, Illinois 60187
ATTN: Sarah Hunn, Director of Stormwater Management
Phone: 630-407-6676
Email: Sarah.Hunn@dupagecounty.gov

21.2 All notices required to be given under the terms of this AGREEMENT shall be in writing and either (a) served personally during regular business hours; (8:00a.m.-4:30p.m. CST or CDT Monday–Friday); (b) served by certified or registered mail, return receipt requested, properly addressed with postage prepaid; or (d) served by email transmission during regular business hours (8:00 a.m. – 4:30 p.m. CST or CDT Monday-Friday), return receipt requested. Notices served personally, by email transmission shall be effective upon receipt, and notices served by mail shall be effective upon receipt as verified by the United States Postal Service. Each party may designate a new location for service of notices by serving notice thereof in accordance with the requirements of this Paragraph, and without compliance to the amendment procedures set forth in Paragraph 14.1, above.

22.0 WAIVER OF/FAILURE TO ENFORCE BREACH.

22.1 The parties agree that the waiver of, or failure to enforce, any breach of this AGREEMENT shall not be construed, or otherwise operate, as a waiver of any future breach of this AGREEMENT and shall not prevent the remaining party from enforcing this AGREEMENT with respect to a different breach.

23.0 FORCE MAJEURE.

23.1 Neither party shall be liable for any delay or non-performance of their obligations caused by any contingency beyond their control including but not limited to Acts of God, war, civil unrest, strikes, walkouts, fires or natural disasters.

24.0 ACCESS TO PROPERTY

24.1 The CONSULTANT shall make a reasonable effort to obtain access to property of a third party necessary for the performance of its obligations under this AGREEMENT. If the CONSULTANT is unable to obtain access to the property, the COUNTY shall be responsible for securing access for the CONSULTANT. In the event the COUNTY cannot secure access for the CONSULTANT, the COUNTY shall excuse the CONSULTANT from the performance of any work that necessitated such access. The CONSULTANT shall have no claim to compensation for any work excused under this provision. The COUNTY shall

provide the CONSULTANT, upon the CONSULTANT'S request, proof of the COUNTY'S permission, or legal authority, to enter onto the property of a third party.

- 24.2 In the event of the following: a) it is necessary for the CONSULTANT to access the property of a third party in order for the CONSULTANT to perform its obligations under this AGREEMENT, and b) the COUNTY has obtained an easement, license or other grant of authority allowing the CONSULTANT to access such property; the CONSULTANT shall fully abide by and comply with the terms and conditions of said authorizing instrument as though the CONSULTANT were a signatory thereto.

25.0 QUALIFICATIONS

- 25.1 The CONSULTANT shall employ only persons duly licensed or registered in the appropriate category in responsible charge of all elements of the work covered under this AGREEMENT, for which Illinois Statutes require license or registration, and further shall employ only well qualified persons in responsible charge of any elements of the work covered under this AGREEMENT, all subject to COUNTY approval.
- 25.2 Failure by the CONSULTANT to properly staff the PROJECT with qualified personnel shall be sufficient cause for the COUNTY to deny payment for services performed by unqualified personnel and will serve as a basis for cancellation of this AGREEMENT.
- 25.3 The CONSULTANT shall require any sub-consultant(s) utilized for the PROJECT to employ qualified persons to be the same extent such qualifications are required of the CONSULTANT'S personnel. The COUNTY shall have the same rights under Paragraph 25.2 above, with respect to the CONSULTANT'S sub-consultant(s) being properly staffed while engaged in the PROJECT

IN WITNESS OF, the parties set their hands and seals as of the date first written above.

COUNTY OF DUPAGE

BY: _____
DEBORAH A. CONROY
CHAIR DUPAGE COUNTY BOARD

ATTEST:

BY: _____
JEAN KACZMAREK, County Clerk

FEHR GRAHAM

BY: _____
SETH GRONEWOLD

ATTEST:

BY: _____
KATHY KUMMER, Project Assistant

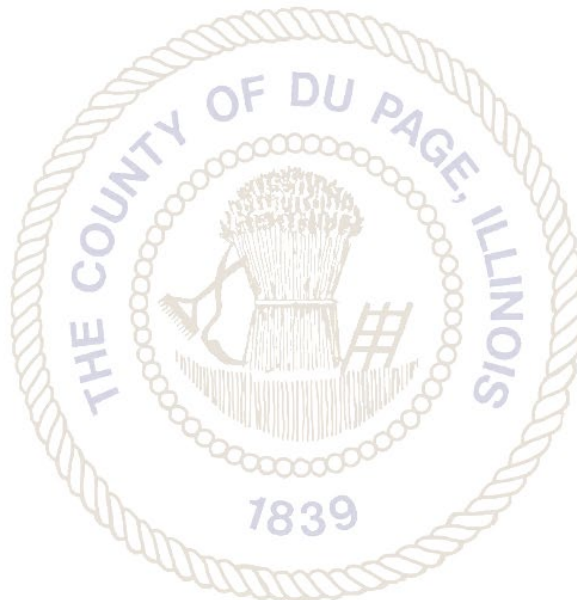


EXHIBIT A

Exhibit A

Scope of Services

Project Overview:

The DuPage County Stormwater Management Department is in need of professional engineering services to assist in updating a capital assessment report/reserve study for the department's flood control facilities. The initial report was completed in 2019. The department operates 17 facilities countywide with 8 of those facilities having significant mechanical and structural components. The major facilities that need to be evaluated are the Elmhurst Quarry, Fawell Dam, Wood Dale-Itasca Reservoir, River-Dumoulin Pump Station, Weeks Park Reservoir and Pump Station, Armstrong Park Reservoir, Spring Creek Reservoir and the Liberty Park Reservoir.

The total list of facilities to be included in this 5 and 20-year assessment include:

1. Brewster Creek Basin
2. Pleasantdale Reservoir
3. River – Dumoulin Pump Station
4. Country Lakes
5. Gary Kehoe Reservoir
6. Armstrong Park Reservoir
7. Weeks Park Drainage Facility
8. Eldridge Park Reservoir
9. Elmhurst Quarry Flood Control Facility
10. Meacham Grove Dam & Reservoir
11. Spring Creek Reservoir
12. Wood Dale Itasca Flood Control Reservoir
13. Crest Road Basin
14. Dale Road Basin
15. Fawell Dam
16. Kress Creek Reservoir
17. Wayne Oaks Dam
18. Liberty Park Reservoir

Scope of Services:

The intent of the revised capital assessment report is to assess the department's funding and maintenance projections and evaluate options to ensure the department is prepared for maintenance costs and projects for the next 20 years.

The Consultant shall:

- Review the Department's initial 2019 Capital Assessment Report and reserve study for the
- department's assets.
- Provide a revised capital assessment report and reserve study for the department's assets.

- Provide a prioritized short-term and long-term facility capital improvement plan with 5, 10, and
- 20 year projections.
- Understanding of current and potential future needs of the facilities.
- Provide detailed cost estimates and schedules of improvements or rehabilitation.
- Identify, analyze and recommend alternatives for future facility upgrades.

Onsite Assessment of the Facilities:

- The team will survey each site, requesting to be accompanied by an operations staff member with familiarity of the facility.
- Revise the asset condition rating to help prioritize projects.
- Condition assessment observations will be made with the naked eye and cameras as necessary. No inspection openings or other destructive investigation techniques will be employed during this phase of observations. The assessment will determine if additional inspection is needed and the design team shall determine associated costs for detailed inspections.
- To access the condition of mechanical and electrical equipment the team shall perform visual inspection, obtain information indirectly (by interview – anecdotally or data review) and analysis of available operations and maintenance data.
- For areas not accessible and require confined space entry, the design team will review the existing drawings and any existing reports that were done in relation to those areas. Based on the data found in the existing reports, the design team will outline the next steps DuPage should take to further evaluate these structures
- The team will make general Life-Safety observations but will not conduct an in-depth Life-Safety review as part of the project. Any Life-Safety issues identified will be shared with the client for further investigation and suitable resolution.

Prioritization:

- The team will prioritize needed improvements for both short and long-term projects.
- The team will provide these lists to DuPage for discussion and determine if there are any missing improvement or if projects should be grouped or done chronologically based on operational needs or planned projects.

Capital Assessment Report:

- The revised report will contain a 5-year, 10-year, and 20-year plan of the proposed improvements with associated costs and schedules.
- A revised high-level description will be provided for each needed improvement.
- New maps and pictures will be included to provide additional detail.
- Revised Engineer's estimate of cost shall be developed using excel.
- The revised high-level schedule for each project will reflect engineer estimated design and construction time in days.

Meetings:

Kick-off Meeting

- Introductions to contacts and resources on Consultant and client side.

- Determine protocol for visiting project sites.
- Preferences for revised report format.

Review and Status Meetings (2)

- Review and discuss project prioritization or alternative recommendations.
- Review and discuss draft report.

EXHIBIT B

Exhibit B

Anticipated Deliverables

The following deliverables may be requested by the COUNTY under the terms of this contract. These may include:

Communication

The Consultant will:

- Provide DuPage Stormwater Management staff bi-weekly email updates on progress.
- Meeting minutes
- Response letter to formal comments received on the draft report.

Deliverables

The Consultant will provide:

- An updated design memorandum with a list of prioritized short-term and long-term projects and potential alternatives for future upgrades. The memorandum shall be provided in pdf format.
- An updated draft report of the short-term and long-term capital improvement plan including associated cost estimates and schedules. The report shall be provided in pdf format.
- A final report in pdf format, accompanied by cost estimates in excel.
- Data collection files.

Owner Provided Data

The County will provide the following material for use on the project:

- As-built plans
- Studies and inspection results
- List of recent improvements and proposed improvements
- Maintenance history
- Anecdotal information
- Ass listing for each facility from City Works
- O&M Procedures / Manuals and warranty data for equipment recently installed

Schedule

Milestone	Date
Notice to Proceed (NTP)	TBD
Project Kick-off	NTP +10 days
Design Memo with list of prioritized projects	September, 2024
Draft Capital Improvement Report	October, 2024
Final Report	November, 2024

EXHIBIT C

Exhibit C
Cost Data and Rates

Department: Stormwater Management

Project: Agreement for on-call, as-needed Professional Engineering Services for process control projects around facilities for various regions around DuPage County.

Function: Professional Engineering Services

Consultant: Fehr Graham

Cost: Not-to-exceed \$165,000. Tasks will be assigned by the County and costs associated with completing the tasks will be agreed to in writing prior to starting work. Fehr Graham staff will be allocated based on the requirements of the work to ensure the highest quality at the lowest fee.

1. Fehr Graham Subconsultant Fees: Any specialty subconsultants fees required to perform the requested tasks will be pre-approved by DuPage County personnel and billed at the actual cost to Fehr Graham without markup.
2. Fehr Graham labor multiplier = 2.80
3. Rate Structure: Per Exhibit C-1. Rates effective through December 31, 2024
4. Direct expenses, such as copies, will be billed at the actual cost to Fehr Graham.



2024 DuPage County Personnel Chargeout Rates

Principal	\$185 - 240.80
Senior Project Manager	\$160 - 240.80
Project Manager	\$115 - 240.80

Engineering

Lead Structural Engineer	\$185 - 195
Electrical Engineer	\$180 - 190
Senior Project Engineer	\$115 - 185
Project Engineer	\$105 - 170
CAD Manager	\$125 - 135
Designer	\$90 - 130
Staff Engineer	\$105 - 125
Engineer	\$85 - 115
Senior Structural Engineer	\$160 - 180
Senior Resident Engineer	\$125 - 170
Water/Wastewater Op Specialist	\$125 - 145
Senior Engineering Technician	\$85 - 160
Associate Engineering Technician	\$75 - 115
Engineering Technician	\$55 - 105

Landscape Architect	\$85-105
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GIS Specialist	\$85 - 95
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Surveying

Survey Manager	\$180 - 190
Land Surveyor	\$105 - 170
Surveyor	\$85 - 105
Survey Crew Chief	\$95 - 125
Survey Technician	\$65 - 95

Environmental Health and Safety

Senior EHS Scientist	\$110 - 150
EHS Project Scientist	\$105 - 140
EHS Scientist	\$70 - 130
EHS Specialist	\$70 - 110
EHS Technician	\$60 - 110
Project Hydrogeologist	\$95 - 140
Geologist	\$75 - 95
Staff Hydrogeologist	\$85 - 115
Hydrogeologist	\$75 - 105
Biologist	\$85 - 115

I.T. Specialist	\$75 - 170
Grant Writer/Community Development Specialist	\$95 - 115
Project Coordinator	\$179 - 189
Project Administrator	\$75 - 115
Project Assistant	\$75



TSC BILLING CLASSIFICATION		RATES	
BILLING CLASSIFICATION	JOB CLASSIFICATION	WAGE	AVERAGE
Principal Engineers			
Princ. Engineer 0295	Civil Engineer	70.78	
Princ. Engineer 0854	Civil Engineer	64.91	67.85
Senior Engineers			
Sr Engineer 0578	Civil Engineer	58.46	
Sr Engineer 0771	Civil Engineer	62.02	
Sr Engineer 1527	Civil Engineer	56.89	
Sr Engineer 1492	Civil Engineer	47.25	56.16
Project Engineers			
Proj. Engineer 726	Civil Engineer	60.21	
Proj. Engineer 1141	Civil Engineer	60.94	
Proj. Engineer 1567	Civil Engineer	51.01	57.39
Staff Engineers/Project Manager			
Geologist 0299	Geologist	54.70	
Engineer 1566	Civil Engineer	41.56	
Engineer 1592	Civil Engineer	42.31	
Engineer 1620	Civil Engineer	42.08	45.16
Crew Chief - Staking and Utility Clearance			
Field Chief 0299	Drafting/Surveying	54.70	54.70
Drilling Inspector			
Inspector 0299	Engineering Technician	54.70	
Inspector 0362	Engineering Technician	49.47	52.09
Secretary			
Clerical 0676	Clerical	27.10	
Clerical 1665	Clerical	22.81	24.96
CADD Technician			
CADD Technician 1697	Drafting/Surveying	24.50	24.50
Drilling Crew			
Drillers (Local 150)	Earth Drillers	49.47	
Driller Helpers/Oiler (Local 150)	Helpers (Construction)	43.38	46.43