
THE CITY OF ROCHELLE
Ogle County, Illinois

RESOLUTION
NO. _____

**RESOLUTION AUTHORIZING A PROFESSIONAL ENGINEERING SERVICES
AGREEMENT WITH FEHR GRAHAM AND TRANSYSTEMS FOR THE FY 2024
ROCHELLE CROSSING ELIMINATION INITIATIVE STUDY**

JOHN BEARROWS, Mayor
ROSE HUERAMO, City Clerk

TOM McDERMOTT
BIL HAYES
KATE SHAW-DICKEY
DAN McDERMOTT
ROSAELIA ARTEAGA
BEN VALDIVIESO
City Council

Published in pamphlet form by authority of the Mayor and City Council of the City of Rochelle
Peterson, Johnson and Murray, LLC, City Attorneys
1301 W. 22nd Street, Ste. 500 Oak Brook, Illinois 60523

**RESOLUTION AUTHORIZING A PROFESSIONAL ENGINEERING SERVICES
AGREEMENT WITH FEHR GRAHAM AND TRANSYSTEMS FOR THE FY 2024
ROCHELLE CROSSING ELIMINATION INITIATIVE STUDY**

RESOLUTION NO. _____

WHEREAS, Section 7 of Article VII of the 1970 Constitution of the State of Illinois provides that a municipality that is not a home rule unit shall only have the powers granted to them by law and as such the City of Rochelle (“City”), Ogle County, Illinois being a non-home rule unit pursuant to the provisions of said Section 7 of Article VII, and may exercise only the powers expressly granted by law; and

WHEREAS, the Illinois General Assembly granted non-home rule municipalities broad authority to “pass all ordinances and make all rules and regulations proper or necessary, to carry into effect the powers granted to municipalities.” 65 ILCS 5/1-2-1; and

WHEREAS, the City owns and operates the City of Rochelle Railroad (CRRR) which consists of three interchange rail yards, two transloading yards, and a total of twelve miles of railroad track; and

WHEREAS, the CRR currently interchanges with the BNSF mainline where two passively protected railroad crossings are located on Caron Road and one passively protected crossing is located on Steam Plant Road; and

WHEREAS, in 2023 the City applied for and was awarded a Statewide Planning and Research (SPR) Grant to fund 80% of a study that will determine the best relocation of new BNSF/CRRR switches so to eliminate the BNSF traffic from crossing all three crossings when interchanging with the CRRR (“FY 2024 Rochelle Crossing Elimination Initiative”); and

WHEREAS, the City published a Request for Qualifications to engineering firms who could conduct the study and after numerous calls soliciting responses, only one response was received by Fehr Graham and Transystems; and

WHEREAS, the proposal received by Fehr Graham and Transystems in the amount of \$275,000 is attached herein as Exhibit A; and

WHEREAS, the procurement committee charged with reviewing the responses consisting of the Mayor, City Manager and Economic Development Director reviewed the proposal and qualifications and is satisfied that Fehr Graham and Transystems are qualified to conduct the study; and

WHEREAS, it has been determined by the Corporate Authorities of the City of Rochelle that it is in the best interest of the City and its residents to accept the proposal and enter into a

professional engineering services agreement with Fehr Graham and Transystems for the FY 2024 Rochelle Crossing Elimination Initiative.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF ROCHELLE, ILLINOIS as follows:

SECTION ONE: The foregoing Recitals are not mere preparatory language, but are hereby incorporated in this Section 1 as if said Recitals were fully set forth.

SECTION TWO: The proposal from Fehr Graham and Transystems for engineering services for the FY 2024 Rochelle Crossing Elimination Initiative in the amount of \$275,000 is hereby accepted and approved. Furthermore, the City Manager or his designee is authorized to execute the attached Exhibit A and any other necessary agreements consistent with this Resolution subject to review and revision by the City Attorney.

SECTION THREE: If any provision of this Resolution or application thereof to any person or circumstance is ruled unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this Resolution is severable.

SECTION FOUR: Where the conditions imposed by any provisions of this Resolution are more restrictive than comparable provisions imposed elsewhere in any other local law, ordinance, resolution, rule or regulation, the regulations of this Resolution will govern.

SECTION FIVE: The City Clerk shall publish this Resolution in pamphlet form.

SECTION SIX: This Resolution shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law.

PASSED THIS 12th day of November, 2024.

AYES:

NAYS:

ABSENT:

APPROVED THIS 12th day of November, 2024.

MAYOR

ATTEST:

CITY CLERK

EXHIBIT A



October 21, 2024

Jason Anderson
Economic Development Director
City of Rochelle
420 N 6th Street
Rochelle, IL 61068

**RE: Proposal for Professional Engineering Services
City of Rochelle Municipal Railroad – FY 2024 SPR Rochelle Crossing Elimination Initiative**

Dear Jason,

Please accept this proposal for professional services associated with the above-referenced project. This agreement is based upon the city's August 15, 2024 Request For Qualifications (RFQ) and the Illinois Department of Transportation (IDOT) Statewide Planning & Research (SPR) Grant award. The intent of this planning project is to determine the feasibility of creating a new interchange between the BNSF and the City of Rochelle Railroad, thereby eliminating and/or reducing vehicular traffic over the city's at-grade crossings. The project will include the planning and preliminary engineering and environmental services necessary to determine the scope and location of the new BNSF interchange. In addition, Fehr Graham will investigate the system impacts and the rail improvements necessary to facilitate the new interchange. Transystems will be assisting Fehr Graham in completing the described engineering services, specifically with the rail design and coordination with the ICC and BNSF. The following details our anticipated scope of services.

TOPOGRAPHIC SURVEY AND PREPARATION OF BASE DRAWING

Fehr Graham will gather previously completed surveys, rail improvement drawings, city Geographic Information System (GIS) information, Rochelle Municipal Utilities (RMU) maps, and other readily available data and create a comprehensive base drawing of the city railroad system. We will also request record drawings and Right-of-way (ROW) information from BNSF for inclusion in the base drawing. Fehr Graham will review the existing survey data and supplement said data with additional field surveys as needed.

PRELIMINARY ENGINEERING

Fehr Graham will advance preliminary rail and roadway engineering in support of relocating the interchange with the BNSF. The scope of services is anticipated to include the following:

» Conceptual Design

Fehr Graham and Transystems will develop multiple alternates for a new BNSF interchange. Various locations, track configurations and switch locations will be investigated and discussed with the City of Rochelle. The design team will work with the city and other stakeholders (as invited by the city) to refine the alternatives and selecting the preferred alternative. The scope of work for each alternative will include the following:

- Exhibits detailing the conceptual rail and roadway geometrics
- Identification of land acquisition needs (ROW and/or easements)
- Estimates of cost

» **Environmental Review**

Fehr Graham will complete an environmental review of the project area. For the purposes of this proposal, the project area includes all land impacted or potentially impacted by construction activities, excluding the BNSF right-of-way. We anticipate the environmental review will generally follow the Illinois Department of Transportation (IDOT) Preliminary Environmental Site Assessment (PEZA) process. Additionally, Fehr Graham will investigate potential impacts due to wetlands, endangered species, or historical sites. The scope of work is assumed to include the following:

- PEZA Report
- Illinois Department of Natural Resources (IDNR) EcoCAT Report
- USF&W Wetland Mapper Report
- IDNR Historical Preservation Division Report
- Floodplain and floodway impacts
- Noise impact analysis
- Air quality impacts

» **Utility Conflict Analysis**

The Fehr Graham team will prepare a utility atlas for the project area for use in determining utility conflicts. For the purposes of this proposal, the utilities are limited to those who are members of the JULIE system. The following details the scope of work associated with this line item:

- Complete a design JULIE request
- Include received JULIE utility data/maps into base drawing
- Supplement JULIE information with field collected survey data
- Identify potential utility conflicts for further investigation

» **Limited Geotechnical Investigation**

Fehr Graham will coordinate and advance a geotechnical investigation within the project area. For the purposes of this proposal, the geotechnical investigation and associated report will provide basic soils information. Said investigation will help determine the construction means and methods necessary to construct the rail infrastructure as planned given the construction characteristics of the underlying soils. The geotechnical report will be used in preparing preliminary engineering designs and estimates of cost.

» **Rail Engineering**

Once the conceptual alternatives have been identified, Fehr Graham and Transystems will advance preliminary rail engineering designs for each. This task is to determine the feasibility and constructability of the various alternatives. The rail engineering scope of services will include the following:

- Rail alignments
 - Typical sections
 - Plan and profile sheets
 - Drainage plans
 - Stormwater report
 - Floodplain/Floodway mitigation
 - Identification of rail infrastructure such as point of switch, rail curvature, track spacing, etc.
 - General specifications on rail, ties, and other track materials (OTM)
-

» **Roadway Engineering**

Concurrent with rail engineering, Fehr Graham will advance preliminary roadway and utility engineering designs for each alternative. This task is to determine the impacts to the roadway and utility systems associated with each alternative. The roadway engineering scope of services will include the following:

- Removal plans
- Typical pavement sections
- Plan and profile sheets
- Utility adjustment plans
- Maintenance of traffic plans
- General specifications on embankments, pavements, water/sewer utilities, and other improvements
- Analysis of potential roadway safety improvements at Steam Plant Road
- Analysis of potential roadway safety improvements at other CRRR at-grade crossings

» **Funding Strategies and Phasing**

The Fehr Graham team will work closely with the City of Rochelle and their grant writer in determining funding strategies to advance the identified infrastructure improvements. As part of this scope of work, our team will divide the overall construction project into logical phases based on the funding options available. The following details the scope of work associated with this line item:

- Identify potential funding sources including federal, state and local funding options
- Develop phasing plan to align with identified funding options
- Prepare estimates of cost for each phase
- Create funding matrix which summarizes the funding options

» **Stakeholder Outreach and Engagement**

Stakeholder outreach and engagement broadly refers to involving stakeholders (governing bodies, railroad operators, rail customers, etc.) the opportunity to provide input on decisions that impact them. Commonly cited benefits of outreach and engagement include:

- Input from stakeholders can inform and improve decisions and policies.
- Engagement can inform and educate the stakeholders about policies.
- Stakeholder engagement increases transparency and accountability with government, thereby building trust with all stakeholders.

For these and similar reasons, stakeholder engagement is now broadly recognized as an integral part of project development. To meet these goals and objectives, our team will lead the stakeholder outreach and engagement effort for this project. Fehr Graham and Transystems will work with the city in designing an approach that engages participating stakeholders and business partners and allows those invested in the rail system to weigh in on this project. Common approaches to outreach and engagement are informational exhibits, virtual informational meetings, in-person presentations, and one-on-one stakeholder informational meetings. Our team will work with the city on the right approach to engage stakeholders throughout the planning project.

BNSF AND ICC COORDINATION

Transsystems has a strong working relationship with the BNSF railway and the ICC. Transsystems will lead this coordination effort, providing conceptual drawings for their review, coordinating a diagnostic review meeting, gathering feedback and input on design options, and garnering BNSF and ICC preliminary support and approval of the preferred alternative.

FINAL FEASIBILITY REPORT

The Fehr Graham team will prepare a Feasibility Report summarizing our findings. Said report will be used to guide the build out of the rail system and as a basis for securing additional funding. The report will summarize the completed work and is anticipated to include the following:

- » Location and Existing Conditions: Description of general location, existing infrastructure, topographic features, water features, and any other relevant site information.
 - » Proposed Improvements: Description and detail of the proposed improvements including:
 - Description of work and improvements.
 - Right of Way (ROW) and easement data.
 - Estimates of cost.
 - Design guidelines for improvements.
 - Impacts on future expansions or ancillary projects.
 - » Crash Analysis (if applicable to demonstrate safety issues): Collect and analyze crash and accident data within the project area. Identify engineering solutions to improve safety and reduce or eliminate crash issues.
 - » Land Acquisition:
 - Identify needed ROW or easements.
 - Identify any homes, businesses or farms to be displaced.
 - » Floodplain/Floodway Encroachment: Identify and summarize the location and impacts of the project on regulated floodplains and floodways. Provide hydrologic and hydraulic studies to demonstrate the effects of the project on impacted floodplains/floodways.
 - » NPDES and other Permits: Identify National Pollutant Discharge Elimination System (NPDES) permit requirements and other permits necessary for the construction of the project.
 - » Utility Coordination: Coordinate with utility companies and identify conflicts caused by the proposed improvements.
 - » Special Waste Analysis: Provide the executive summary of the Environmental Site Assessment.
 - » Environmental Impact Summary: Provide results associated with wetland investigation, endangered species review, and historical preservation studies.
 - » Noise and Air Quality: Review project noise and air quality requirements and impacts to the project.
 - » Maintenance of Traffic (for road closures only): Discuss the impacts to the traveling public and how traffic will be accommodated during construction.
 - » Stakeholder Involvement and Agency Coordination: Document all stakeholder outreach activities and coordination with BNSF, ICC, IDOT and other agencies.
 - » Coordinate Geotechnical Report and Boring Locations. Drilling and geotechnical report by subconsultant.
 - » Track and Infrastructure Design: Analysis and basis of infrastructure design using the recommendations within the geotechnical report.
 - » Drainage and Stormwater Management Study: Prepare a preliminary drainage report in compliance with IDOT, IDNR and applicable local codes. Identify drainage boundaries, review localized drainage conditions and flooding history, stormwater management practices, and outfall constraints, if any.
-

PROJECT MANAGEMENT AND PROEJECT ADMINISTRATION

Fehr Graham and Transsystems will provide project management and project administration throughout the project. The scope of services is anticipated to include the following:

- » Kick-off meeting with City of Rochelle.
- » Progress Meetings: Hold progress meetings as needed to update the City of Rochelle on the project status to keep the project on task and on schedule.
- » Develop project schedule, milestones and deliverables.
- » Emails and communications to stakeholders, client and design team.
- » Quality Assurance and Quality Control procedures and peer reviews of deliverables.

EXCLUSIONS

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

- » Federal Emergency Management Agency (FEMA)/IDNR/Army Corps of Engineers (ACOE) Permitting (if necessary).
- » Drainage, flood, access, utility, or other easements.
- » Preparation of land acquisition surveying and plats.
- » Land negotiations or appraisals.
- » Property boundary or American Land Title Association (ALTA)/National Society of Professional Surveyors (NSPS) surveys.
- » Detailed or final engineering design.
- » Utility locates, potholing or other means of physically locating utilities.

Any of the above services can be performed as an additional cost to the project.

SCHEDULE

Fehr Graham can initiate this project upon receipt of formal authorization to proceed.

FEES

Based on the information available at this time, we are prepared to provide these services on a time and materials bases the following fee amounts:

Topographic Survey and Preparation of Base Drawing	\$31,000
Preliminary Engineering	\$180,000
BNSF and ICC Coordination	\$17,500
Final Feasibility Report	\$21,500
Project Management and Project Administration	<u>\$25,000</u>
Amount of this Agreement	\$275,000

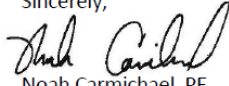
Payment for the services rendered will be requested via an invoice prepared monthly.

AUTHORIZATION

I trust that the information we have provided is in line with your expectations. Please sign the attached agreement and return a copy to my attention. We look forward to working with you on this project. If you have any questions, please don't hesitate to contact this office.

October 21, 2024
Jason Anderson, City of Rochelle
Proposal for Professional Engineering Services
Page 6

Sincerely,

A handwritten signature in black ink, appearing to read "Noah Carmichael".

Noah Carmichael, PE
Principal

NJC:sjm

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2024 10 21.docx



AGREEMENT FOR PROFESSIONAL SERVICES

Client Jason Anderson
Economic Development Director
City of Rochelle
420 N 6th Street
Rochelle, IL 61068

815.562.7595

Description of Services:

City of Rochelle - Railroad Grade Crossing Safety Improvements - Rochelle, IL

Fehr Graham is pleased to provide Professional Engineering Services for the City of Rochelle's Municipal Railroad FY 2024 Rochelle Crossing Elimination Initiative project. This agreement is based upon the city's August 15, 2024 for RFQ and IDOT Statewide Planning & Research Grant award. The intent of this planning project is to determine the feasibility of creating a new interchange between the BNSF and the City of Rochelle Railroad, thereby eliminating and/or reducing vehicular traffic over the city's at-grade crossings. The project will include the planning and preliminary engineering and environmental services necessary to determine the scope and location of the new BNSF interchange. In addition, Fehr Graham will investigate the system impacts and the rail improvements necessary to facilitate the new interchange. Transystems will be assisting Fehr Graham in completing the described engineering services, specifically with the rail design and coordination with the ICC and BNSF.

COST: Based on the information available at this time, we are prepared to provide these services on a time and materials bases the following fee amounts:

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Preliminary Engineering	\$180,000
BNSF and ICC Coordination	\$17,500
Final Feasibility Report	\$21,500
Project Management and Project Administration	\$25,000
Amount of this Agreement	\$275,000

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 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:	CONSULTANT:
Signature _____	By  _____
Name _____	Name Noah J. Carmichael
Title _____	Title Principal
Date Accepted _____	Date Proposed October 21, 2024
	24 -1617

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. Assignment - Neither party to this Agreement shall, without the prior written consent of the other party, which shall not be unreasonably withheld, assign the benefit or in any way transfer its obligations under this Agreement or any part hereof; provided, however, either Party may freely assign this Agreement to a parent, subsidiary or affiliate without the other party's consent. This Agreement shall inure to the benefit of and be binding upon the parties hereto, and except as otherwise provided herein, upon their executors, administrators, successors, and assigns.
21. 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.
22. Provision Severable – The unenforceability or invalidity of any provisions hereof shall not render any other provisions herein contained unenforceable or invalid.
23. 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.

STATE OF ILLINOIS)
)
COUNTY OF OGLE) SS.

CERTIFICATE

I, Rose Hueramo, City Clerk of the City of Rochelle, County of Ogle and State of Illinois,
DO HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution No. _____,
“RESOLUTION AUTHORIZING A PROFESSIONAL ENGINEERING SERVICES
AGREEMENT WITH FEHR GRAHAM AND TRANSYSTEMS FOR THE FY 2024
ROCHELLE CROSSING ELIMINATION INITIATIVE STUDY” which was adopted by the
Mayor and City Council of the City of Rochelle on November 12, 2024.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of
the City of Rochelle this 12th day of November, 2024.

CITY CLERK