

June 27, 2024

Mr. Frank Eubank
Village President
Village of Winnebago
108 West Main Street
Winnebago, Illinois 61088

**RE: Cunningham Road Water Main Replacement
 Civil Engineering Design Services Proposal**

Dear President Eubank,

Fehr Graham is pleased to present you with the following proposal for professional services associated with the above-referenced project in the Village of Winnebago. In a previous project for the Village pertaining to water main replacement along Cunningham Road and connecting streets (Fehr Graham Project Number: 20-341), agreement signed on April 2, 2020, Fehr Graham's original Scope of Services included the necessary revisions/updates to a previously completed design plan set to reach permitting standards, preparation and submittal of Illinois Department of Commerce & Development (DCEO) funding documents, as well as permitting efforts through the Illinois Environmental Protection Agency (IEPA) and Winnebago County. The project currently has expired permits, out-of-date construction cost estimates, and was never advanced to a bid ready condition for plans and specifications. In addition, it is now the Village's intent to apply for IEPA Public Water Supply Loan Program funding to complete this project.

Fehr Graham will provide professional services pertaining to project funding, permitting and bidding as described in the below Scope of Services:

SCOPE OF SERVICES

IEPA Construction Permit Extension

Fehr Graham will coordinate with the IEPA to facilitate an extension to the previously approved Public Water Supply Construction Permit issued July 22, 2020, and was subsequently renewed one time after initial approval.

Winnebago County Highway Department Permitting

Fehr Graham will coordinate permitting efforts with the Winnebago County Highway Department regarding the water main replacement and associated repairs within the Cunningham Road Right-of-Way, facilitating the submittal of a utility permit application and all supporting documentation for County review and approval. An original submission was provided, but approval was not granted as it was originally discussed that the County would provide feedback if Rebuild Illinois grant funding were appropriated to this project.

IEPA Loan Application

A formal bypass funding loan application must also be prepared and submitted to the IEPA Financial Section and ultimately approved. This application includes various documentation that involves, but is not limited to, approved local resolutions/ordinances, financial data, environmental studies and reviews, and legal review and opinion. The end result of this loan application will be an approved loan

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commitment from the IEPA for the subject project. At loan commitment, the Village has assurance that all eligible costs to construct the physical improvements as well as design and construction engineering fees associated with the project will be covered by loan disbursements on an as-needed basis, should the Village decide to proceed. All fees associated with the Loan Application will need to be paid upfront and reimbursed when the loan is approved. Because the Village was not placed on the FY2025 intended funding list, there is a chance that bypass funding will not be appropriated for FY2025.

Bidding Plan and Specification Revisions

Utilizing the permitting plans and specifications created in 2020 for the project, Fehr Graham will complete the necessary updates to meet current bidding and permitting requirements. Based on discussion with the Village, there is no desire for an updated survey, but a new Design JULIE will be completed to pick up any provided utility adjustment information that can be provided by the franchise utilities within the project limits. It is assumed that the Village is not anticipating adjustments to the most recent alignment for the proposed water main. Should adjustments be required, additional may be necessary. The following items will be completed as part of this scope item:

- » Design updates to comply with current IEPA and Winnebago County permitting requirements
- » Updated summary of quantities and pay items
- » Conversion of permit plans to bid/construction ready plans with associated details, notes and labeling.
- » Revised Engineer's opinion of probable cost
- » Updated contract documents for bidding
- » Project special provisions for bidding
- » Submission of plans to Four Rivers Sanitation Authority for project concurrence and coordination.

Due to the fact that there is more than 1 acre of anticipated disturbance for this project, Fehr Graham will also create a stormwater pollution prevention plan (SWPPP) and submit to IEPA for NPDES stormwater construction permit approval.

The construction cost for this project is expected to be nearly \$1.0 million but will be confirmed once the plans reach a bidding condition.

Bidding Documents and Services

Utilizing the completed design drawings and project specifications, Fehr Graham will prepare a bid package of documents for the solicitation of bids. Prior to going out for bid a review of the complete bidding document package must be submitted and approved by IEPA.

As part of this process, Fehr Graham will address Contractor questions, manage the distribution of bidding documents, prepare and distribute addendums and clarifications, attend a pre-bid meeting, attend the bid opening, review and tabulate the bids, and provide a bid recommendation to the Village of Winnebago for consideration in compliance with IEPA Public Water Supply Loan Program requirements. Upon completion of bidding, Fehr Graham will complete a bid certification checklist and submit all necessary documentation to the IEPA to allow for the loan agreement to be written and provided to the Village for execution.

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EXCLUSIONS

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

- » Topographic and Boundary surveys
- » Environmental or soil remediation services
- » Archaeological investigations
- » Ecological investigations
- » Preparation of permanent or temporary easements and/or right-of-way acquisition documents
- » Title Commitments
- » Construction engineering
- » Contract management
- » Construction staking
- » Geotechnical investigation
- » Funding applications or administration beyond IEPA public water supply loan program application.
- » Traffic control plans and/or staging plans. It is assumed this project will allow for road closures as necessary.
- » Water main design beyond the currently proposed alignment within the most recent permit plans.
- » Franchise utility relocation coordination.

**Any of the above services can be performed at an additional cost to the project upon request.*

FEES

Based on the information available at this time, Fehr Graham is prepared to provide the Scope of Services described as follows on a lump sum basis:

Engineering Design Fees

• IEPA Construction Permit Extension	\$750.00
• Winnebago Co. Hwy Dept. Permitting	\$3,100.00
• IEPA Loan Application	\$10,200.00
• Bidding Plan and Specification Revisions	\$23,650.00
• Bidding Documents and Services	\$9,400.00

Total \$47,100.00

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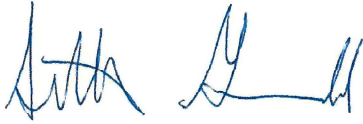
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AUTHORIZATION

I trust that the information we have provided is in line with your expectations. If you would like us to proceed with the above project, please sign the attached Agreement for Professional Services and return one (1) copy to my attention.

As always, Fehr Graham is willing to commit the necessary resources to this project and provide timely and competent solutions to assure that this project moves forward. We look forward to working with the Village on this project. If you should have any questions, please do not hesitate to contact me directly at (815) 394-4700.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Seth Gronewold', with a stylized flourish at the end.

Seth Gronewold, PE
Principal

SWG:adn

Enclosure –
Agreement for Professional Services

Client Frank Eubank
 Village of Winnebago
 108 West Main Street
 Winnebago, IL 61108

815.335.2020

Description of Services:

Village of Winnebago - Engineering Services for Cunningham Road Water Main Replacement in Winnebago, IL

Fehr Graham will provide professional services as related to the above-referenced project in the Village of Winnebago, as detailed in the proposal letter, dated on June 27, 2024.

COST:

The fixed fee for performing the above services is \$47,100.00

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	<u></u>	By	<u></u>
Name	<u>Franklin J. Eubank, Jr.</u>	Name	<u>Seth W. Gronewold</u>
Title	<u>Village President</u>	Title	<u>Principal</u>
Date Accepted	<u>July 16, 2024</u>	Date Proposed	<u>June 27, 2024</u>
			24-1255

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)' 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 Contractors(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. *IEPA Loan Project – The Owner intends to fund the design engineering services of the Engineer with a loan from the Illinois Environmental Protection Agency. In order to meet the rules of the IEPA Loan Program, the following provisions from Section 662.630 Contracts for Personal and Professional Services; Illinois Environmental Protection Agency, shall be followed:*

All Subagreements for personal and professional services for design or construction expected to exceed \$25,000 in the aggregate shall include the following subagreement provisions:

- a) *Subagreements for personal and professional construction services shall include:*

- 1) *Evidence, such as, but not limited to, a copy of the advertisement or advertisements and the record of negotiation in accordance with 40 CFR Part 33 that affirmative steps have been taken to assure that disadvantaged business enterprises are used when possible as sources of supplies, equipment, construction, and services consistent with the provisions of the Agency's Operating Agreement with USEPA.*

The ENGINEER agrees to take affirmative steps to assure that disadvantaged business enterprises are utilized when possible as sources of supplies, equipment, construction and services in accordance with the Public Water Supply Loan Program rules. As required by the award conditions of USEPA's Assistance Agreement with IEPA, the ENGINEER acknowledges that the fair share percentages are 5% for MBE's and 12% for WBE's.

- 2) *An audit and access to records clause that provides as follows:*

- A) *Subsections (a)(2)(B) through (E) shall be included in all contracts and all subcontracts directly related to project services that are in excess of \$25,000.*
- B) *Books, records, documents and other evidence directly pertinent to performance of PWSLP loan work under this agreement shall be maintained consistent with generally accepted accounting standards in accordance with the American Institute of Certified Public Accountants Professional Standards. The Agency or any of its authorized representatives shall have access to the books, records, documents and other evidence for the purposes of inspection, audit and copying. Facilities shall be provided for access and inspection.*
- C) *Audits conducted pursuant to this provision shall be in accordance with generally accepted auditing standards.*
- D) *All information and reports resulting from access to records pursuant to subsection (a)(2)(B) shall be disclosed to the Agency. The auditing agency shall afford the engineer an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report shall include the written comments, if any, of the audited parties.*
- E) *Records under subsection (a)(2)(B) shall be maintained and made available during performance of project services under this agreement and for three years after the final loan closing. In addition, those records that relate to any dispute pursuant to Section 369.650 (Disputes) of this Subpart, litigation, the settlement of claims arising out of project performance, costs or items to which an audit exception has been taken shall be maintained and made available for three years after the resolution of the appeal litigation, claim or exception.*

- 3) *A covenant against contingent fees clause as follows:*

"The professional services contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bonafide employees. For breach or violation of this warranty, the loan recipient shall have the right to annul this agreement without liability or in its discretion to deduct from the contract price or consideration or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee."

- 4) *A "Certification Regarding Debarment, Suspension, and Other Responsibility Matters" (EPA Form 5700-49) showing compliance with federal Executive Order 12549 (Appendix A, Exhibit A).*
The Consultant certifies that the person or persons performing the services for the loan project have not been debarred or suspended in accordance with federal EO12549.
- 5) *A description of the scope and extent of the project work (See City's Work Order).*
- 6) *The schedule for performance and completion of the contract work including, where appropriate, dates for completion of significant project tasks (See City's Work Order).*
- 7) *A method of compensation (see City's Work Order).*
- 8) *The ENGINEER shall not discriminate on the basis of race, color, or national origin or sex in the performance of this contract. The ENGINEER shall carry out the applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the ENGINEER to carry out these requirements is a material breach of this contract which may result in termination of this contract or other legally available remedies.*
- b) *Subagreements for personal and professional design services shall include the subagreement provisions contained in subsections (a)(2) through (a)(4). In addition, the subagreements shall be accompanied by a statement regarding the use of disadvantaged business enterprises during the design service phase.*
- c) *If, at the time of contract execution, any of the elements required in this Section 662.630 cannot be defined adequately for later tasks, those tasks shall not be included in the contract at that time.*
- d) *Construction Engineering work will be completed by_____.*

19. 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.

20. 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.
21. 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.
22. 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.
23. Provision Severable – The unenforceability or invalidity of any provisions hereof shall not render any other provisions herein contained unenforceable or invalid.
24. 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.