

AUTHORIZING THE MAYOR OF THE CITY OF DEKALB, ILLINOIS TO SIGN AN ENGINEERING SERVICES AGREEMENT WITH BAXTER AND WOODMAN, INC., FOR CONSTRUCTION INSPECTION SERVICES ON VARIOUS PROJECTS AT AN HOURLY RATE.

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

Section 1. That the Mayor of the City of DeKalb be authorized and directed to execute an Engineering Services Agreement with Baxter and Woodman, Inc., for construction inspection services at an hourly rate for annual street, sidewalk and alley maintenance projects and the North First Street federal inspection project in an amount not to exceed forty-five thousand five hundred dollars (\$45,500), a copy of which is attached hereto and made a part hereof as Exhibit "A".

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

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois at a regular meeting thereof held on the 27th day of June, 2011 and approved by me as Mayor on the same day. Adopted from the Consent Agenda by omnibus roll call vote: 7-0. Aye: Jacobson, Teresinski, Lash, Gallagher, Naylor, Baker, O' Leary. Nay: None.

ATTEST:



STEVE KAPITAN, City Clerk





KRIS POVLSSEN, Mayor

CITY OF DEKALB, ILLINOIS
2011 CONSTRUCTION INSPECTION SERVICES

ENGINEERING SERVICES AGREEMENT

THIS AGREEMENT is made this 29TH day of JUNE 2011, by and between the City of DeKalb, Illinois, hereinafter referred to as the CITY, and Baxter & Woodman, Inc., Consulting Engineers, hereinafter referred to as the ENGINEERS, to provide Construction Engineering Assistance to the CITY for the 2011 Construction Inspection Services, hereinafter referred to as the PROJECT.

WITNESSETH that in consideration of the covenants herein, these parties agree as follows:

SECTION 1. The PROJECT consists of providing on-site construction engineering assistance, as more completely described in Exhibit A, attached hereto. After written authorization by the CITY, the ENGINEERS shall provide professional services for the PROJECT. These services will include serving as the CITY's representative in all phases of the PROJECT, and furnishing customary construction-related engineering services, as enumerated in Exhibit B, attached hereto.

SECTION 2. The CITY shall compensate the ENGINEERS for the professional services enumerated in Exhibit B hereof as follows:

2.1 The ENGINEERS' fee for the construction-related engineering services described in Exhibit B Sections 1 and 2 shall be computed on the basis of their hourly billing rates for actual work time performed plus reimbursement of out-of-pocket expenses including travel costs, which total amount will not exceed \$45,500, except as provided in Paragraph 3.10; ENGINEERS' Project No. 110373.60.

For this PROJECT, we propose that our Resident Project Representative will be billed at a rate of \$65 per hour, and Supplemental Resident Project Representatives will be billed at \$88 per hour on an as-needed basis. Hours worked in excess of 40 hours per week will be billed at the standard hourly rates quoted above, with no premium time charged.

2.2 The ENGINEERS' fee for the additional services described in Exhibit B Section 3 shall be negotiated between these parties and this Agreement amended accordingly prior to the commencement of said services.

SECTION 3. The parties hereto further mutually agree:

3.1 The ENGINEERS may submit requests for periodic progress payments for services rendered. Payments shall be due and owing by the CITY in accordance with the terms and provisions of the Local Government Prompt Payment Act, Illinois Compiled Statutes, Ch. 50, Sec. 505, et. seq.; and the ENGINEERS may, after giving seven (7) days written notice to the CITY, suspend services under this Agreement until the ENGINEERS have been paid in full all amounts due for services, expenses, and late payment charges as provided in such Act.

3.2 This Agreement may be terminated, in whole or in part, by either party if the other party substantially fails to fulfill its obligations under this Agreement through no fault of the terminating party; or the CITY may terminate this Agreement, in whole or in part, for its convenience. However, no such termination may be effected unless the terminating party gives the other party (1) not less than ten (10) calendar days written notice by certified mail of intent to terminate, and (2) an opportunity for a meeting with the terminating party before termination. If this Agreement is terminated by either party, the ENGINEERS shall be paid for services performed to the effective date of termination, including reimbursable expenses. In the event of contract termination, the CITY shall receive reproducible copies of Drawings, Specifications and other documents completed by the ENGINEERS.

3.3 The ENGINEERS agree to hold harmless and indemnify the CITY and each of its officers, agents and employees from any and all liability claims, losses, or damages including reasonable attorney's fees to the extent that such claims, losses, damages or expenses are caused by the ENGINEERS' failure to perform the work required in the contract, failure to perform work to the standards of engineers in the Northern Illinois area, or its errors, acts or omissions, but not including liability, claims, losses or damages due to the negligence of the CITY or other consultants, contractors or subcontractors working for the CITY, or their officers, agents and employees.

In the event claims, losses, damages or expenses are caused by the joint or concurrent negligence of the ENGINEERS and the CITY they shall be borne by each party in proportion to their respective fault and causation.

The CITY acknowledges that the ENGINEERS is a Business Corporation and not a Professional Service Corporation, and further acknowledges that the corporate entity, as the party to this contract, expressly avoids contracting for individual responsibility of its officers, directors, or employees.

The CITY and ENGINEERS agree that any claim made by either party arising out of any act of the other party, or any officer, director, or employee of the other party in the execution or performance of the Agreement, shall be made solely against the other party and not individually or jointly against such officer, director, or employees.

3.4 For the duration of the PROJECT, the ENGINEERS shall procure and maintain insurance for protection from claims under worker's compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease or death of any and all employees or of any person other than such employees, and from claims or damages because of injury to or destruction of property including loss of use resulting therefrom, alleged to arise from the ENGINEERS' default or failure in the performance of services under this Agreement. The CITY shall be named as an additional insured on the ENGINEERS' general liability insurance policy. The limits of liability for the insurance required by this Subsection are as follows:

(1)	Worker's Compensation:	Statutory Limits
(2)	General Liability	
	Per Claim:	\$1,000,000
	Aggregate:	\$2,000,000
(3)	Automobile Liability	
	Combined Single Limit:	\$1,000,000
(4)	Excess Umbrella Liability	
	Per Claim and Aggregate:	\$5,000,000
(5)	Professional Liability	
	Per Claim and Aggregate:	\$5,000,000/\$5,000,000

3.5 Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of the ENGINEERS and their officers, directors, employees, agents, and any of them, to the CITY and anyone claiming by, through or under the CITY, for any and all claims, losses, costs or damages whatsoever arising out of, resulting from or in any way related to the PROJECT or the Agreement from any cause or causes, including but not limited to the failure to perform the work required in the contract, failure to perform work to the standards of engineers in the Northern Illinois area, or its professional errors or omissions, strict liability or breach of contract or warranty express or implied of ENGINEERS or their officers, directors, employees, agents or any of them, hereafter referred to as the "CITY's Claims", shall not exceed the total insurance proceeds available to pay on behalf of or to the ENGINEERS by their insurers in settlement or satisfaction of CITY's Claims under the terms and conditions of ENGINEERS' insurance policies applicable thereto, including all covered payments made by those insurers for fees, costs and expenses of investigation, claims adjustment, defense and appeal.

The CITY and ENGINEERS agree to waive against each other all claims for special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the PROJECT.



3.6 The ENGINEERS are responsible for the quality, technical accuracy, timely completion, and coordination of all Designs, Drawings, Specifications, Reports, and other professional services furnished or required under this Agreement. The ENGINEERS shall endeavor to perform such services with the same degree of knowledge, skill and diligence normally employed by professional engineers performing the same or similar services.

3.7 The CITY may, at any time, by written order, make changes within the general scope of this Agreement in the services to be performed by the ENGINEERS. If such changes cause an increase or decrease in the ENGINEERS' fee or time required for performance of any services under this Agreement, whether or not changed by any order, an equitable adjustment shall be made and this Agreement shall be modified in writing accordingly. No service for which an additional compensation will be charged by the ENGINEERS shall be furnished without the written authorization of the CITY.

3.8 All Reports, Drawings, Specifications, other documents, and electronic media prepared or furnished by the ENGINEERS pursuant to this Agreement are instruments of service in respect to the PROJECT, and the ENGINEERS shall retain the right of reuse of said documents and electronic media by and at the discretion of the ENGINEERS whether or not the PROJECT is completed. Reproducible copies of the ENGINEERS' documents and electronic media for information and reference in connection with the use and occupancy of the PROJECT by the CITY and others shall be delivered to and become the property of the CITY upon request; however, the ENGINEERS' documents and electronic media are not intended or represented to be suitable for reuse by the CITY or others on additions or extensions of the PROJECT, or on any other project. Any such reuse without verification or adaptation by the ENGINEERS for the specific purpose intended will be at the CITY's sole risk and without liability or legal exposure to the ENGINEERS, and the CITY shall indemnify and hold harmless the ENGINEERS from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any ENGINEERS' furnishing of additional copies and verification or adaptation of the ENGINEERS' documents and electronic media will entitle the ENGINEERS to claim and receive additional compensation from the CITY. Electronic media are furnished without guarantee of compatibility with the CITY's software or hardware, and the ENGINEERS' sole responsibility for such media is to furnish replacements of defective disks within 30 days after initial delivery.

3.9 The CITY will provide the site for the PROJECT, and it warrants that all hazardous materials on or beneath the site known to it will have been identified to the ENGINEERS. The ENGINEERS shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, unidentified or undisclosed hazardous materials.

3.10 During the progress of the construction work under this Agreement, the ENGINEERS shall continuously monitor their costs and anticipated future costs, and if such

monitoring indicates possible costs in excess of the amounts stated in Section 2 above, the ENGINEERS shall notify the CITY of such anticipated increase, and the scope of services and/or the compensation for construction-related engineering services shall be adjusted by amendment to this Agreement. If the CITY and the ENGINEERS cannot agree on the amount of extra compensation for said anticipated increase of engineering costs, this Agreement shall then be considered to be terminated to the mutual benefit of these parties, without penalty to either party.

3.11 The ENGINEERS are an equal opportunity employer and hereby incorporate the requirements of 44 Ill. Adm. Code 750 Appendix A, as applicable.

3.12 Any provision or part thereof of this Agreement held to be void or unenforceable under any law shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the parties. The parties agree that this Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision which comes as close as possible to expressing the intention of the stricken provision.

3.13 This Agreement contains and embodies the entire and integrated agreement between parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral.

IN WITNESS WHEREOF, the parties hereto have caused the execution of this Agreement by their duly authorized officers as of the day and year first above written.

BAXTER & WOODMAN, INC.

CITY OF DEKALB, ILLINOIS

By *Laurence E. Thomas*
Vice President / COO

By *[Signature]*
Mayor

June 21, 2011
Date of Signature

6-29-11
Date of Signature

ATTEST:

Peggy Garbors
Deputy Secretary

ATTEST:

Steve Kapitan
Clerk



Attachment

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CITY OF DEKALB, ILLINOIS
2011 CONSTRUCTION INSPECTION SERVICES

EXHIBIT A

PROJECT DESCRIPTION

The proposed PROJECT consists of General Construction Services for the 2011 TIF and gas tax maintenance projects and North First Street federal project inspection documentation in DeKalb, Illinois.

The PROJECTS consist of normal pavement maintenance operations including milling, patching, paving and associated concrete work.

I:\Crystal Lake\DKLBC\110373-2011\ConInsp\Contract\110373.60 Exhibit A.doc

CITY OF DEKALB, ILLINOIS
2011 CONSTRUCTION INSPECTION SERVICES

EXHIBIT B

SCOPE OF SERVICES

1. Act as the CITY's representative with duties, responsibilities and limitations of authority as assigned in the Construction Contract Documents.

2. CS110 - FIELD OBSERVATION

- Provide Resident Project Representatives (RPR) at the construction site as follows:
 - 2011 Construction Season –part-time RPR on-site as needed for a total of 700 hours at \$65.00/hour.

The above-mentioned schedule does not include legal holidays. The RPR's services include assisting the Contractor with interpretation of the Drawings and Specifications, observing in general if the Contractor's work is in conformity with the Final Design Documents, and monitoring the Contractor's progress as related to the Construction Contract date of completion. The construction Contractor is a separate company from the ENGINEERS. The CITY understands and acknowledges that the ENGINEERS are not responsible for the Contractor's construction means, methods, techniques, sequences or procedures, time of performance, compliance with Laws and Regulations, or safety precautions and programs in connection with the PROJECT, and the ENGINEERS do not guarantee the performance of the Contractor and are not responsible for the Contractor's failure to execute the work in accordance with the Construction Contract Documents.

- Provide the necessary base lines, benchmarks, and reference points to enable the Contractor to proceed with the work.
- Keep a daily record of the Contractor's work on those days that the ENGINEERS are at the construction site including notations on the nature and cost of any extra work, and provide weekly reports to the CITY of the construction progress and working days charged against the Contractor's time for completion.

3. CS150 Supplemental Resident Project Representative

- Provide Supplemental Resident Project Representatives (RPR) at the construction site as needed at \$88.00/hour. The CITY will contact the ENGINEERS to schedule this additional assistance. This work is separate from the 700 hours anticipated for the RPR.