

RESOLUTION 2014-011 Passed: April 14, 2014

AUTHORIZING THE MAYOR OF THE CITY OF DEKALB, ILLINOIS TO EXERCISE THE OPTION IN THE EXISTING ENGINEERING SERVICES CONTRACT FOR THE 2014 STREETS PROJECT IN THE AMOUNT OF \$95,472.50 WITH BAXTER AND WOODMAN.

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

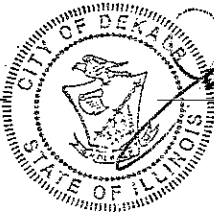
Section 1. That the Mayor of the City of DeKalb be authorized and directed to execute an Engineering Agreement for 2014 street, alley and sidewalk maintenance construction with Baxter and Woodman, Inc., in an amount not to exceed ninety-five thousand four-hundred seventy two dollars and 50/100 (\$95,472.50) a copy of which is attached hereto and made a part hereof as Exhibit "A." The execution of this agreement is subject to changes acceptable to the Mayor with the recommendation of the City Manager and City Attorney.

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 14th day of April, 2014 and approved by me as Mayor on the same day. Passed by Omnibus roll call vote of 8-0 on Consent Agenda. Aye: Jacobson, Finucane, Lash, Snow, Naylor, Baker, O'Leary, Rey.

ATTEST:


ELIZABETH E. PEERBOOM, City Clerk




JOHN A. REY, Mayor

April 2, 2014

Mr. John Laskowski
Assistant Director of Public Works/City Engineer
City of DeKalb
223 South Fourth Street, Suite A
DeKalb, Illinois 60115

Subject: DeKalb – 2014 Street, Alley and Sidewalk Maintenance Program Assistance

Dear Mr. Laskowski:

Baxter & Woodman's experience with assisting the City with its annual street, alley, and sidewalk maintenance programs in 2011, 2012 and 2013, and our experience working for the City for over twenty years, will help the City efficiently complete its 2014 Street, Alley, and Sidewalk Maintenance Program.

Based on the Scope of Services and Hourly Rates outlined in the Proposal for 2013-2014 Annual Street, Alley and Sidewalk Maintenance Construction Assistance approved by the City Council on March 25, 2013, and the estimated hours provided by Michael Bauling on April 1, 2014, we will provide the following personnel from Baxter & Woodman's office, on a part-time basis as determined by the City, not including Sundays or legal holidays:

<u>Personnel</u>	<u>2014 Hours</u>	<u>2014 Rate</u>	<u>2014 Cost</u>
Engineering Technician (Design)	250	\$72.77	\$18,192.50
Engineering Technician (Construction)	1,000	\$72.77	\$72,770.00
Engineer/Construction Manager	40	\$112.75	\$4,510.00
Totals	1,290		\$95,472.50

The above 2014 Rates include the 2.5% rate escalator from the 2013 Rates per the Proposal for 2013-2014 Annual Street, Alley and Sidewalk Maintenance Construction Assistance approved by the City Council on March 25, 2013.

Hours for the Engineer/Construction Manager will only be used at the discretion of the City Engineer or City's Project Implementation Engineer.

The above hourly rates will also apply to overtime hours on weekdays and Saturdays. Baxter & Woodman, Inc. will not exceed the estimated 1,290 hours without written confirmation by the City. Any additional engineering hours authorized by the City above 1,290 hours will be billed at the above hourly rates.

Baxter & Woodman's (Engineer) site observation shall be at the times agreed upon with the Owner. The Engineer will provide Resident Project Representatives at the construction site on a periodic part-time basis from the Engineer's office of not more than eight (8) hours per regular weekday, not

including legal holidays (for up to 1,000 hours, including no more than 100 hours at overtime) as deemed necessary by the Engineer, to assist the Contractor with interpretation of the Drawings and Specifications, to observe in general if the Contractor's work is in conformity with the Final Design Documents, and to monitor the Contractor's progress as related to the Construction Contract date of completion. Through standard, reasonable means, the Engineer will become generally familiar with observable completed work. If the Engineer observes completed work that is inconsistent with the construction documents, that information shall be communicated to the contractor and Owner to address. The Engineer shall not supervise, direct, control, or have charge or authority over any contractor's work, nor shall the Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the site, nor for any failure of any contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work. The Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform the work in accordance with the contract documents, which contractor is solely responsible for its errors, omissions, and failure to carry out the work. The Engineer shall not be responsible for the acts of omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or any other person, (except the Engineer's own agents, employees, and consultants) at the site or otherwise furnishing or performing any work; or for any decision made regarding the contract documents, or any application, interpretation, or clarification, of the contract documents, other than those made by the Engineer.

Engineer shall provide the necessary base lines, benchmarks, and reference points to enable the Contractor to proceed with the work.

Engineer shall 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.

The attached Baxter & Woodman, Inc. Engineering Services Standard Terms & Conditions apply to this Proposal.

We appreciate the opportunity to work with the City of DeKalb on this important project. If this Proposal is acceptable to the City of DeKalb, please sign below and return one fully-executed original to us for our records.

If you have any questions or need additional information, please do not hesitate to call me, Jim Sparber, or Steve Naber at (815)459-1260.

Sincerely,

BAXTER & WOODMAN, INC.
CONSULTING ENGINEERS



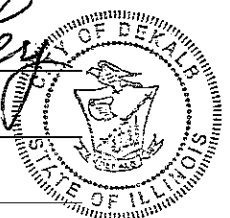
Louis D. Haussmann, PE, PTOE
Vice President / COO

LDH / SLN:bt

Attachment

CITY OF DEKALB, ILLINOIS

ACCEPTED BY: John A. Sey
TITLE: Mayor
DATE: 4-17-14



STANDARD TERMS AND CONDITIONS

Agreement - These Standard Terms and Conditions, together with the letter proposal, constitute the entire integrated agreement between the Owner and Baxter & Woodman, Inc. (BW) and take precedence over any other provisions between the Parties. These terms may be amended, but only if both parties consent in writing.

Owner's Responsibility - Provide BW with all criteria and full information for the Project. BW will rely, without liability, on the accuracy and completeness of all information provided by the Owner including its consultants, contractor, specialty contractors, manufacturers, suppliers and publishers of technical standards without independently verifying that information. The Owner warrants that all known hazardous materials on or beneath the site have been identified to BW. BW and their consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, unidentified or undisclosed hazardous materials unless this service is set forth in the proposal.

Schedule for Rendering Services - The agreed upon services shall be completed within a reasonable amount of time. If BW is hindered, delayed or prevented from performing the services as a result of any act or neglect of the Owner or force majeure, BW's work shall be extended and the rates and amounts of BW's compensation shall be equitably adjusted in writing executed by all Parties.

Invoices and Payments - The fees to perform the proposed scope of services constitute BW's estimate to perform the agreed upon scope of services. Circumstances may dictate a change in scope, and if this occurs, an equitable adjustment in compensation and time shall be made by all parties. No service for which added compensation will be charged will be provided without first obtaining written authorization from the Owner. BW invoices shall be due and owing by Owner in accordance with the terms and provisions of the Local Government Prompt Payment Act.

Opinion of Probable Construction Costs - BW's opinion of probable construction costs represents its reasonable judgment as a professional engineer. Owner acknowledges that BW has no control over construction costs of contractor's methods of determining prices, or over competitive bidding, of market conditions. BW cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from BW's opinion of probable construction costs.

Standards of Performance - (1) The standard of care for all services performed or furnished by BW, will be completed with the same care and skill ordinarily used by professionals practicing under similar circumstances, at the same time and in the same locality on similar projects. BW makes no guarantees or warranties, express or implied, in connection with its services; (2) BW shall be responsible for the technical accuracy of its services and documents; (3) BW shall use reasonable care to comply with all applicable laws and regulations and Owner-mandated standards; (4) BW may employ such sub-consultants as BW deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objection by Owner; (5) BW shall not supervise, direct, control, or have authority over any contractor work, nor have authority over or be responsible for the means, methods, techniques sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety of the site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work; (6) BW neither guarantees the performance of any contractor nor assumes responsibility for contractor's failure to furnish and perform the work in accordance with the contract documents; (7) BW is not responsible for the acts of omissions of any contractor, subcontractor, or supplier, or any of their agents or employees or any other person at the site or otherwise furnishing or performing any work; (8) Shop drawing and submittal review by BW shall apply to only the items in the submissions and only for the purpose of assessing if upon installation or incorporation in the Project work they are generally consistent with the construction documents. Owner agrees that the contractor is solely responsible for the submissions (regardless of the format in which provided, i.e. hard copy or electronic transmission) and for compliance with the construction documents. Owner further agrees that BW's review and action in relation to these submissions shall not constitute the provision of means, methods, techniques, sequencing or procedures of construction or extend to safety programs or precautions. BW's consideration of a component does not constitute acceptance of the assembled item; (9) BW's site observation during construction shall be at the times agreed upon in the Project scope. Through standard, reasonable means, BW will become generally familiar with observable completed work. If BW observes completed work that is inconsistent with the construction documents, that information shall be communicated to the contractor and Owner for them to address.

Insurance - BW will maintain insurance coverage with the following limits and Certificates of Insurance will be provided to the Owner upon written request:

Worker's Compensation: Statutory Limits	Excess Umbrella Liability:	\$5 million per claim and aggregate
General Liability: \$1 million per claim	Professional Liability:	\$5 million per claim
\$2 million aggregate		\$5 million aggregate
Automobile Liability: \$1 million combined single limit		

BW's liability under this Agreement, based on any theory of liability or for any cause of action, shall not exceed the total amount of BW's contract amount for the project. Any claim against BW arising out of this Agreement may be asserted by the Owner, but only against the entity and not against BW's directors, officers, shareholders or employees, none of whom shall bear any liability and may not be subject to any claim.

Indemnification and Mutual Waiver – (1) To the fullest extent permitted by law, BW shall indemnify and hold harmless the Owner and its officers and employees from claims, costs, losses, and damages arising out of or relating to the Project, provided that such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of BW or its officers, directors, employees, agents, or consultants; (2) Owner shall indemnify and hold harmless BW and its officers, directors, employees, agents and consultants from and against any all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death of to injury or destruction of tangible property, including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or its officers, directors, employees, consultants, or others retained by or under contract to the Owner with respect to this Agreement or to the Project; (3) To the fullest extent permitted by law, Owner and BW waive against each other, and the other's employees, officers, directors, insurers, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project; (4) In the event claims, losses, damages or expenses are caused by the joint or concurrent negligence of the ENGINEER and OWNER, they shall be borne by each party in proportion to its negligence; (5) The Owner acknowledges that the BW 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 Owner and BW 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.

Termination - Either party may terminate this Agreement upon ten (10) business days' written notice to the other party in the event of failure by the other party to perform with the terms of the Agreement through no fault of the terminating party. A condition precedent to termination shall be an opportunity for the Parties to meet. If this Agreement is terminated, Owner shall receive reproducible copies of drawings, developed applications and other completed documents. Owner shall be liable for, and promptly pay for all services and reimbursable expenses rendered to the date of suspension/termination of services.

Use of Documents - BW documents are instruments of service and BW retains ownership and property interest (including copyright and right of reuse). Client shall not rely on such documents unless in printed form, signed or sealed by BW or its consultant. Electronic format of BW's design documents may differ from the printed version and BW bears no liability for errors, omissions or discrepancies. Reuse of BW's design documents is prohibited and Client shall defend and indemnify BW from all claims, damages, losses and expenses, including attorney's fees, consultant/expert fees, and costs arising out of or resulting from said reuse. BW's document retention policy will be followed upon Project closeout, and project documents will be kept for a period of 14 years after Project closeout.

Successors, Assigns, and Beneficiaries – Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Client or BW to any third party, including any lender, Contractor, Contractor's subcontractor, supplier, manufacturer, other individual, entity or public body, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement are for the sole and exclusive benefit of the Client and BW and not for the benefit (intended, unintended, direct or indirect) of any other entity or person.

Dispute Resolution - All disputes between the Parties shall first be negotiated between them for a period of thirty (30) days. If unresolved, disputes shall be then submitted to mediation as a condition precedent to litigation. If mediation is unsuccessful, litigation in the county where the Project is pending shall be pursued.

Miscellaneous Provisions – (1) This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located. (2) All notices must be in writing and shall be deemed effectively served upon the other party when sent by certified mail, return receipt requested; (3) All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason; (4) Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the Owner and BW, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close to expressing the intention of the stricken provision; (5) A party's non-enforcement of any provision shall not constitute a waiver of the provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement; (6) To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of substantial completion, which is the point where the Project can be utilized for the purposes for which it was intended.