

RESOLUTION 2014-27 Passed: May 12, 2014

**AMENDING THE ORIGINAL AGREEMENT
WITH BAXTER AND WOODMAN FOR
ENGINEERING SERVICES IN THE AMOUNT
OF \$38,557.25**

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 executed an Engineering Agreement for 2013 street, alley and sidewalk maintenance construction with Baxter and Woodman, Inc., in the amount \$66,630.00 on March 25, 2013.

Section 2. The project exceeded the approved cost by \$38,557.25 with actual costs amounting to \$105,187.25,

Section 3. That the excess cost is the result of delays and the original Agreement needs to be amended to reflect the actual costs of \$105,187.25.

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 12th day of May, 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



1788 Sycamore Road, DeKalb, IL 60115 • 815.459.1260 • baxterwoodman.com

April 25, 2014

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

Subject: City of 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 acknowledges that the City is a municipal entity, and acknowledges that it shall not rely upon the statement or acknowledgment of any City employee or official beyond the scope of said person’s official authority, and expressly acknowledges that in many instances, approval of additional project costs requires the approval of the City Council.

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. In connection with observations of the work of the Contractor(s) while it is in progress the Engineer shall make visits to the site at intervals appropriate to the various stages of construction as the Engineer deems necessary in order 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 Engineer shall endeavor to determine in general if such work is proceeding in accordance with the Contract Documents and the Engineer shall keep the Client informed of the progress of the work. The Engineer shall advise the City with regard to work performed, to provide the City with a professional opinion that the work has been completed in accordance with project plans and to advise the City if, in the opinion of the Engineer, that non-compliant work is completed, prior to such work being covered or placed into service. 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 and shall be responsible for the accuracy of such information.

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. Rey
TITLE: Mayor
DATE: May 2, 2014

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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, BW may request a change order to approve additional costs or additional services. No service for which added compensation will be charged will be provided without first obtaining written authorization from the Owner, and BW shall not be entitled to additional compensation to complete the services contemplated by this Agreement. BW invoices shall be due and owing by Owner in accordance with the terms and provisions of the Local Government Prompt Payment Act. Unless this project is expressly approved on a time and materials basis, the contract sum contemplated herein shall be a not-to-exceed price.

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) Services performed by BW 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. (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, it shall immediately notify the City and the contractor, and shall cooperate with the City in determining a mechanism to correct the non-compliant work prior to further progress on the item in question.

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

Automobile Liability: \$2 million aggregate
\$1 million combined single limit

\$5 million aggregate

Other than Worker's Compensation and Professional Liability, such policies of insurance shall provide name the Owner as additional primary insured, without right of subrogation, with coverage for contractual indemnification, and without limiting clause or language that would obviate, limit or render this additional insured coverage excess or secondary. BW's liability under this Agreement for claims not arising out of willful, wanton or intentional misconduct shall not exceed the total amount of insurance which BW is required to maintain for the Owner's benefit as outlined above (regardless of the actual availability of insurance coverage). 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 (unless engaging in willful, wanton or intentional misconduct).

Indemnification - (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; This indemnification shall not be limited in any way by limitations on the amount or type of damages, compensation, or benefits payable by or for the Contractor under Workers' Compensation Acts, disability benefit acts, or other employee benefit acts, and serves as an express agreement to waive the protection of *Kotecki v. Cyclops Welding Corp.*, 146 Ill.2d 155 (1991) in Illinois. (2) 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; (3) 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 (unless any such party has engaged in willful, wanton or intentional misconduct).

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's documents, after delivery to the Owner, shall become the property of the Owner and shall be available for use by the City in such format as the City shall deem desirable. Any documents generated by BW are for the exclusive use of the Owner and any use after project closeout by third parties shall be at the sole risk of the Owner. 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 (during which time any applicable statutes of limitation shall be tolled). If unresolved, disputes may be then submitted to mediation. If mediation is unsuccessful or is not pursued, 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.