

DATE: October 19, 2016

TO: Honorable Mayor John Rey
City Council

FROM: Anne Marie Gaura, City Manager
Tim Holdeman, Public Works Director
Bryan Faivre, Utilities Superintendent

SUBJECT: Authorizing an Agreement with Baxter & Woodman for Preparation of an Application and Supporting Documentation for a Low-Interest Loan through the Public Water Supply Loan Program Administered Through the Illinois Environmental Protection Agency in an Amount Not to Exceed \$25,000.

I. Summary

The Public Works Department is requesting approval of an agreement with Baxter & Woodman for a not-to-exceed amount of \$25,000 for preparation of an application and supporting documentation for a low-interest loan as provided through the Public Water Supply Loan Program (PWSLP) administered through the Illinois Environmental Protection Agency (IEPA).

The low-interest loan would be used for water main replacement and would allow for a 50% forgiveness of the total principal loan amount up to a maximum of \$750,000 per year. The loan application and supporting documentation is the first step required for approval of a loan through the PWSLP but does not guarantee that the loan would be approved or that there would be any principal loan forgiveness.

II. Background

Last year, Council approved a series of water rate adjustments recommended by Burns & McDonald as part of a Water System Master Plan Update and Water Rate Study. The water rate adjustments were designed to help support water system capital improvements as outlined in the Water System Master Plan. On-going water main replacement was one of the capital projects recommended by Burns & McDonald as a way to improve an aging water distribution system.

To address this need, the Utilities Division developed and has included as part of its Fiscal Year 2017 (FY2017) Draft Budget preliminary plans for water main replacement in various locations throughout the City. These locations include: Sunset Place, South

Sixth Street, South Eleventh Street, Maplewood and Lewis Street. The recommended projects will be discussed with Council in greater detail during the upcoming FY2017 Budget meetings. The total estimated cost of these projects is in excess of \$1,300,000. Should Council approve the projects as part of the FY2017 Budget, the cost of these projects would be covered under the Utilities Division's Fund 62. Although there is money available in this fund to cover the costs, there may be additional funding sources available that would help significantly reduce the cost.

Currently, the IEPA is accepting loan assistance applications for water capital projects. Through the IEPA's low-interest loan program, the City may be eligible to receive a substantial savings on water capital projects. Loans approved under the program are eligible for a 50% loan forgiveness of the principal amount. In addition, the current rate for the low-interest loan is favorable at 1.86% (APR). Should Council approve the water main replacements outlined above as part of the Utilities Division's FY2017 budget, and the IEPA accepts the City's loan application for these projects, the City would be eligible to receive up to a 50% loan forgiveness of the total capital costs associated with these projects. This would amount to a savings of over \$650,000 of the estimated \$1,300,000 in capital costs. The remaining principal amount would then be applied to a 20 year low-interest loan at 1.86% APR.

At this time, staff is seeking approval only to begin the loan application process. There is a fair amount of preparation work involved to insure all the various requirements of the loan assistance program are met and submitted in a timely manner. For this reason, staff is recommending an agreement with Baxter & Woodman to assist in the preparation of an application and supporting documentation for a low-interest loan through the PWSLP administered through the IEPA. Even with assistance through Baxter & Woodman, it is still estimated that it will take up to three to four months for "planning approval" from the IEPA. Starting the process now would allow adequate time for processing the loan application and acceptance of planning approval which is the first step required for the PWSLP. Full execution of the loan would not occur until after the project had been bid and accepted and may take up to six to eight months to complete.

It should be noted that neither the City nor IEPA is committed until a loan offer is made by the IEPA and accepted by the City. Up until that point, the City may back out at any time. The loan offer would contain the terms of the loan. If the terms are unacceptable to the City (or if bids are too high), the City is under no obligation to accept the loan or proceed with the projects.

III. Community Groups/Interested Parties Contacted

This item is anticipated to be discussed at the City Council meeting to be conducted on October 24, 2016 to provide an opportunity for public input.



IV. Legal Impact

The City has the legal authority to participate in the IEPA low interest loan program if approved by the City Council. If approved, the City would enter into a loan repayment agreement with the IEPA that contemplates the full amortization schedule for the loans and the permitted purposes for which loan funds can be expended. The funds are subject to customary purchasing requirements (e.g. compliance with prevailing wage, competitive bidding and purchasing policies), and are restricted in purpose to funding certain water and wastewater related system improvements as described herein. Use of the loans does commit the City to repayment of loan proceeds, and the IEPA typically requires a demonstration that repayment can be made through the water and wastewater user fees imposed by the municipality.

V. Financial Impact

Baxter & Woodman has submitted a quote for a not-to-exceed amount of \$25,000 for preparation of an application and supporting documentation for a low-interest loan as provided through the PWSLP administered through the IEPA. Expenses relating to this would be covered under the Utilities Division's Fund 60-00-00-300-8331 (Arch/Engineering Services).

VI. Options

1. Council may authorize an agreement with Baxter & Woodman for a not-to-exceed amount of \$25,000 for preparation of an application and supporting documentation for a low-interest loan through the PWSLP administered through the IEPA.
2. Council may elect not to authorize an agreement with Baxter & Woodman for a not-to-exceed amount of \$25,000 for preparation of an application and supporting documentation for a low-interest loan through the PWSLP administered through the IEPA.

VII. Recommendation

Staff recommends authorizing an agreement with Baxter & Woodman for a not-to-exceed amount of \$25,000 for preparation of an application and supporting documentation for a low-interest loan through the PWSLP administered through the IEPA.



RESOLUTION 2016-

AUTHORIZING AN AGREEMENT WITH BAXTER & WOODMAN FOR THE PREPARATION OF AN APPLICATION AND SUPPORTING DOCUMENTATION FOR A LOW-INTEREST LOAN THROUGH THE PUBLIC WATER SUPPLY LOAN PROGRAM ADMINISTERED THROUGH THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY IN AN AMOUNT NOT TO EXCEED \$25,000.

WHEREAS, the City of DeKalb is a home rule unit as defined in Article VII, Section 6(a) of the 1970 Illinois Constitution and has jurisdiction over matters pertaining to its government and affairs; and

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF DEKALB, ILLINOIS:

Section 1: That the Mayor of the City of DeKalb be authorized and directed to enter into an agreement with Baxter & Woodman for a not-to-exceed amount of \$25,000 for preparation of a loan application and supporting documentation for a low-interest loan through the Public Water Supply Loan Program (PWSLP) administered through the Illinois Environmental Protection Agency (IEPA) subject to such changes as shall be acceptable to him with the recommendation of City Staff.

Section 2: That the City Clerk of the City of DeKalb, Illinois be authorized and directed to attest the Mayor's Signature and shall be effective thereupon.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois, at a regular meeting thereof held on the _____ day of _____, 2016, and approved by me as Mayor on the same day.

ATTEST:

JENNIFER JEEP JOHNSON, City Clerk

JOHN A. REY, Mayor

September 21, 2016

Mr. Tim Holdeman
Director of Public Works
City of DeKalb
200 S. Fourth Street
DeKalb, Illinois 60115

***Subject: City of DeKalb - IEPA Project Plan and Loan Assistance for
Water Main Replacements
PROPOSAL***

Dear Mr. Holdeman:

We are pleased to provide this letter proposal for preparation of an Illinois Environmental Protection Agency (IEPA) Project Plan and assistance with the IEPA Public Water Supply Loan Program (PWSLP) loan application package for the water main replacements project. Our scope of services is as follows:

SCOPE OF SERVICES

1. DATA REVIEW – Review existing information provided by the City, including:
 - A. WATER USAGE, PUMPING, AND BILLING DATA – provide data for the previous three years.
 - B. EXISTING WATER SYSTEM – Provide supply well, treatment, storage tank, and distribution system information.
 - C. WATER/SEWER RATES – Provide current water and sewer rates, any fixed charges, and schedule for upcoming rate increases, if any.
 - D. POPULATION DATA – Provide population estimates and projections, if any.
2. PROJECT PLAN – Prepare a Report to fulfill the project planning requirements of the PWSLP.
 - A. BACKGROUND INFORMATION – Describe the City's location, present and future service area, historical population, makeup of customer base, conditions affecting growth, and 20-year design customer base.

- B. WATER USAGE – Discuss the existing daily average and maximum water usage, current population served, and water usage by customer class. Project water usage over the 20-year planning period.
- C. EXISTING CONDITIONS – Prepare descriptions of existing public water supply source, treatment, storage, and distribution systems. Identify the condition of the existing water mains and explain why they need to be replaced. Identify existing violations, if any, of federal or State public water supply regulations.
- D. FUTURE CONDITIONS – Discuss adequacy of existing public water supply source, treatment, storage, and distribution systems to meet future demands. Identify possible future violations of federal or State public water supply regulations.
- E. PROJECT ASSESSMENT – Assess ability of proposed improvements to address identified needs of the system and maintain compliance with applicable laws and regulations.
 - 1) Proposed improvements include water main replacement.
 - 2) Work does not include selection or prioritization of water mains to be replaced. Water mains to be replaced will be identified by the City.
 - 3) Water main replacements will be completed under a single phase that will not require a multi-phased Project Plan.
- F. PRELIMINARY OPINION OF PROBABLE COST – An opinion of the probable project cost including construction, engineering services, contingencies, and, on the basis of information furnished by the City, allowances for legal services, financial consultants, and any administrative services or other costs necessary for completion of the Project.
- G. ENGINEER’S DESIGN SUMMARY – Prepare a design summary for the water main replacements listing pipe lengths, materials, and sizes.
- H. ENVIRONMENTAL IMPACTS – Prepare discussion of environmental impacts and measures required during design and construction to mitigate or minimize negative environmental impacts, including impacts to rare and endangered species, historic and cultural resources, prime agricultural land, air and water quality, recreational areas, wetlands, floodplains, and other sensitive environmental areas. Obtain environmental checklist signoffs from:
 - 1) Illinois Historic Preservation Agency, Preservation Services Division
 - 2) Illinois Department of Natural Resources, Office of Realty and Environmental Planning

- I. FINANCING ALTERNATIVES – Analyze and review the existing rate structure to assure adequate annual debt service and Operation, Maintenance, and Replacement coverage requirements.
 - 1) Description of existing water rate structure, basis of billing, current average monthly residential bill, any proposed rate changes, and any change to the average monthly residential bill as a result of the cost of the Project.
 - J. PROJECT SCHEDULE – Coordinate with the City to prepare a project schedule which shows anticipated dates of design initiation, submittal of the permit application to IEPA, advertisement, bid opening, construction start, and construction completion.
 - K. LOCATION PLAN AND SITE PLAN – Create exhibits showing the locations of water mains to be replaced in the community, along with associated structures, if any, on the project site.
 - L. AGENCY SUBMITTAL – Submit the following documents to the IEPA for their review and approval:
 - 1) Project Plan
 - 2) Project Plan Submittal Checklist
 - 3) Loan Applicant Environmental Checklist
 - M. PUBLIC NOTICE – Review the draft Public Notice prepared by IEPA and comment if necessary. Assist the City with advertising the Public Notice and transmit comments received during the public comment period.
 - N. ADMINISTRATION & MEETINGS – Confer with the City’s Director of Public Works and his staff to clarify and define the general scope, extent, and character of the Project. Coordinate with City staff and project team to ensure the goals of the Project are achieved.
 - O. PROJECT MANAGEMENT – Plan, schedule, and control the activities that must be performed to complete the Project. These activities include tracking budget, schedule, and scope.
3. LOAN ASSISTANCE – Baxter & Woodman will assist the City in preparation of an application and supporting documentation for a low-interest loan through the PWSLP that is administered by IEPA. The City and Baxter & Woodman will share in the responsibility for preparing the loan application. As part of the application:

- A. The City will prepare and assemble the financial documentation that is required to demonstrate that the City has the ability to pay back the loan. The City will also provide some of the information that is needed for the various forms; information that only the City can access or that can be accessed more easily by the City. The main financial documents are:
- 1) The dedicated source of revenue.
 - 2) The user charge ordinance.
 - 3) Information on the bond issue or other funds, if any, to repay the loan.
 - 4) The loan ordinance, which is prepared by the City attorney.
 - 5) The City attorney's legal opinion.
 - 6) Tax exempt certificate
- B. Baxter & Woodman will prepare the following administrative items:
- 1) Pre-Application for Loan Assistance for Drinking Water Facilities.
 - 2) Loan application form for approval by the City's authorized representative, including "Loan Program Certifications" for approval by the City's authorized representative.
 - a. Certification Regarding Debarment, Suspension and Other Responsibility Matters.
 - b. Intent Regarding National Flood Insurance.
 - c. Certification regarding project site, rights-of-way, easements, and permits.
 - d. Loan Applicant Acknowledgement of the Use of American Iron and Steel Products Requirement.
 - 3) Financial information checklist form for execution by the City's authorized representative.
 - 4) Federal Reporting Requirements.
 - 5) Certificate Regarding Operation & Maintenance.
 - 6) Resolution authorizing a representative to sign the loan documents.
 - 7) Project completion schedule.
 - 8) Summary of construction costs.

ENGINEERING FEE

The Owner shall pay the Engineer for the services performed or furnished, based upon the Engineer's standard hourly billing rates actual work time performed plus reimbursement of out-of-pocket expenses including travel, which in total will not exceed **\$25,000**.

The attached Standard Terms and Conditions apply to this proposal. If you find this proposal acceptable, **please sign and return one copy for our files.** If you have any questions or need additional information, please contact me. Thank you again for the opportunity to provide service to the City of DeKalb.

Sincerely,

BAXTER & WOODMAN, INC.
CONSULTING ENGINEERS



Carolyn A. Grieves, P.E.
Crystal Lake Regional Manager

Attachment

CITY OF DEKALB, ILLINOIS

ACCEPTED BY: _____

TITLE: _____

DATE: _____

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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.