



**CITY OF DELRAY BEACH
100 NW 1st AVENUE, DELRAY BEACH, FL 33444**

**AGREEMENT FOR PROFESSIONAL SERVICES
RFQ 2017-042, PROJECT NO. 16-024**

**BAXTER & WOODMAN, INC. DBA MATHEWS CONSULTING, A BAXTER
& WOODMAN COMPANY**

**AGREEMENT
FOR
PROFESSIONAL SERVICES**

AGREEMENT NO. RFQ 2017-042

THIS AGREEMENT is made and entered into this _____ day of _____, 2017

(the "effective date"), by and between the **City of Delray Beach**, a Florida municipal corporation (hereinafter referred to as "City"), whose address is 100 NW 1st Avenue, Delray Beach, Florida, 33444, and Baxter & Woodman, Inc. dba Mathews Consulting, a Baxter & Woodman Company, an Illinois corporation authorized to do business in the State of Florida (hereinafter referred to as "Consultant"), whose principal address is 477 S. Rosemary Avenue, Suite 330, West Palm Beach, Florida 33401.

WHEREAS, the City desires to retain the services of the Consultant to provide certain Professional Services in accordance with the City's Request for Qualifications RFQ 2017-042, Construction Engineering and Inspection for Area 12C Reclaimed Water, Project No. 16-024, and the Consultant's response thereto, which are attached hereto and incorporated herein as Exhibit "A".

NOW, THEREFORE, in consideration of the mutual covenants and promises hereafter set forth, the Consultant and the City agree as follows:

ARTICLE 1. INCORPORATION OF REQUEST FOR QUALIFICATIONS

The terms and conditions of this Agreement shall include and incorporate the terms, conditions, and scope of services set forth in the City's Request for Qualifications, RFQ 2017-042, and the Consultant's response to the Request for Qualifications, including all addenda and documentation required thereunder.

ARTICLE 2. SCOPE OF SERVICES

The Consultant shall provide Professional Services to the City, under the scope of services/work as defined in the Request for Qualifications RFQ 2017-042:

The successful Proposer (hereinafter in this Scope referred to as Consultant) shall provide all labor, equipment, supplies, and travel to provide Construction Engineering and Inspection services. The Scope of Services consists of the following two (2) tasks:

- Task 1 - Construction Administration
- Task 2 - Resident Project Representative Services

ARTICLE 3. COMPENSATION

Upon approval by City Commission, The City shall issue a blanket purchase order in an amount not to exceed of \$275,025 according to budget summary Prices and Rates shown in Exhibit “B”, which is attached hereto and incorporated herein.

ARTICLE 4. TERM

The term of this Agreement shall be from the effective date until twelve (12) months after the effective date, unless terminated beforehand as provided for in Article 5. Nothing contained in the Request for Qualifications or this Agreement shall be construed by the Consultant as a guarantee of work from the City. The City reserves the right to extend the Agreement for one, two-year term, providing all terms conditions and specifications remain the same, both parties agree to the extension, and such extension is approved by the City.

At the City’s request, the Consultant shall continue services beyond the final expiration date. This extension period shall not extend for more than one year beyond the final expiration date of the Agreement. The Consultant shall be compensated at the rate in effect when this extension period is invoked by the City.

ARTICLE 5. TERMINATION

a. This Agreement may be terminated by the City, with or without cause, upon providing written notice to the Consultant. This Agreement may be terminated by the Consultant upon thirty (30) days’ prior written notice to the City. Upon any such termination, the Consultant waives any claims for damages from such termination, including, but not limited to, loss of anticipated profits. Unless the Consultant is in breach of this Agreement, the City shall pay the Consultant for services rendered through the date of termination in accordance with the terms of this Agreement.

b. The continuation of this Agreement beyond the end of any fiscal year shall be subject to both the appropriation and the availability of funds in accordance with Florida law.

ARTICLE 6. ASSIGNMENT

Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other Party.

ARTICLE 7. LAW, JURISDICTION, VENUE, WAIVER OF JURY TRIAL

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. All Parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Fifteenth Judicial Circuit in Palm Beach County, Florida, and venue for litigation arising out of this

Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. **BY ENTERING INTO THIS AGREEMENT, SECOND PARTY AND CITY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

ARTICLE 8. ATTORNEY'S FEES

Any costs or expense (including reasonable attorney's fees) associated with the enforcement of the terms and for conditions of this Agreement shall be borne by the respective Parties, however, this clause pertains only to the Parties to this Agreement.

ARTICLE 9. INDEMNIFICATION

The Consultant shall indemnify and hold harmless the City and its officers, employees, agents, and instrumentalities from any and all liability, losses, or damages, including attorney's fees and costs of defense, which the City or its officers, employees, agents, or instrumentalities may incur as a result of claims, demands, suits, causes of actions, or proceedings of any kind or nature arising out of, relating to, or resulting from the performance of the agreement by the Consultant or its employees, agents, servants, partners, principals, or subcontractors. The Consultant shall pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits, or actions of any kind or nature in the name of the City, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may be incurred thereon to the extent caused by the Consultant or its employees, agents, servants, partners, principals, or subcontractors. The Consultant expressly understands and agrees that any insurance protection required by this contract agreement or otherwise provided by the Consultant shall in no way limit the responsibility to indemnify, keep and save harmless, and defend the City or its officers, employees, agents, and instrumentalities as herein provided.

ARTICLE 10. PUBLIC RECORDS

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY OF DELRAY BEACH, CITY CLERK, 100 N.W. 1ST

AVE., DELRAY BEACH FLORIDA. THE CITY CLERK'S OFFICE MAY BE CONTACTED BY PHONE AT 561-243-7050 OR VIA EMAIL AT CITYCLERK@MYDELRAYBEACH.COM. Consultant shall comply with public records laws, specifically to:

- a. Keep and maintain public records required by the City to perform the service.
- b. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Florida Statute or as otherwise provided by law.
- c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the Consultant does not transfer the records to the City.
- d. Upon completion of the Agreement, transfer, at no cost, to the City all public records in possession of the Consultant or keep and maintain public records required by the City to perform the service. If the Consultant transfers all public records to the City upon completion of the Agreement, the Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Consultant keeps and maintains public records upon completion of the Agreement, the Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.
- e. If the Consultant does not comply with this section, the City shall enforce the contract provisions in accordance with the contract and may unilaterally cancel this contract in accordance with state law.

ARTICLE 11. INSPECTOR GENERAL

Consultant is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this contract, and may demand and obtain records and testimony from Consultant and its sub licensees and lower tier sub licensees. Consultant understands and agrees that in addition to all other remedies and consequences provided by law, the failure of Consultant or its sub licensee or lower tier sub licensees to fully cooperate with the Inspector General when requested may be deemed by the City to be a material breach of this Agreement justifying its termination

ARTICLE 12. MISCELLANEOUS PROVISIONS

a. Notice Format. All notices or other written communications required, contemplated, or permitted under this Agreement shall be in writing and shall be sent by certified United States Mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgement of delivery, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the Parties designate the following:

As to the City: **City of Delray Beach**
100 NW 1st Avenue
Delray Beach, FL 33444
Attn: City Manager

With a copy to: **City of Delray Beach**
200 NW 1st Avenue
Delray Beach, Florida 33444
Attn: City Attorney

As to the Consultant: **Baxter & Woodman, Inc. dba
Mathews Consulting, a Baxter &
Woodman Company**
477 S. Rosemary Avenue, Suite 330
West Palm Beach, Florida 33401
ATTN: David L. Mathews, Vice President

b. Headings. The headings contained in this Agreement are for convenience of reference only and shall not limit or otherwise affect in any way the meaning or interpretation of this Agreement.

c. The documents listed below are a part of this Agreement and are hereby incorporated by reference. In the event of inconsistency between the documents, unless otherwise provided herein, the terms of the following documents will govern in the following order of precedence:

- i. Terms and conditions as contained in this Agreement.
- ii. Terms and conditions of RFQ 2017-042.
- iii. Consultant's response to RFQ 2017-042 and any subsequent information submitted by Consultant during the evaluation and negotiation process.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date hereinabove first written.

CITY OF DELRAY BEACH, FLORIDA

By: _____
Cary D. Glickstein, Mayor

ATTEST:

By: _____
Katerri Johnson, City Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

By: _____
R. Max Lohman, City Attorney

CONSULTANT

By: [Signature]

Title: Vice President



STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 31 day of August, 2017, by David L. Mathews as Vice President (name of officer or agent, title of officer or agent), of Mathews Consulting, a Bartter & Woodman company (name of corporation acknowledging), an Illinois (state or place of incorporation) corporation, on behalf of the corporation. He/She is personally known to me or has produced _____ (type of identification) as identification



Courtney Marshall
Notary Public – State of Florida

EXHIBIT A

RECLAIMED WATER EXPANSION – AREA 12C CONSTRUCTION MANAGEMENT

I. PROJECT DESCRIPTION

The City of Delray Beach has adopted a Reclaimed Water Master Plan (RWMP), (prepared by Mathews Consulting, Inc., October, 2003) which identifies areas of service for the City's new reclaimed water system. The purpose of the RWMP is to serve as a planning document from which a reclaimed water system can be developed in phases as capital improvements are budgeted and scheduled through a designated time frame.

The first project identified for implementation in the RWMP was "Area 1" and was placed in operation in 2005. The second project(s) identified for implementation in the RWMP were "Area 2" and "Area 3" and they were placed in operation in 2006. The third project identified for implementation in the RWMP was "Area 4" and was placed in operation in 2008. The fourth project identified for implementation was "Area 11". The Area 11 RWS was broken into Area 11A and Area 11B. The Area 11A RWS was placed in operation in late 2009 and the Area 11B RWS was placed in operation in August 2011. The fifth project identified for implementation was "Area 12". The Area 12 RWS will be broken into Area 12A (Phase 1 & 2), Area 12B and Area 12C. The Area 12A (Phase 1) was placed in operation in August 2013. The Area 12A (Phase 2) was placed in operation in August 2014. The Area 12B was placed in operation in 2016.

This Service Authorization provides construction administration services and full-time inspection services (40 hrs/week) for the Area 12C project. The project area consists of Lewis Cove, Brooks Lane, White Drive, Rhodes Villa Avenue, Del Haven Drive and S.R. A.1.A. (from Linton Blvd. to Casuarina Rd.).

II. SCOPE OF SERVICES

Phase I – Study and Report Phase

Not Applicable.

Phase II – Preliminary Design Phase

Not Applicable.

Phase III – Final Design Phase

Not Applicable.

Phase IV – Bidding/Negotiation Phase

Not Applicable.

Phase V – Construction Administration Phase

Task 5.1 - Public Outreach Meeting

Consultant shall lead a public stakeholder outreach meeting at the City's Environmental Services Building or Public Library. This shall include preparing brochures and presentation material for the meeting.

Task 5.2 - Preconstruction Conference

Consultant shall prepare the agenda and facilitate the pre-construction conference with selected Contractor and City staff. Prepare and issue written minutes of meeting.

Task 5.3 – Submittal Review

Consultant shall receive, log, and review Shop Drawing and Product submittals for general conformance with the design intent and provisions of the Contract Documents. Review of up to 75-100 submittals (total, which includes submittals and re-submittals, if required) is included in the budget for submittal review. Consultant will review and return submittals to City and Contractor within 7 to 10 days of receipt.

Task 5.4 – Bi-Weekly Meetings

Consultant shall attend construction progress meetings with the City and Contractor every 2-weeks and provide an agenda and written summary of the issues discussed. Project meetings will be conducted by the Construction Manager with the Resident Project Representative also in attendance. Following the meeting, the Construction Manager will prepare and distribute meeting minutes (within 24 to 36 hours after meeting) to the City and other attendees. Meetings will be held at the City facilities. Twenty-four (24) progress meetings are included in the budget for this task.

Task 5.5 – Pay Estimate Review

Consultant shall review monthly payment applications (total of 12) submitted in a format acceptable to the City. Consultant shall verify the quantities as represented on the pay request and make a recommendation to the City to proceed, with the payment as requested, or as modified based on Consultant review. A 12-month construction period is assumed in budgeting this task.

Task 5.6 – Construction Administration

Consultant's Construction Manager shall provide all construction administration required for the Contract. The Construction Manager will also visit the project site an average of 8 hours a month for the twelve (12) month construction time frame.

Item 5.7 – Construction Schedule Review

Consultant shall monitor the construction schedule monthly and report to the City conditions which may cause delay in completion.

Item 5.8 – Construction Clarifications

Consultant shall respond in writing to Contractor's Request For Information (RFI) regarding the design documents. Consultant shall issue interpretations and clarifications of the Contract Documents, along with associated support materials, as requested by the Contractor. These interpretations will be rendered and a response prepared and submitted to the Contractor within one week.

Item 5.9 – Construction Changes

Consultant shall Prepare and negotiate Change Orders (CO) and Field Change Directives (FCD) during the 12-month construction period.

Item 5.10 – Certification of Construction Completion

Consultant shall certify to PBCHD, FDOT and SFWMD based on visible project features inspections, and review of testing reports that the project was constructed in accordance with the plans and specifications submitted in the permit applications. Certification will also include that water services were properly pressure tested and bacteriologically sampled to allow a "request for release of facilities to be placed into service" to be filed with the PBCHD. It is assumed that up to 5 partial releases and one final release will be prepared for PBCHD.

Task 5.11 - Substantial and Final Inspections

In conjunction with City staff, Consultant shall make preliminary and final inspections and assist in the preparation of a Contractor "punch list" to achieve Substantial Completion. Consultant shall review completion of identified punch list items to assist in the determination that Substantial Completion has been achieved by the Contractor. Consultant shall advise the City that Final Acceptance of the project has been reached in accordance with the Contract Documents.

Item 5.12 – Record Drawings

Consultant shall review monthly as-builts from the Contractor. The Contractor shall prepare final Record Drawings at the completion of the project.

Item 5.13 – Grant Assistance

SFWMD and FDEP Grants. Consultant shall prepare any and all necessary Grant information for the Compliance with any and all SFWMD and FDEP Grants (e.g., financial reports, quarterly reports).

Item 5.14 – Create Web Site

Consultant shall create a project web site that can be linked back to the City's web site. The web site will describe the specifics of the overall project and provide emergency numbers.

Item 5.15 – Update Web Site (every 2-weeks)

Consultant shall update the web site every 2-weeks to provide the residents an update on the project and provide locations of upcoming work.

Phase VI – Resident Project Representative Phase

Item 6.1 – Inspections

Consultant shall provide a full-time (40 hours/week) Resident Project Representative (RPR) during the construction (assumed 12-months) of the work in a total period of not-to-exceed 264 working days (for a total of 2,112 hours) for the construction contract. Activities performed by Consultant under this task consist of furnishing an RPR during the construction of the project, to observe the quality of the construction work, and to determine, in general, if the construction is proceeding in accordance with the contract documents so that an engineering certification can be made regarding the construction of the proposed improvements.

The RPR shall:

- Serve as Consultant's liaison with construction contractor, working principally through the contractor's superintendent and assisting him in understanding the intent of the contract documents.
- Conduct on-site observations of the work in progress to assist in determining if the work is proceeding in accordance with the contract documents and that completed work conforms to the contract documents. Consultant's Project Manager shall report, in writing to the City, whenever Consultant believes that work is unsatisfactory, faulty or defective, or does not conform to the contract documents, or does not meet the requirements of inspections, tests or approval required to be made, or has been damaged prior to final payment.
- Accompany visiting inspectors representing public or regulatory agencies having jurisdiction over the project. Record, in writing, the outcome of these inspections and report same to City.
- Consider and evaluate construction contractor's suggestions for modifications in drawings or specifications and report them to the City, in writing. Consultant shall make recommendation for action by the City.
- Review Contractor As-Built information on a monthly basis to confirm proper updates are being made.
- Observe, approve and certify all flushing and pressure testing of the piping.

- Assist the Contractor in coordinating all required density testing, etc. as required by the Construction Documents.
- RPR shall work with the Contractor and develop a Daily Quantity Sheet (based on the approved Schedule of Values) to be reviewed and accepted each day agreeing to the quantities of Schedule of Value items installed.

LIMITATIONS OF AUTHORITY

Limitations of RFP Authority. Except upon written instructions of Consultant, RFP:

1. Shall not exceed limitations on Consultant's authority as set forth in the Contract Documents.
2. Shall not undertake any of the responsibilities of Contractor, Subcontractors or Construction Manager, or expedite the Work.
3. Shall not issue directions relative to any aspect of the means, methods, techniques, sequences or procedures of construction unless such is specifically called for in the Contract Documents.
4. Shall observe but not participate in specialized field or laboratory tests.

ASSUMPTIONS

Work described herein is based upon the assumptions listed below. If conditions differ from those assumed in a manner that will affect schedule of Scope of Work, Consultant shall advise City in writing of the magnitude of the required adjustments. Changes in completion schedule or compensation to Consultant will be negotiated with City.

1. The Contract Documents will be prepared as a single contract. No pre-purchase of materials and/or equipment is presumed.
2. The construction duration is 360 calendar days.
3. Full-time inspections are based on a maximum of 40 hrs/week.
4. Assisting the City in the settlement of construction contract claims is considered Additional Services and is not included in this Scope of Services

ADDITIONAL SERVICES

Consultant shall provide additional engineering services relating to the provision of surveying, geotechnical, sanitary, water, reclaimed water, and drainage improvements to the project area that are not covered under this Service Authorization. These additional services may be required due to uncertainties discovered during survey, soils, investigations, field verification of existing facilities and conditions, and potential property or easement acquisitions.

Services performed under this task will be on as-directed basis in accordance with a written Notice-to-Proceed from the City Manager. The Notice-to-Proceed issued shall contain the following information and requirements:

1. A detailed description of the work to be undertaken.

2. A budget establishing the amount of the fee to be paid in accordance with the Agreement.
3. A time established for completion of the work.

III. TIME OF PERFORMANCE

The completion dates for this work will be as follows (starting at written notice-to-proceed). Refer to Attachment A.

<u>Engineering Services</u>	<u>Time per Phase</u>	<u>Cumulative Time</u>
Phase V – Construction	360 days	360 days
Phase VI – Resident Project Representative	360 days	360 days

VI. COMPENSATION

The compensation for services provided shall be billed on an hourly basis plus reimbursable expenses for each phase of work in accordance with Article VII, Method II, up to the following not to exceed cost for each phase. Refer to *Attachment B* for budget summary.

<u>Engineering Services</u>	<u>Estimated Fees</u>
Phase V – Construction Administration	\$ 81,945.00
Phase VI – RPR Services	\$ 190,080.00
Out-of-Pocket Expenses	<u>\$ 3,000.00 ⁽¹⁾</u>
TOTAL PROJECT COST	\$ 275,025.00

Notes:

⁽¹⁾*Out-of-Pocket Expenses include the following: printing/reproduction and postage.*

