



Cover Memorandum/Staff Report

File #: 21-725

Agenda Date: 8/10/2021

Item #: 6.M.

TO: Mayor and Commissioners
FROM: Missie Barletto, Public Works Director
THROUGH: Terrence R. Moore, City Manager
DATE: August 10, 2021

APPROVAL OF AMENDMENT NO. 2 TO BAXTER & WOODMAN, INC. FOR ADDITIONAL CONSTRUCTION, ENGINEERING, AND INSPECTION SERVICES (CEI) FOR THE OSCEOLA PARK NEIGHBORHOOD IMPROVEMENT PROJECT IN THE AMOUNT OF \$172,000 (PROJECT NO. 16-095)

Recommended Action:

Motion to Approve Amendment No. 2 to the Agreement with Baxter & Woodman, Inc. for additional Construction, Engineering, and Inspection Services (CEI) for the Osceola Park Project, in the amount of \$172,000, for a total contract amount not to exceed \$1,155,865.

Background:

On March 3, 2020, City Commission approved Resolution No. 40-20 to Baxter & Woodman, Inc. (BWI) for Professional Construction, Engineering and Inspection Services (CEI) for the construction of the Osceola Park Neighborhood Improvement Project (Phase I) in the amount of \$495,953.

On January 5, 2021, City Commission approved the First Amendment to the Agreement in the amount of \$487,912 to implement Phase II CEI Services.

Due to construction delays, the City has determined that it is in its best interests to amend the CEI Agreement to add additional services for construction administration and inspection services. This Amendment for additional services will be funded with existing funds from the Contractor's Construction Contract Contingency.

This motion is in accordance with the City Code of Ordinances, Section 36 and City Policies and Procedures, Change Orders and Amendments.

Attachments:

Legal Review Checklist
Amendment No. 2
Amendment No. 1
Advertised RFQ No. 2019-051

City Attorney Review:

Approved as to form and legal sufficiency.

Funding Source:

Funding is available from 334-41-340-541.63-20 (Capital Outlay Osceola Pk. / Other Landscp. Beaut.) The funding will be transferred from the Contractor's Construction Contract Contingency to this agreement for Construction Administration Services.

Timing of Request:

Approval of this amendment is time sensitive.



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

AMENDMENT NO. 2 TO
RFQ 2019-051 CONSTRUCTION ENGINEERING AND INSPECTION
SERVICES FOR OSCEOLA PARK NEIGHBORHOOD
IMPROVEMENT PROJECT

BAXTER & WOODMAN, INC.

CITY OF DELRAY BEACH
AMENDMENT NO. 2 TO
CONSTRUCTION ENGINEERING AND INSPECTION SERVICES
FOR THE OSCEOLA PARK NEIGHBORHOOD IMPROVEMENT PROJECT

THIS AMENDMENT NO. 2 to the Consulting Agreement for Construction Engineering and Inspection Services for the Osceola Park Neighborhood Improvement Project, dated March 3, 2020, by and between City of Delray Beach, a municipal corporation of the State of Florida (hereinafter referred to as "City"), and Baxter & Woodman, Inc. (hereinafter referred to as "Contractor"), an Illinois corporation authorized to do business in the State of Florida, is entered into this 10th day of August, 2021.

WITNESSETH:

WHEREAS, on March 3, 2020, the City entered into an agreement with Consultant for professional services (hereinafter referred to as the "Agreement"); and

WHEREAS, on January 5, 2021, the City entered into the first amendment to the Agreement with Consultant for additional professional services (hereinafter referred to as the "First Amendment"); and

WHEREAS, the City desires to further amend the Agreement to add additional construction administration and inspection services; and

WHEREAS, Consultant agrees to continue to provide services to City in accordance with the terms and conditions of the Agreement.

NOW, THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, the parties do agree that the Agreement is amended as follows:

1. The above recitals are true and correct and are incorporated herein.
2. This Amendment No. 2 adds additional construction, engineering, and inspection services for the professional fees as further defined in Attachment "A", which is incorporated herein.
3. Except as provided herein, all other terms and conditions of the Agreement remain in full force and effect and are hereby confirmed. The Agreement, Amendment No. 1 and this Amendment No. 2 represent the entire understanding between the parties on the issues contained herein, either written or oral, and may only be amended by written instrument signed by both parties.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the City and Consultant hereto have executed this Amendment as of the day and year first above written.

ATTEST:

CITY OF DELRAY BEACH

Katerri Johnson
Katerri Johnson, City Clerk

BY: Shelly Petrolia
Shelly Petrolia, Mayor

Approved as to form for legal sufficiency:
Lynn Gelin
Lynn Gelin, City Attorney

BAXTER AND WOODMAN, INC.

By: Rebecca Travis
Rebecca Travis, P.E.

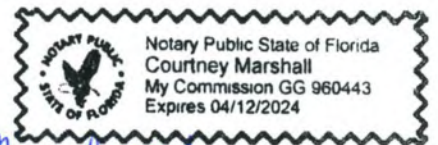
Printed Name
Executive Vice President
Title



STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 28 day of June, 2021, by Rebecca Travis, (name of person), as Executive Vice President (type of authority) for Baxter & Woodman, Inc. (name of party on behalf of whom instrument was executed).

Personally known OR Produced Identification
Type of Identification Produced



Courtney Marshall
Notary Public – State of Florida

CITY OF DELRAY BEACH

CONSULTING SERVICE AUTHORIZATION

DATE: June 18, 2021

SERVICE AUTHORIZATION NO. RFQ No. 2019-051 FOR CONSULTING SERVICES

CITY P.O. NO. 2020-00001082 CITY EXPENSE CODE: _____

CITY PROJECT NO. 16-095 CONSULTANT PROJECT NO. 191293.60

TITLE: Osceola Park Neighborhood Improvements – Amendment No. 2

This Amendment No. 2 when executed, shall be incorporated in and shall become an integral part of the Agreement.

TITLE: Agreement for CEI Services

A. BACKGROUND

This Amendment No. 2 includes an extension to our Construction Engineering & Inspection Services (CEI) to accommodate Time Extensions issued to the Contractor, as well as additional delays beyond the Contract Completion Duration. The original agreement for CEI Services covered under Service Authorization for RFQ No. 2019-051 assumed a 12-month construction duration. This Amendment No. 2 will supplement CEI Services Budget in the amount of \$172,000.00 for approximately four (4) additional months of construction. If approved by the City, we will shift the above listed amount from the Construction Contract Contingency under Pay Item 132 that was associated with PO #2020-00001085 (see attached letter):

B. SCOPE OF SERVICES

The CEI Services included in this Amendment No. 2 shall include the following tasks:

- Task 1 – Construction Administration Services
- Task 2 – Construction Inspections

The specific scope of services to be provided by B&W in this Amendment No. 2 includes the following:

TASK 1 – CONSTRUCTION ADMINISTRATION SERVICES

The general administration services during construction of the projects shall include the following tasks:

Subtask 1.2 Shop Drawing Submittal Review

CEI shall review and process shop drawings, samples, schedules, certifications and any other data which the construction contractor is required to submit. The review will be for conformance with the design concept and compliance with the construction contract documents. Consultant will submit approved shop drawings/submittals to CITY for their records. The submittals shall be in electronic format.

Subtask 1.3 Progress Meetings

CEI shall attend construction progress meetings with the City and Contractor every month 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 depending on work activities. Following the meeting, the Construction Manager will prepare and distribute meeting minutes to the City and other attendees. Meetings will be held at the City facilities (or through virtual meetings if social distancing measures are in place). An additional four (4) progress meetings are included in the budget for this task.

Subtask 1.4 Pay Estimate Review

CEI shall review monthly payment applications submitted in a format acceptable to the City. CEI 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 CEI review. An additional 4-months is assumed for this task.

Subtask 1.5 Construction Schedule Review

CEI shall monitor the construction schedule monthly for the additional 4-months of construction and report to the City conditions which may cause delay in completion. If Schedule slippage is identified, the CEI will notify the Contractor in writing and request the Contractor to provide a recovery plan.

Subtask 1.6 Construction Clarifications

Respond in writing to Contractor's Request for Information (RFI) regarding design documents during the estimated additional 4-months of construction. CEI shall issue interpretations and clarifications of the Contract Documents, along with associated support materials, as requested by the Contractor. Those interpretations will be rendered and a response prepared and submitted to the Contractor within a targeted time-frame of 5 working days.

Subtask 1.7 Construction Claims and Changes

CEI shall Prepare and negotiate City requested or Contractor initiated Change Orders (CO) and Additional Work Authorizations (AWA) as required during the additional 4-month construction period.

CEI will also review and respond to all Contractor Delay Claims or Requests for Compensation, and respond per the Contract Documents.

Subtask 1.9 Public Outreach

CEI shall create and maintain a resident/business owner complaint log during the additional 4-months of construction. CEI will coordinate the issues with the CITY and Contractor; and will track resolution of all matters.

Social Media Posts updating the project will be conducted on a weekly basis.

TASK 2 – RESIDENT PROJECT REPRESENTATIVE SERVICES

The Construction Inspections phase services to be provided by B&W include the following:

- CEI shall provide Two (2) Full Time Inspectors during construction of the additional work for the construction contract (assumed 4-months). The Inspectors shall be full-time (40 hours/week) for the additional 4-month construction period. Activities performed by Consultant under this task consist of furnishing an Inspector 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. Serve as CEI's liaison with construction contractor, working principally with the Contractor's Superintendent and assist 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. Report, in writing, whenever CEI 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 CITY, in writing. CEI shall make recommendation for action by the CITY.
- Review Contractor As-Built information on a monthly basis to confirm updates are being made.
- Review all Contractor's specified test results performed by Professional Geotechnical Company.

LIMITATIONS OF AUTHORITY

Except upon written instructions of City or CEI Engineer, Resident Project Representative:

1. Shall not authorize any deviation from the Contract Documents or approve any substitute materials or equipment.
2. Shall not exceed limitations on Engineer's authority as set forth in the Contract Documents.
3. Shall not undertake any of the responsibilities of Contractor, Subcontractors or Construction Manager, or expedite the Work.
4. Shall not advise on or 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.
5. Shall not advise on or issue directions as to safety precautions and programs in connection with the Work.
6. Shall not participate in specialized field or laboratory tests.

C. ASSUMPTIONS

In addition to the work items discussed above, the following assumptions were made in establishing the scope of this Contract and associated fee. Changes and/ or modifications in the above work items or these assumptions are considered an Additional Services Item under the terms of the contract. Assumptions include:

1. The CEI assumes that the Contractor can reach Contract Completion in the additional time allotted for this Amendment. CEI does not guarantee this to be the case, nor does the CEI control the Contractor's Schedule to complete the work.

D. ADDITIONAL SERVICES

The following are examples of some specific Additional Services Items that may be required, but are not included within this Amendment. Generally, a condition contrary to the work description in Section B or assumptions of Section C (upon which the Contract fee is based) is considered an Additional Services Item. Examples include:

1. Additional supervision or construction observation in excess of that specified in this Contract.
2. Assisting the CITY in the settlement of unforeseen construction contract claims above what is listed in the original contract will be an additional service.

These and other services can be provided, if desired by the CITY, under separate Contract(s) or by an amendment to this Contract. Services performed will be on an as-directed basis in accordance with a written Notice to Proceed from the CITY.

E. COMPENSATION

Compensation for the Amendment No. 2 services by the CITY to B&W for all tasks will be on a Lump Sum basis in accordance with the above mentioned Agreement. The estimated compensation for the services described in this Contract is \$172,000.00 for the services as shown in Table 1 below.

TABLE 1: LABOR AND EXPENSE SUMMARY

AMENDMENT NO. 2	Total Cost
Task 1 – Construction Administration Services	\$25,800.00
Task 2 – Construction Inspections	\$146,200.00
Reimbursables	\$0.00
Total – AMENDMENT NO. 2 CEI Services	\$172,000.00

This Amendment No. 2 is approved contingent upon the City's acceptance of and satisfaction of the completion of the services rendered in the previous phase whereas encompassed by the previous Service Authorization. If the City in its sole discretion is unsatisfied with the services provided in the previous phase or Service Authorization, the City may terminate the contract without incurring any further liability. The Consultant shall commence work upon City approval and this to be included as part of the contract without any notice to proceed.

BAXTER & WOODMAN:

Date: 6/18/2021

Rebecca Travis, P.E., Executive Vice President / Florida Division Manger

Witness

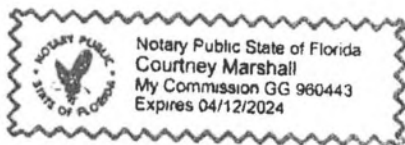
Witness

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 18 day of June, 2021 by Rebecca, Executive Vice President of Baxter & Woodman Company, an Illinois corporation, on behalf of the corporation. He/She is (personally known to me) or (has produced identification), Florida Driver's License

and (did/did not) take an oath

Signature of person taking acknowledgement



June 18, 2021
Via Email Only

Ms. Begona Krane
City of Delray Beach
434 S. Swinton Avenue
Delray Beach, FL 33444

**Subject: Amendment #2
Project #16-095
Osceola Park Neighborhood Improvements – Phase 1
PO #2020-00001085 – Ric-Man Construction, Inc., Construction Contract
PO #2020-00001082 – CEI Services**

Dear Begona,

Please accept this letter as a request to shift contract task billing amounts on the above referenced project. We would like to shift the following funds from the Construction Contract Contingency under the PO #2020-00001085:

Osceola Park – Phase 1 Construction Contract - PO #2020-0000-1085

Pay Item 132 – Undefined Contingency Allowance	\$172,000.00
TOTAL	\$172,000.00

These funds would be transferred to the CEI Services PO #2020-00001082, to cover construction administration and inspection services necessary due to the contract time extending longer than anticipated. The breakdown is as follows:

Osceola Park – Phase 1 CEI Services - PO #2020-00001025

Task 01 - CMS	\$25,800.00
Task 02 - RPR (Inspections)	\$146,200.00
TOTAL	\$172,000.00

Note that the contract total compensation to Baxter & Woodman would increase by \$172,000.00.

If you have any questions, please contact me. Thank you.



Sincerely,

Baxter and Woodman, Inc.

A handwritten signature in black ink, appearing to read "Rebecca Travis".

Rebecca Travis, P.E.
Executive Vice President / Florida Division Manager

Cc: Aaron Cutler – B&W
B&W File DELBC/191293.60/Docs/delrayletter01FundBalance

**CITY OF DELRAY BEACH
(DEDUCTIVE) CHANGE ORDER TO ORIGINAL CONTRACT**

CHANGE ORDER NO. 1

PROJECT NO. 16-095

DATE: June 1, 2021

PROJECT TITLE: Osceola Park Neighborhood Improvements

TO CONTRACTOR: Ric-Man Construction, Inc.

YOU ARE HEREBY REQUESTED TO MAKE THE FOLLOWING CHANGES IN THE PLANS AND SPECIFICATIONS FOR THIS PROJECT AND TO PERFORM THE WORK ACCORDINGLY, SUBJECT TO ALL CONTRACT STIPULATIONS AND COVENANTS.

JUSTIFICATION:

(Deductive) Change Order No. 1 in the amount of \$172,000 for the following items:

- 1) City's direction to deduct \$172,000 from the Contract Unforeseen Conditions and Contingency Allowance line item to account for additional funding for extension of CEI Engineering Services. The additional costs are to cover CEI Costs beyond the original Contract Duration and Scope of Services.

The above items shall be funded from the following contingency line item in the construction contract **(\$500,000.00)**.

SUMMARY OF CONTRACT AMOUNT/CHANGES

ORIGINAL CONTINGENCY CONTRACT AMOUNT	\$ 4,056,327.00
COST OF CONSTRUCTION CHANGE ORDERS PREVIOUSLY ORDERED	\$ 0.00
ADJUSTED CONTRACT AMOUNT PRIOR TO THIS CHANGE ORDER	\$ 4,056,327.00
ADJUSTED CONTRACT AMOUNT INCLUDING THIS DEDUCTIVE CHANGE ORDER	\$ 3,884,327.00
ORIGINAL UNFORESEEN CONDITIONS ALLOWANCE AMOUNT	\$ 500,000.00
DEDUCTIVE AMOUNT FOR CHANGE ORDER No. 1	\$ 172,000.00
TOTAL COST OF AWA 001 CONTINGENCY AMOUNT	\$ 80,600.10
PROJECTED COST OF AWA 002 CONTINGENCY AMOUNT (Pending T&M Submittal)	\$ 90,000.00
PROJECTED REMAINING CONTINGENCY CONTRACT AMOUNT	\$ 157,399.90

ADJUSTED ADDITIONAL CONTRACT TIME FOR THIS CHANGE ORDER Zero (0) Calendar Days

PERCENT INCREASE CONTRACT AMOUNT - 0.00%

Substantial Completion Date: 04/05/2021

Final Completion Date: 05/20/2021

CERTIFIED STATEMENT: I hereby certify that the supporting cost data included is, in my considered opinion, accurate and that the prices quoted are fair and reasonable.

Aaron Cutler
CEI/Consultant/PM Signature

06/11/21
Date

[Signature]
Contractor Signature

6/10/2021
Date

Missie Barletto, Director Public Works

Date

TO BE FILLED OUT BY DEPARTMENT INITIATING CHANGE ORDER

Funding is available from the original Contract Contingency Line Item: N/A – No Additional Funding is Required.