

**RESOLUTION  
R 47-22**

**A RESOLUTION AUTHORIZING SIGNATURE OF  
PRESIDENT AND CLERK ON AN AGREEMENT**

**WHEREAS**, the Corporate Authorities of the Village of Lombard have received an Agreement between the Village of Lombard, and Baxter & Woodman Consulting Engineers regarding professional engineering services for the 22<sup>nd</sup> Street Manhole Improvements Design Engineering as attached hereto and marked Exhibit "A"; and

**WHEREAS**, the Corporate Authorities deem it to be in the best interest of the Village of Lombard to approve such agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LOMBARD, DU PAGE COUNTY, ILLINOIS as follows:

**SECTION 1:** That the Village President be and hereby is authorized to sign on behalf of the Village of Lombard said agreement as attached hereto.

**SECTION 2:** That the Village Clerk be and hereby is authorized to attest said agreement as attached hereto.


Adopted this 17<sup>th</sup> day of November, 2022.

Ayes: Trustee LaVaque, Puccio, Dudek, Honig, Militello and Bachner

Nays: None

Absent: None

Approved by me this 17<sup>th</sup> day of November, 2022.

  
**Keith Giagnorio**  
**Village President**

ATTEST:

  
**Elizabeth Brezinski**  
**Village Clerk**

November 2, 2022

Mr. Dave Gorman, PE  
Assistant Director of Public Works  
Village of Lombard  
255 E. Wilson Ave  
Lombard, IL 60148-8222

**Subject: Village of Lombard – 22<sup>nd</sup> Street Manhole (MH 620137) – Design Services**

Dear Mr. Gorman,

The Village of Lombard is investing in improvements to the capacity of its collection system due to the accumulating costs of handling Sanitary Service Overflows, loss of service, and the desire for additional development in the area. The Project includes improvements to Manhole #620137 and the Yorktown Lift Station Force Main discharge configuration to Manhole #620137.

Below is the expanded design scope of services from our Proposal, which we consider appropriate and necessary for the proper performance and completion of the Project.

**Scope of Services:**

**Preliminary Engineering Phase**

1. Attend Village kickoff meeting.
2. Consultation with the Village to determine the requirements of the Project and review data in possession of the Village including the 22nd Street Trunk Sewer Capacity Study (2020).
3. Collect data for drainage and pavement analysis. Drainage data will be collected in accordance with the DuPage County Stormwater Ordinance. Pavement analysis will be performed as needed.
4. Perform a JULIE Design Stage Locate to coordinate the design with existing utilities.
5. Prepare topographic design survey and base sheets. We will use NAVD88 for vertical datum and State Plane coordinates for horizontal datum.
6. Prepare preliminary design parameters and recommended standards (assume IDOT, Village, or FHWA standards as default). Preliminary design standards will also be prepared in accordance with Illinois Urban Manual, Illinois Recommended Standards for Water and Sewer Construction, Ten State Standards for Wastewater, and Illinois State Title 35 Code.
7. Perform geotechnical reports either as the prime consultant or through a subconsultant. We will retain a geotechnical subconsultant to perform soil borings and provide a geotechnical report. The geotechnical subconsultant will also provide CCDD testing and provide the LPC-663 signoff.

8. Determine permit requirements for the improvements. We anticipate permitting coordination with the Illinois Environmental Protection Agency.
9. Prepare a draft Preliminary Design Report (PDR) and final PDR for review and approval.
10. The PDR should address the limits of construction while taking into account the Village's budget for the Project. These documents should also include preliminary estimates of construction cost and construction duration.

#### **Design Engineering Phase**

1. The Engineer will prepare contract documents in the appropriate format, which will include construction documents, bid forms, instructions to bidders, contract bid form, bonding and insurance requirements, and applicable State or Federal compliance requirements. Assistance by the Engineer in the preparation of other related documents such as plats of easement will be performed as needed. The Project Manual and Plans will be prepared in Village of Lombard standard format.
2. During the term of the contract, the Engineer will submit the plans, special provisions, and cost estimates for review and approval at completion intervals of 95% and final bid documents.
3. The work shall be designed in all aspects to meet all applicable design criteria for the appropriate road classification, inclusive of full plans and specifications in standard units (non-metric). Review meetings will be attended after the Village reviews are complete at each completion interval. Meetings may be virtual or in-person. The design shall also meet all applicable Village criteria and use standards and best practices from FHWA, IDOT, MUTCD, and other applicable publications. Preliminary design standards will also be prepared in accordance with Illinois Urban Manual, Illinois Recommended Standards for Water and Sewer Construction, Ten State Standards for Wastewater, and Illinois State Title 35 Code.
4. The Engineer will perform the timely preparation and submittal of all required permits. We anticipate permitting coordination with the Illinois Environmental Protection Agency.

#### **Schedule**

The proposed work will be completed between November 2022 and February 2023.

#### **Engineering Fee**

Our engineering fee for the above stated scope of services will be based on our hourly billing rates for actual work time performed plus reimbursement of out-of-pocket expenses, including travel costs which in total will not exceed \$28,510.

Thank you for the opportunity to submit our Proposal for this Project. 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. Please contact Shane at 815-444-3395 or [sfirsching@baxterwoodman.com](mailto:sfirsching@baxterwoodman.com) if you should have any questions or need additional information.

Sincerely,

BAXTER & WOODMAN, INC.  
CONSULTING ENGINEERS

John V. Ambrose, PE  
Executive President

Attachment

**VILLAGE OF LOMBARD, ILLINOIS**

AUTHORIZED BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

\\corp.baxwood.com\project\Azure\LOMBD\222311-22nd Street  
Manhole\Contracts\Work\222311.40\_Proposal\_22ndStreetMH620137\_DS.docx

## STANDARD TERMS AND CONDITIONS

PLEASE READ THESE STANDARD TERMS AND CONDITIONS ("TERMS") CAREFULLY BEFORE EXECUTING THE LETTER PROPOSAL PRESENTED BY BAXTER & WOODMAN, INC. ("BW"). BY EXECUTING THE LETTER PROPOSAL, OWNER AGREES TO BE BOUND BY THESE TERMS, THE PROVISIONS OF THE LETTER PROPOSAL, AND THE PROVISIONS OF ANY DOCUMENT REFERRING TO THESE TERMS OR THE LETTER PROPOSAL, ALL OF WHICH SHALL COLLECTIVELY CONSTITUTE THE "AGREEMENT".

**Owner's Responsibility** – Provide BW with all criteria and full information for the "Project", which is generally otherwise identified in the Letter Proposal. BW will rely, without liability, on the accuracy and completeness of all information provided by the Owner (as defined in the Letter Proposal) including its consultants, contractors, specialty contractors, subcontractors, manufacturers, suppliers and publishers of technical standards ("Owner Affiliates") without independently verifying that information. The Owner represents and 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 Letter 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, any Owner Affiliate, or force majeure event, BW's work shall be extended and the rates and amounts of BW's compensation shall be equitably adjusted in a written instrument executed by all Parties.

**Invoices and Payments** - The fees to perform the proposed scope of services constitutes BW's estimate to perform the agreed upon scope of services. Circumstances may dictate a change in scope, and if this occurs, an equitable adjustment in compensation and time shall be agreed upon by all Parties by written agreement. No service for which added compensation will be charged will be provided without first obtaining written authorization from the Owner. BW invoices shall be due and owing by Owner in accordance with the terms and provisions of the State of Illinois Local Government Prompt Payment Act (50 ILCS 505/1 et seq.).

**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 or contractor's methods of determining prices, or over competitive bidding, or market conditions. BW cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from BW's opinion of probable construction costs.

**Standards of Performance** – (1) The standard of care for all services performed or furnished by BW will be the same care and skill ordinarily used by professionals practicing under similar circumstances, at the same time and in the same locality on similar projects. BW makes no warranties, express or implied, in connection with its services; (2) BW shall be responsible for the technical accuracy of its services and documents; (3) BW shall use reasonable care to comply with applicable laws, 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's 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 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; (6) BW 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; (7) BW is not acting as a municipal advisor as defined by the Dodd-Frank Act. BW shall not provide advice or have any responsibility for municipal financial products or securities; (8) BW is not responsible for the acts or 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; (9) Shop drawing and submittal review by BW shall apply only to 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 contract 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; (10) 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, information shall be communicated to the contractor and Owner for them to address.

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

Worker's Compensation:	Statutory Limits	Excess Umbrella Liability:	\$10 million per claim and aggregate	General
Liability:	\$1 million per claim	Professional Liability:	\$5 million per claim	
	\$2 million aggregate		\$5 million aggregate	
Automobile Liability:	\$1 million combined single limit			

In no event will BW's collective aggregate liability under or in connection with this Agreement or its subject matter, based on any legal or equitable theory of liability, including breach of contract, tort (including negligence), strict liability and otherwise, exceed the contract sum to be paid to BW's under this Agreement. Any claim against BW arising out of this Agreement may be asserted by the Owner, but only against the entity and not against BW's directors, officers, shareholders or employees, none of whom shall bear any liability and may not be subject to any claim.

**Indemnification and Mutual Waiver** – (1) To the fullest extent permitted by law, BW shall indemnify and hold harmless the Owner and its officers and employees from claims, costs, losses, and damages (“Losses”) arising out of or relating to the Project, provided that such Losses are 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 grossly negligent act or omission of BW; (2) To the fullest extent permitted by law, Owner shall indemnify and hold harmless BW and its officers, directors, employees, agents and consultants from and against any and all Losses (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project provided that any such Losses are 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 arising out of or occurring in connection with the Owner’s, or Owner’s officers, directors, employees, consultants, agents, or others retained by or under contract to the Owner, negligent act or omission, willful misconduct, or breach of this Agreement; (3) To the fullest extent permitted by law, Owner and BW waive against each other, and the other’s employees, officers, directors, insurers, and consultants, any and all claims for or entitlement to special, incidental, indirect, enhanced, punitive, or consequential damages, in each case regardless of whether such party was advised of the possibility of such losses or damages or such losses or damages were otherwise foreseeable, and notwithstanding the failure of any agreed or other remedy of its essential purpose; (4) In the event Losses or expenses are caused by the joint or concurrent fault of the BW and Owner, they shall be borne by each party in proportion to its respective fault, as determined by a mediator or court of competent jurisdiction; (5) The Owner acknowledges that BW is a business corporation and not a professional service corporation, and further acknowledges that the corporate entity, as the party to this contract, expressly avoids contracting for individual responsibility of its officers, directors, or employees. The Owner and BW agree that any claim made by either party arising out of any act of the other party, or any officer, director, or employee of the other party in the execution or performance of the Agreement, shall be made solely against the other party and not individually or jointly against such officer, director, or employees.

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

**Use of Documents** – All BW documents (data, calculations, reports, Drawings, Specifications, Record Drawings and other deliverables, whether in printed form or electronic media format, provided by BW to Owner pursuant to this Agreement) are instruments of service and BW retains ownership and property interest therein (including copyright and right of reuse). Owner shall not rely on such documents unless in printed form, signed or sealed by BW or its consultant. Electronic format of BW’s design documents may differ from the printed version and BW bears no liability for errors, omissions or discrepancies. Reuse of BW’s design documents is prohibited and Owner shall defend and indemnify BW from all claims, damages, losses and expenses, including attorney’s fees, consultant/expert fees, and costs arising out of or resulting from said reuse. Project documents will be kept for time periods set forth in BW’s document retention policy 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 Owner or BW to any third party, including any lender, contractor, 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 Owner 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 executives who have authority to settle the dispute for a period of thirty (30) days. If unresolved, disputes shall be then submitted to mediation as a condition precedent to litigation. The mediation session shall be held within forty-five (45) days of the retention of the mediator, and last for at least one (1) full mediation day, before any party has the option to withdraw from the process. If mediation is unsuccessful in resolving a Dispute, then the parties may seek to have the Dispute resolved by a court of competent jurisdiction.

**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 and/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 expresses 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; (7) this Agreement, together with any other documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter; (8) no amendment to or modification of this Agreement is effective unless it is in writing and signed by each party.