



MASTER SERVICES AGREEMENT

THIS AGREEMENT is made and entered into effective _____, 2020 (the "Agreement Date") by and between:

"CLIENT"

Name: CITY OF CLEARWATER, FL
Address: 100 South Myrtle Avenue, Clearwater, FL 33758
Phone: (727) 562-4530 Fax: (727) 562-4535
Representative: Jay Ravins, Finance Director

"STANTEC"

Name: STANTEC CONSULTING SERVICES INC.
Address: 777 S. Harbour Island Blvd., Suite 600, Tampa, FL
Phone: (813) 204-3331 Fax:
Representative: Andrew Burnham, Vice President

WHEREAS this **MASTER SERVICES AGREEMENT** ("AGREEMENT") is between STANTEC CONSULTING SERVICES INC. ("STANTEC") and CITY OF CLEARWATER, FL ("CLIENT") for Services to be provided by STANTEC on projects as described in the Individual Task Order issued pursuant to this AGREEMENT (which sections are incorporated into this AGREEMENT).

NOW THEREFORE, in consideration of the mutual promises hereinafter contained, it is hereby agreed as follows:

CLIENT'S Request for Proposal #14-20 ("RFP #14-20"), titled Utility Rate Study Services, and STANTEC'S response to RFP #14-20 submitted on February 11, 2020 are incorporated by reference to this AGREEMENT and the parties agree to be bound by those documents' terms.

To the extent there is any conflict between the terms of RFP #14-20, STANTEC'S response to RFP #14-20 submitted on February 11, 2020, and this AGREEMENT, the terms of RFP #14-20 and STANTEC'S response to RFP #14-20 control.

The scope of STANTEC's services ("SERVICES") will be set forth in individual Task Orders, which are incorporated into this AGREEMENT. All work authorized by a Task Order issued pursuant to this AGREEMENT shall be completed in accordance with, and subject to, the Terms and Conditions set forth herein, on pages 2 through 6.

STANTEC's Fee for the SERVICES will be set forth in the individual Task Orders which are incorporated into this AGREEMENT.

The Parties, intending to be legally bound, have made, accepted and executed this AGREEMENT as of the Agreement Date noted above:

STANTEC CONSULTING SERVICES INC.

Andrew Burnham, Vice President

Per: 

Eric Grau, Principal

Per: 

Countersigned:

Frank V. Hibbard
Mayor

William B. Horne, II
City Manager

Approved as to form:

Attest:

Michael P. Fuino
Senior Assistant City Attorney

Rosemarie Call
City Clerk

DESCRIPTION OF WORK: STANTEC shall render the services described in the "Scope of Services" found on pp. 17-18 of RFP # 14-20 and the services described in Tab 3 of STANTEC's response to RFP #14-20 submitted on February 11, 2020 (hereinafter called the "SERVICES") in accordance with this AGREEMENT. STANTEC may, at its discretion and at any stage, engage subconsultants to perform all or any part of the SERVICES.

COMPENSATION: Charges for the SERVICES rendered will be made in accordance with the CONTRACT PRICE indicated per Tab 5 Cost of Services, Page 37, of STANTEC's response to RFP #14-20 submitted on February 11, 2020, or, if no CONTRACT PRICE is indicated, in accordance with STANTEC's Schedule of Fees and Disbursements in effect from time to time as the SERVICES are rendered.

Invoices shall be paid by the CLIENT in the currency of the jurisdiction in which the SERVICES are provided without deduction or setoff upon receipt. Failure to make any payment when due is a material breach of this Agreement and will entitle STANTEC, at its option, to suspend or terminate this Agreement and the provision of the SERVICES. Interest will accrue on accounts overdue by 30 days at the lesser of 1.5% per month (18% per annum) or the maximum legal rate of interest.

REPRESENTATIVES: Each party shall designate in the space provided on the Task Order a representative who is authorized to act on behalf of that party and receive notices under this AGREEMENT. Such representatives have complete authority to act on behalf of their principals in respect to all matters arising under this AGREEMENT.

NOTICES: All notices, consents, and approvals required to be given hereunder shall be in writing and shall be given to the representatives of each party. All notices required by this AGREEMENT to be given by either party shall be deemed to be properly given and received within two (2) business days if made in writing to the other party by certified mail, telegram, email, facsimile or telex, addressed to the regular business address of such party as identified above.

CLIENT'S RESPONSIBILITIES: The CLIENT shall provide to STANTEC in writing, the CLIENT's total requirements in connection with each PROJECT described in a Task Order, including the PROJECT budget and time constraints. The CLIENT shall make available to STANTEC all relevant information or data pertinent to the PROJECT which is required by STANTEC to perform the SERVICES. STANTEC shall be entitled to rely upon the accuracy and completeness of all information and data furnished by the CLIENT, including information and data originating with other consultants employed by the CLIENT whether such consultants are engaged at the request of STANTEC or otherwise. Where such information or data originates either with the CLIENT or its consultants then STANTEC shall not be responsible to the CLIENT for the consequences of any error or omission contained therein.

The CLIENT shall give prompt consideration to all documentation related to the PROJECT prepared by STANTEC and whenever prompt action is necessary shall inform STANTEC of CLIENT's decisions in such reasonable time so as not to delay the schedule for providing the SERVICES.

When applicable, the CLIENT shall arrange and make provision for STANTEC's entry to the PROJECT site as well as other public and private property as necessary for STANTEC to perform the SERVICES. The CLIENT shall obtain any required approvals, licenses and permits from governmental or other authorities having jurisdiction over the PROJECT so as not to delay STANTEC in the performance of the SERVICES.

STANTEC'S RESPONSIBILITIES: STANTEC shall furnish the necessary qualified personnel to provide the SERVICES. STANTEC agrees that the services and materials will conform to the requirements of this AGREEMENT. Additionally, STANTEC agrees to perform the SERVICES with the reasonable skill and diligence required by customarily accepted professional practices and procedures normally provided in the performance of the SERVICES at the time when and the location in which the SERVICES were performed. If any SERVICES do not meet this standard of care, STANTEC, at no additional charge to the CLIENT, will reperform the SERVICES until STANTEC comports with this AGREEMENT to the CLIENT's reasonable satisfaction.

In performing the SERVICES under this AGREEMENT, STANTEC shall operate as and have the status of an independent contractor and shall not act as, or be an employee of the CLIENT.

The SERVICES performed by STANTEC shall be subject to the inspection and the review of the CLIENT at all times but such inspection and review shall not relieve STANTEC from its responsibility for the proper performance of the SERVICES.

TERMINATION: The CLIENT may terminate this AGREEMENT or an Individual Task Order without cause upon thirty (30) days' notice in writing. If either party breaches this AGREEMENT or an Individual Task Order, the non-defaulting party may terminate this AGREEMENT and/or an Individual Task Order after giving thirty (30) days' notice to remedy the breach. On termination of this AGREEMENT, the CLIENT shall forthwith pay STANTEC for the SERVICES performed to the date of termination. Non-payment by the CLIENT of STANTEC's invoices within 30 days of STANTEC rendering same is agreed to constitute a material breach of this AGREEMENT and, upon written notice as prescribed above, the duties, obligations and responsibilities of STANTEC are terminated.

The CLIENT is a governmental agency which relies upon the appropriation of funds by its governing body to satisfy its obligations. If the CLIENT reasonably determines that it does not have funds to meet its obligations under this AGREEMENT, the CLIENT will have the right to terminate the MASTER SERVICE AGREEMENT without penalty on the last day of the fiscal period for which funds were legally available. In the event of such termination, the CLIENT agrees to provide written notice of its intent to terminate thirty (30) calendar days prior to the stated termination date.

SUSPENSION OF SERVICES: If the SERVICES from an Individual Task Order are suspended for more than thirty (30) calendar days in the aggregate, STANTEC shall be compensated for services performed and charges incurred prior to receipt of notice to suspend and, upon resumption, an equitable adjustment in fees to accommodate the resulting demobilization and remobilization costs. In addition, there shall be an equitable adjustment in the project schedule based on the delay caused by the suspension. If the SERVICES from an Individual Task Order are suspended for more than ninety (90) days, STANTEC may, at its option, terminate the Task Order upon giving notice in writing to the CLIENT.

BUILDING CODES, BYLAWS AND OTHER PUBLIC REGULATIONS: STANTEC shall, to the best of its ability, interpret building codes, by-laws and other public regulations as they apply to the PROJECT and as they are published at the time SERVICES commence. Furthermore, STANTEC shall observe and comply with all applicable laws, ordinances, codes and regulations of government agencies, including federal, state, provincial, municipal and local governing bodies having jurisdiction over the conduct of the SERVICES ("LAWS"). However, it is expressly acknowledged and agreed by the CLIENT that as the PROJECT progresses such building codes, by-laws, other public regulations and LAWS may change or the interpretation of any public authority may differ from the interpretation of STANTEC, through no fault of STANTEC, and any extra costs necessary to conform to such changes or interpretations during or after execution of the SERVICES will be paid by the CLIENT.

STANTEC shall continue to provide equal employment opportunity to all qualified persons and to recruit, hire, train, promote and compensate persons in all jobs without regard to race, color, religion, sex, age, disability or national origin or any other basis prohibited by applicable laws.

INSURANCE REQUIREMENTS: STANTEC shall, at its own cost and expense, acquire and maintain (and cause any subcontractors, representatives or agents to acquire and maintain) during the term with the CLIENT, sufficient insurance to adequately protect the respective interest of the parties. Coverage shall be obtained with a carrier having an AM Best Rating of A-VII or better.

Specifically, STANTEC must carry the following minimum types and amounts of insurance on an occurrence basis or in the case of coverage that cannot be obtained on an occurrence basis, then coverage can be obtained on a claims-made basis with a minimum three (3) year tail following the termination or expiration of this Agreement:

- a. Commercial General Liability Insurance coverage, including but not limited to, premises operations, products/completed operations, products liability, contractual liability, advertising injury, personal injury, death, and property damage in the minimum amount of \$1,000,000 (one million dollars) per occurrence and \$2,000,000 (two million dollars) general aggregate.
- b. Commercial Automobile Liability Insurance coverage for any owned, non-owned, hired or borrowed automobile is required in the minimum amount of \$1,000,000 (one million dollars) combined single limit.
- c. Professional Liability/Malpractice/Errors or Omissions Insurance coverage appropriate for the type of business engaged in by the Respondent with minimum limits of \$2,000,000 (two million dollars) per claim. If a claims made form of coverage is provided, the retroactive date of coverage shall be no later than the inception date of claims made coverage, unless the prior policy was extended indefinitely to cover prior acts. Coverage shall be extended beyond the policy year either by a supplemental extended reporting period (SERP) of as great a duration as available, and with no less coverage and with reinstated aggregate limits, or by requiring that any new policy provide a retroactive date no later than the inception date of claims made coverage.
- d. Unless waived by the State of Florida and proof of waiver is provided to CLIENT, statutory Workers' Compensation Insurance coverage in accordance with the laws of the State of Florida, and Employer's Liability Insurance in the minimum amount of \$500,000 (five hundred thousand dollars) each employee each accident, \$500,000 (five hundred thousand dollars) each employee by disease, and \$500,000 (five hundred thousand dollars) disease policy limit. Coverage should include Voluntary Compensation, Jones Act, and U.S. Longshoremen's and Harbor Worker's Act coverage where applicable. Coverage must be applicable to employees, contractors, subcontractors, and volunteers, if any.

The above insurance limits may be achieved by a combination of primary and umbrella/excess liability policies.

Other Insurance Provisions.

- a. Prior to the execution of this Agreement, and then annually upon the anniversary date(s) of the insurance policy's renewal date(s) for as long as this Agreement remains in effect, STANTEC will furnish CLIENT with a Certificate of Insurance(s) (using appropriate ACORD certificate, SIGNED by the Issuer, and with applicable endorsements) evidencing all of the coverage set forth above and naming CLIENT as an "Additional Insured" on the Commercial General Liability Insurance and the Commercial Automobile Liability Insurance.
- b. STANTEC shall provide thirty (30) days written notice of any cancellation, non-renewal, termination, material change or reduction in coverage.
- c. STANTEC's insurance as outlined above shall be primary and non-contributory coverage for STANTEC negligence.
- d. STANTEC reserves the right to appoint legal counsel to provide for the STANTEC's defense, for any and all claims that may arise related to Agreement, work performed under this Agreement, or to STANTEC's design, equipment, or service. STANTEC agrees that CLIENT shall not be liable to reimburse STANTEC for any legal fees or costs as a result of STANTEC providing its defense as contemplated herein.

INDEMNIFICATION/LIABILITY: STANTEC shall act as an independent contractor and agrees to assume all risks of providing the program activities and services herein agreed and all liability therefore, and shall defend, indemnify, and hold harmless the CLIENT, its officers, agents, and employees from and against any and all claims of loss, liability and damages of whatever nature, to persons and property, including, without limiting the generality of the foregoing, death of any person and loss of the use of any property, except claims arising from the negligence of the CLIENT or the CLIENT's agents or employees. This includes, but is not limited to, matters arising out of or claimed to have been caused by or in any manner related to STANTEC's activities or those of any approved or unapproved invitee, contractor, subcontractor, or other person approved, authorized, or permitted by STANTEC whether or not based on negligence. Nothing herein shall be construed as consent by the CLIENT to be sued by third parties, or as a waiver or modification of the provisions or limits of Section 768.28, Florida Statutes or the Doctrine of Sovereign Immunity.

STANTEC will update the CLIENT during the course of any litigation to timely notify the CLIENT of any issues that may involve the independent negligence of the CLIENT that is not covered by this indemnification.

The CLIENT assumes no liability for actions of STANTEC and will not indemnify or hold STANTEC or any third party harmless for claims based on this Agreement or use of STANTEC-provided supplies or services.

DOCUMENTS: All documents prepared by STANTEC or on behalf of STANTEC in connection with an Individual Task Order are instruments of service for the execution of the PROJECT. STANTEC retains the property and copyright in these documents, whether the PROJECT is executed or not. Payment to STANTEC of the compensation prescribed in this AGREEMENT shall be a condition precedent to the CLIENT's right to use documentation prepared by STANTEC. These documents may not be used for any other purpose without the prior written agreement of STANTEC. The CLIENT shall have a permanent non-exclusive, royalty-free license to use any concept, product or process which is patentable or capable of trademark, produced by or resulting from the SERVICES rendered by STANTEC in connection with the PROJECT, for the life of the PROJECT. The CLIENT shall not use, infringe upon or appropriate such concepts, products or processes without the express written agreement of STANTEC.

Any document produced by STANTEC in relation to the SERVICES is intended for the sole use of CLIENT. The documents may not be relied upon by any other party without the express written consent of STANTEC, which may be withheld at STANTEC's discretion. Any such consent will provide no greater rights to the third party than those held by the CLIENT under the contract, and will only be authorized pursuant to the conditions of STANTEC's standard form reliance letter.

STANTEC cannot guarantee the authenticity, integrity or completeness of data files supplied in electronic format ("Electronic Files"). CLIENT shall release, indemnify and hold STANTEC, its officers, employees, consultants and agents harmless from any claims or damages arising from the use of Electronic Files. Electronic files will not contain stamps or seals, remain the property of STANTEC, are not to be used for any purpose other than that for which they were transmitted, and are not to be retransmitted to a third party without STANTEC's written consent.

FORCE MAJEURE: Failure by either party to perform its duties and obligations will be excused by unforeseeable circumstances beyond its reasonable control, including acts of nature, acts of the public enemy, riots, fire, explosion, pandemics, epidemics, legislation, and governmental regulation. The party whose performance is so affected will within five (5) calendar days of the unforeseeable circumstance notify the other party of all pertinent facts and identify the force majeure event. The party whose performance is so affected must also take all reasonable steps, promptly and diligently, to prevent such causes if it is feasible to do so, or to minimize or eliminate the effect thereof. The delivery or performance date will be extended for a period equal to the time lost by reason of delay, plus such additional time as may be reasonably necessary to overcome the effect of the delay; provided, however, under no circumstances will delays caused by a force majeure extend beyond one hundred-twenty (120) calendar days from the scheduled delivery or completion date of a task unless otherwise agreed to by the parties.

GOVERNING LAW; VENUE; NONDISCRIMINATION: This AGREEMENT shall be governed, construed and enforced in accordance with the laws of the State of Florida. The exclusive venue selected for any proceeding or suit in law or equity arising from or incident to this AGREEMENT shall be Pinellas County, Florida.

STANTEC shall observe and comply with all applicable laws, provide equal employment opportunity to all qualified persons and recruit, hire, train, promote and compensate persons in all jobs without regard to race, color, religion, sex, age, disability or national origin or any other basis prohibited by applicable laws.

STANTEC shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

STANTEC shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.

DISPUTE RESOLUTION: If requested in writing by either the CLIENT or STANTEC, the CLIENT and STANTEC shall attempt to resolve any dispute between them arising out of or in connection with this AGREEMENT or an Individual Task Order by entering into structured non-binding negotiations with the assistance of a mediator on a without prejudice basis. The mediator shall be appointed by agreement of the parties. If a dispute cannot be settled within a period of thirty (30) calendar days with the mediator, if mutually agreed, the dispute shall be referred to arbitration pursuant to laws of the jurisdiction in which the majority of the SERVICES are performed or elsewhere by mutual agreement.

ATTORNEYS FEES: In the event of a dispute hereunder, the prevailing party is entitled to recover from the other party all costs incurred by the prevailing party in enforcing this AGREEMENT and prosecuting the dispute, including reasonable attorney's and expert's fees, whether incurred through formal legal proceedings or otherwise.

ASSIGNMENT AND SUCCESSORS: Neither the CLIENT nor STANTEC shall, without the prior written consent of the other party, assign the benefit or in any way transfer the obligations of this AGREEMENT or any part hereof. This AGREEMENT shall enure to the benefit of and be binding upon the parties hereto, and except as otherwise provided herein, upon their executors, administrators, successors, and assigns.

PROTECTION OF PRIVACY LAWS: STANTEC will comply with its statutory obligations respecting the collection, use, disclosure, access to, correction, protection, accuracy, retention and disposition of personal information that may be collected or created under this AGREEMENT. STANTEC will refer any request for access to or correction of personal information that is made under statute to the CLIENT and will comply with any directions from the CLIENT respecting the access request, or respecting correction and annotation of personal information. STANTEC will, at reasonable times and on reasonable notice, allow the CLIENT to enter its premises and inspect any personal information of the CLIENT's that is in the custody of STANTEC or any of STANTEC's policies or practices relevant to the management of personal information subject to this AGREEMENT.

ENTIRE AGREEMENT: This AGREEMENT constitutes the sole and entire agreement between the CLIENT and STANTEC relating to the PROJECT and supersedes all prior agreements between them, whether written or oral respecting the subject matter hereof and no other terms, conditions or warranties, whether express or implied, shall form a part hereof. This AGREEMENT may be amended only by written instrument signed by both the CLIENT and STANTEC. All attachments and Task Orders referred to in this AGREEMENT are incorporated herein by this reference; however, in the event of any conflict between attachments, Task Orders and the terms and conditions of this AGREEMENT, the terms and conditions of this AGREEMENT shall take precedence.

TERM OF AGREEMENT; RENEWAL. This AGREEMENT shall terminate five (5) years after the Agreement Date. At the end of the initial term of this AGREEMENT, the CLIENT may initiate one (1), five (5) year renewal. The decision to renew this AGREEMENT rests solely with the CLIENT. The CLIENT will give written notice of its intention to renew this AGREEMENT no later than thirty (30) days prior to expiration.

SEVERABILITY: If any term, condition or covenant of this AGREEMENT is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this AGREEMENT shall be binding on the CLIENT and STANTEC.

In addition to all other contract requirements as provided by law, the contractor executing this agreement agrees to comply with public records law.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, Rosemarie Call, phone: 727-562-4092 or Rosemarie.Call@myclearwater.com, 600 Cleveland Street, Suite 600, Clearwater, FL 33755.

The contractor's agreement to comply with public records law applies specifically to:

- a) Keep and maintain public records required by the City of Clearwater (hereinafter "public agency") to perform the service being provided by the contractor hereunder.
- b) Upon request from the public agency's custodian of public records, provide the public agency 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 for in Chapter 119, Florida Statutes, as may be amended from time to time, or as otherwise provided by law.

c) Ensure that the 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 contract term and following completion of the contract if the contractor does not transfer the records to the public agency.

d) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

e) A request to inspect or copy public records relating to a public agency's contract for services must be made directly to the public agency. If the public agency does not possess the requested records, the public agency shall immediately notify the contractor of the request and the contractor must provide the records to the public agency or allow the records to be inspected or copied within a reasonable time.

f) The contractor hereby acknowledges and agrees that if the contractor does not comply with the public agency's request for records, the public agency shall enforce the contract provisions in accordance with the contract.

g) A contractor who fails to provide the public records to the public agency within a reasonable time may be subject to penalties under Section 119.10, Florida Statutes.

h) If a civil action is filed against a contractor to compel production of public records relating to a public agency's contract for services, the court shall assess and award against the contractor the reasonable costs of enforcement, including reasonable attorney fees, if:

1. The court determines that the contractor unlawfully refused to comply with the public records request within a reasonable time; and

2. At least eight (8) business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the contractor has not complied with the request, to the public agency and to the contractor.

i) A notice complies with subparagraph (h)2. if it is sent to the public agency's custodian of public records and to the contractor at the contractor's address listed on its contract with the public agency or to the contractor's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.

A contractor who complies with a public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.