

SERVICES AGREEMENT

THIS SERVICES AGREEMENT (hereinafter "Agreement"), made on the _____ day of _____, 2016, by and between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government pursuant to KRS Chapter 67A (hereinafter "LFUCG") and **STANTEC ARCHITECTURE, INC.**, a foreign corporation with offices at 13980 Collections Center Drive, Chicago, IL 60693-0139, a subsidiary of Stantec Consulting Services Inc., a foreign corporation with offices at 1409 North Forbes Road, Lexington, KY 40511 (hereinafter "CONSULTANT").

WHEREAS, the LFUCG seeks to partner with a consultant to (1) examine the location and condition of property and equipment used by the Department of Environmental Quality and Public Works (hereinafter "EQPW"), (2) optimize the use of said property; (3) propose an appropriate divisional layout for maximum efficiency; and (4) complete a comprehensive facilities plan for EQPW; and

WHEREAS, the LFUCG issued a request for proposals, or RFP #29-2016 Facilities Consultant, to accomplish the above tasks; and

WHEREAS, CONSULTANT responded to RFP #29-2016 (hereinafter the "RFP") and LFUCG determined that CONSULTANT was the successful bidder;

NOW, THEREFORE, LFUCG and CONSULTANT, in consideration of their mutual covenants herein, AGREE with respect to the professional services ("Services") set forth in the RFP and the payment for those Services by the LFUCG as set forth below.

WITNESSETH: That CONSULTANT and LFUCG in consideration of the negotiated hours and rates required to complete the work by CONSULTANT, hereby agree to commence and complete the scope of services described as follows:

1.0 SCOPE OF WORK

CONSULTANT shall perform the work as outlined in the RFP and CONSULTANT's Response which are attached hereto as Exhibit "A" (the "RFP") and as Exhibit B (the "Response"), respectively.

2.0 APPLICABLE LAWS

CONSULTANT shall perform work in accordance with applicable Federal and State laws and regulations including all of Title 49 United States Code (USC), Title 23 United States Code (USC), 49 Code of Federal Regulations, and 23 Code of Federal Regulations.**3.0 INCORPORATED DOCUMENTS**

All of the terms and provisions of the RFP, including but not limited to the General Conditions and the Risk Management Provisions, are incorporated herein by reference as if fully stated. To the extent of any conflict between or among the documents, the terms of this Agreement shall take precedence, followed by the RFP and the Response.

Exhibit A - The "RFP" document titled "RFP #29-2016 Facilities Consultant" including the General Conditions and the Risk Management Provisions.

Exhibit B - The "Response" document titled "Stantec, Response to Lexington-Fayette Urban County Government RFP #29-2016 Facilities Consultant," as negotiated.

Exhibit C – The negotiated hours with rates required to complete the tasks defined within RFP #29-2016.

4.0 TIMELY REPORTS

CONSULTANT shall provide monthly reports of all activities to the LFUCG Project Manager. Reports may be submitted electronically.

5.0 TERM

This Agreement is effective as of the date of LFUCG's signature ("Effective Date") and shall continue until June 30, 2017, with an option for an additional one (1) year renewal, subject to sufficient appropriation of funds and mutual agreement between LFUCG and CONSULTANT.

6.0 TERMINATION

LFUCG may terminate performance of this Agreement, or a portion thereof, upon thirty (30) days' written notice, or if the CONSULTANT materially breaches any provision of this Agreement. Upon receipt of a written notice (which shall describe the circumstances that lead to a material breach), CONSULTANT shall have thirty (30) calendar days to cure the default.

7.0 INDEMNIFICATION CLAUSE

The Risk Management Provisions of RFP #29-2016 are incorporated herein by reference as if fully stated. Copies of the required Certificates of Insurance shall be provided to LFUCG as required therein.

8.0 PAYMENTS TO CONSULTANT

Payment for the Services hereunder shall not exceed \$218,000.08.

- a. All invoices shall reflect the work performed in accordance with RFP #29-2016 and the corresponding amount due based on the budget allotted for each task.

8.1 Time of Payment

CONSULTANT shall submit detailed monthly statements indicating work completed for LFUCG, and shall submit sufficient documentation for any and all reimbursable expenses prior to payment. LFUCG shall respond to the CONSULTANT's monthly statements within thirty (30) days, either denying payment or making payments.

Other Provisions Concerning Payments

8.1.1. In the event that this Agreement is terminated by the LFUCG without fault on the part of CONSULTANT, CONSULTANT shall be paid for actual work performed or services rendered and delivered to LFUCG prior to termination, as determined by mutual agreement between LFUCG and CONSULTANT.

8.1.2. In the event that Services are terminated by LFUCG for fault on the part of CONSULTANT, CONSULTANT shall be paid reasonable value of the work performed or services rendered and delivered to LFUCG prior to termination, as determined by the LFUCG.

9.0 SUCCESSORS AND ASSIGNS

CONSULTANT binds itself, its partners, successors, executors, administrators, assigns, agents, and legal representatives to this Agreement with respect to all covenants, agreements and obligations set forth herein.

10.0 ASSIGNMENT AND DELEGATION

CONSULTANT shall not assign any interest, obligation or benefit of this Agreement or transfer any interest in the same, whether by assignment or novation, without prior written consent of the LFUCG.

CONSULTANT shall not subcontract more than fifty percent (50%) of the Services hereunder, based upon dollar value, to be provided under this Agreement. CONSULTANT shall obtain written approval prior to delegating or assigning any services contained in this Agreement. LFUCG's consent to assignment or delegation of any part of this Agreement shall not be construed to relieve the CONSULTANT of any responsibility for compliance with the provisions of this Agreement.

11.0 FORCE MAJEURE

CONSULTANT shall not be liable to LFUCG for any delay in performance or any failure

in performance hereunder caused in whole or in part by reason of *force majeure*, which shall be deemed to include war (whether an actual declaration thereof is made or not), sabotage, insurrection, riot and other acts of civil disobedience, action of a public enemy, failure or unavoidable delays in mass transportation, laws, regulations or acts of any national, state or local government (or any agency, subdivision or instrumentality thereof), judicial action, labor dispute, disease, accident, fire, explosion, flood, storm or other act of God, unforeseeable shortage of labor, fuel, raw materials, machinery or unforeseen technical failures. LFUCG shall not refuse to accept delivery by reason of delays occasioned by *force majeure*. Any delay resulting from *force majeure* shall correspondingly extend the time for performance by CONSULTANT. Notwithstanding the above, CONSULTANT acknowledges that it will not be excused from full performance of any contractual provision contained herein or separately contained in any Statement of Work or Change Order if an act or occurrence resulting in any delay in performance or failure in performance could have been avoided through CONSULTANT's exercise of due care.

12.0 OPTIONAL TASKS AND SERVICES LFUCG may desire to have the CONSULTANT perform work or render services in connection with this Project other than provided by the expressed intent of this Agreement. Such work shall be considered as "Optional Task and Services," subject to a change order, supplemental to this Agreement, setting forth the character and scope thereof and the compensation therefore. Work under such change order shall not proceed until written authorization is given by the LFUCG. This work shall be considered as "Optional Work & Tasks" and shall be paid on a lump sum basis by task in accordance with the negotiated rates as provided by the CONSULTANT in response to RFP #29-2016 in the Pricing Matrix.

13.0 RIGHTS IN WORK PRODUCT

Unless otherwise agreed by the parties in a separate Agreement, all Services rendered by CONSULTANT under this Agreement and the product or proceeds of such Services, including any and all information and data owned or controlled by LFUCG, or otherwise manifested in programs and documentation purchased, produced, or delivered to or on LFUCG's behalf ("Work Product") shall belong to and be owned by LFUCG. CONSULTANT and third party service and software providers shall retain sole and exclusive ownership, right, title and interest, including ownership of copyright, with respect to their respective, independently developed intellectual property in accordance with federal copyright and other applicable laws.

14.0 - EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this contract, CONSULTANT agrees as follows:

14.1 The CONSULTANT agrees to comply with Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of

1975, Executive Order 11063, and with Executive Order 11246 as amended by Executive Order 11375 and 12086.

14.2 CONSULTANT will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, age, disability or other handicap. CONSULTANT shall take affirmative action to insure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, national origin, sex, age, disability or other handicap. CONSULTANT will take affirmative action to insure that all employment practices include, but are not limited to, the following: employment, hiring, upgrading, demotion, transfer, recruitment, recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection of training, including apprenticeships. CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this non-discrimination clause.

14.3 Compliance with Civil Rights Act of 1964. During the performance of this AGREEMENT, CONSULTANT agrees as follows:

A. CONSULTANT will comply with the regulations relative to nondiscrimination in federally assisted programs of the U.S. Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this AGREEMENT.

B. Nondiscrimination: CONSULTANT with regard to the work performed by it after award and prior to completion of the AGREEMENT work will not discriminate on the ground of race, color, or national origin in the selection and retention of subcontractors including procurement of materials and leases of equipment. CONSULTANT will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the REGULATIONS, including employment practices when the AGREEMENT covers a program set forth in Appendix B of the REGULATIONS.

C. Solicitations for Subcontractors, including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by CONSULTANT for work to be performed under a subcontract including procurement of materials or equipment, each potential subcontractor or supplier shall be notified by CONSULTANT or CONSULTANT'S obligations under this AGREEMENT with the REGULATIONS relative to nondiscrimination on the ground of race, color, or national origin.

D. Information and Reports: CONSULTANT will provide all information and reports required by the REGULATIONS, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the GOVERNMENT to be pertinent to ascertain compliance with such REGULATIONS orders and instructions.

Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, CONSULTANT will so certify to the GOVERNMENT as appropriate, and shall set forth what efforts it has made to obtain the information.

E. Sanctions for Noncompliance: In the event of CONSULTANT'S noncompliance with the nondiscrimination provisions of this AGREEMENT, the GOVERNMENT will impose such contract sanctions as it may determine to be appropriate, including but not limited to:

- 1) Withholding payment to CONSULTANT under the AGREEMENT until CONSULTANT complies; and/or
- 2) Cancellation, termination or suspension of the AGREEMENT, in whole or in part.

14.4 DBE Obligation. CONSULTANT or its subcontractors agree to ensure that disadvantaged business enterprises as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this AGREEMENT. In this regard, CONSULTANT or subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. CONSULTANT and the subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of contracts.

CONSULTANT will make every effort to locate DBEs to purchase materials and services for use in this AGREEMENT. CONSULTANT shall document the steps it has taken to obtain DBE participation, including, but not limited to the following:

- A. The names, addresses, and telephone numbers of DBEs that were contacted;
- B. A description of the information provided to DBEs regarding the type of work to be performed.

15.0 RIGHT TO REVIEW, AUDIT AND INSPECT

CONSULTANT understands and agrees that upon reasonable notice that officials of the LFUCG may review, audit, and inspect any and all of CONSULTANT'S records and operations relative to the services performed under this Agreement to assure compliance with the Agreement.

16.0 MODIFICATIONS

No extension, modification, or amendment of this Agreement shall be effective unless it is set forth in writing and signed by the Parties.

17.0. DISPUTE RESOLUTION

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. CONSULTANT acknowledges and agrees that any claims, legal proceedings or litigation arising in connection with this Agreement or the Services provided hereunder shall be brought solely in Fayette County, Kentucky.

18.0 SEVERABILITY

If any particular provision of this Agreement is determined to be invalid or unenforceable, that determination will not affect any other provision hereto, which will be construed in all respects as if the invalid or unenforceable provision were omitted. No extension, modification, or amendment of this Agreement will be effective unless it is described in writing and signed by the Parties.

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the date and year above written.

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

BY: _____
Jim Gray, Mayor

ATTEST:

Clerk of the Urban County Council

STANTEC ARCHITECTURE, INC.

BY: _____
ITS: _____

(Secretary)

(Witness)

EXHIBIT A

RFP #29-2016: FACILITIES CONSULTANT

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EXHIBIT B

**STANTEC, RESPONSE TO LEXINGTON-FAYETTE URBAN COUNTY
GOVERNMENT RFP #29-2016 FACILITIES CONSULTANT**

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EXHIBIT C

NEGOTIATED HOURS WITH RATES FOR RFP #29-2016

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