



Subscription Agreement

This Subscription Agreement (the "**Agreement**") between Stantec Consulting Services Inc. ("**Stantec**"), a corporation with authority to transact business in the State of Missouri and the City of Columbia, Missouri ("**City**"), a municipal corporation, is entered into on the date of the signatory last noted below (the "Effective Date"). City and Stantec are each individually referred to herein as a "Party" and collectively as the "Parties."

WHEREAS:

- A. FAMS is a financial planning platform and user interface offered by Stantec that simulates and projects the financial dynamics of an enterprise, including all data, source code, models, reporting tools, formats, work products, and any components ("**FAMS**");
- B. City wishes to subscribe for the use of FAMS by its employees and/or pre-approved consultants and contractors (collectively, "**Users**"); and
- C. The parties wish to enter into this Agreement to set out their respective rights in respect of Stantec's provision of, and City's use of, FAMS.

NOW THEREFORE for good and valid consideration, the receipt and sufficiency of which is acknowledged by the parties, the parties agree as follows:

- 1. **Scope and Technical Parameters of FAMS.** Stantec shall provide City with access to FAMS as described in Schedule A.
- 2. **Subscription Fees and Terms.** City shall pay Stantec the fees for the term of the Agreement, all as described in Schedule B.
- 3. **Terms and Conditions.** This Agreement shall be subject to the terms and conditions set out in Schedule C.
- 4. **Counterparts and Electronic Execution.** This Agreement may be executed in two (2) or more counterpart copies, all of which counterparts when taken together shall have the same force and effect as if all parties had executed a single copy of this Agreement. Each party may execute this Agreement in electronic format, either by facsimile or portable document format (PDF) and delivery of such electronic executed document to the other party shall be proof of execution by the party thereto.

[Signature page to follow]



IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their duly authorized representatives as of the date of the last signatory hereto.

CITY OF COLUMBIA, MISSOURI

By: _____
De'Calon Seewood, City Manager *DS*
Date: _____

ATTESTED BY:

Sheela Amin, City Clerk

APPROVED AS TO FORM:

Nancy Thompson, City Counselor/mc

CERTIFICATION: I hereby certify that the above expenditure is within the purpose of the appropriation to which it is charged, Account No. *referenced below, and that there is an unencumbered balance to the credit of such appropriation sufficient to pay therefor.

*Account No. 55506310-504990

Account No. 55706510-504990

Account No. 55806610-504990

By: _____
Director of Finance

STANTEC CONSULTING SERVICES, INC.

By: *Andrew Burnham* _____
Digitally signed by
Andrew Burnham
Date: 2023.06.28 18:13:06
-04'00'

Name: Andrew Burnham

Title: Vice President

Date: June 28, 2023

SCHEDULE A
SCOPE AND TECHNICAL PARAMETERS OF FAMS

1. FAMS components include, but are not limited to:
 - (a) User interface and user management systems that are based on industry standard web technologies.
 - (b) Data repositories and data management systems that are based on industry standard database structures and flat file data structures.
 - (c) Financial analytic engine used for all model calculation functions.
 - (d) Administration utilities specifically designed for maintenance and to provide enhanced functionality.
 - (e) Enhancements:
 - i. FAMS contains logging features which allow FAMS to be continually enhanced.
 - ii. If there are enhancements, or improvements made to FAMS, Stantec reserves the right to decide if user notification is warranted. Any modification which impacts availability or use of FAMS shall warrant notification to all users.
 - iii. Stantec reserves the right to make enhancements and improvements to FAMS without consent from City
 - iv. Any feedback rendered to Stantec regarding FAMS become the property of Stantec. If City input leads to an improvement or enhancement to FAMS, Stantec is under no financial obligation, or royalty for such input, and Stantec takes full ownership of any idea once implemented.
2. **Setup Services** will be provided for:
 - (a) Configuration and customization of FAMS, including all tools and interfaces.
 - i. Data and assumption collection, review, and import into FAMS.
 - ii. Validating the FAMS calculations and presentation of key indicators.
 - iii. Customizing FAMS user interface based on defined functionality.
 - iv. Configuring FAMS access services for City's authorized users.
3. **Technical Support** is provided to users during business hours (08:00-17:00 EST Monday to Friday). Support includes:
 - (a) Service outage notification
 - (b) Service restoration
 - (c) Account creation
 - (d) Activate or deactivate a user
 - (e) Disaster Recovery of data
 - (f) Assistance in accessing FAMS hosted from the subscribed cloud service
 - (g) Troubleshooting and resolving questions regarding use of FAMS
4. **Training**
 - (a) Online documentation/user manual describing the features and functions of FAMS.
 - (b) Stantec will provide one, 1-hour training session on the features and use of FAMS upon completion of set-up. Additional training sessions can be arranged and would be provided based upon the rates for as-needed services identified in Schedule B.

5. Security and Access

- (a) Stantec will take reasonable measures to secure and encrypt City Data and User Access Credentials. Stantec shall maintain the security of City's content and data and that of City's customers and any user that is stored in or in any way connected with FAMS. If either Party believes or suspects that security has been breached or data compromised, whether it be from harmful code or otherwise, the Party shall notify the other Party of the issue or possible security breach within forty-eight (48) hours.
- (b) Binding Subcontractors and Subsidiaries to Data Security Standards. Stantec shall include similar provisions in Stantec's agreements with subcontractors and subsidiaries that perform work or services related to FAMS or have access to City's data contained therein or in the cloud storage.
- (c) No Harmful Code. Stantec shall take commercially reasonable precautions to ensure that FAMS does not contain Harmful Code. For purposes of this Agreement, "Harmful Code" is any code containing any program, routine, or device which is designed to maliciously delete, disable, deactivate, interfere with or otherwise harm any software, program, data, device, system or service, including without limitations, any time bomb, virus, drop-dead device, malicious logic, Worm, Trojan horse or trap or back door. Stantec shall include in contracts with any subcontractor a provision which prohibits the use of Harmful Code.
- (d) Model Platform Security:
 - i. The FAMS data repository and analytics engine are secured by Stantec IT. FAMS can only be accessed by authorized users who have the correct permissions and privileges.
 - ii. All content on, and use of, FAMS falls under the umbrella of Stantec's IT security policies, backup procedures, and disaster recovery protocols.
 - iii. FAMS, all dependent interfaces, and user interface access is secured by an industry standard security model implementing two factor authentication (2FA).
- (e) Model Platform Accessibility:
 - i. FAMS is platform agnostic providing web-based access for authorized users with any web browser that supports HTML5 and JavaScript.
 - ii. FAMS can support multiple users simultaneously from any supported device without degradation.
- (f) Model Platform Availability:
 - i. FAMS requires administrative maintenance from time to time and therefore during those periods access to FAMS could be affected. Stantec will make a reasonable effort to notify affected users of any planned outages.
 - ii. FAMS is hosted on an industry standard cloud platform. Stantec has no control over the cloud provider's policies, procedures, and maintenance routines. If Stantec becomes aware of any activities being performed by the cloud service provider, Stantec shall make reasonable efforts to communicate the impact on FAMS during this period.
 - iii. The cloud service subscribed for FAMS is a fault tolerant, multi-tenant cloud service which indemnifies Stantec in the unlikely event that the cloud service cannot provide hosting services for FAMS.
 - iv. FAMS uses commercial-off-the-shelf Application Programming Interfaces ("API") that Stantec has secured the right to use. Although the APIs are widely used in the industry and are stable, Stantec cannot guarantee their availability in perpetuity. Stantec cannot be held responsible for loss of

access or impacted performance if the API's proprietor chooses to modify or supplant the API. If this situation arises, Stantec will make reasonable efforts to modify FAMS to mitigate the API change while retaining expected performance.

(g) User Access Credentials will be secured as follows:

- i. All Users must be authorized by Stantec and Azure Active Directory, or other such authorization services as may be used by FAMS in the future, to access FAMS.
- ii. FAMS City-side user interface will be accessible by authorized users who have credentials defined in the security model for the hosting cloud provider. Once an authorized user accesses FAMS, a security token cookie is used for the session and subject to a timeout if there is no activity.
- iii. FAMS server-side will interact with users that hold an authentication token for the web page, which resides as a cookie on the user. This ensures that the server is engaging with the exact user served by the web page.
- iv. The API that communicates between the FAMS cloud service web host and the data repositories requires an authentication token for interaction. FAMS only permits data flow from the data repository to the cloud service web host application. This eliminates the possibility of data and model corruption derived from the cloud service web application.

(h) City Data will be secured as follows:

- i. City Data can only be accessed by authorized users via non-persistent tokens that are generated when the user interface requests FAMS to perform calculations.

(i) Data Recovery:

- i. FAMS data is backed up on a regular schedule and in the event of a data loss can be recovered from the backup.

6. System Requirements

- (a) FAMS can be accessed by any HTML5 compatible web browser which supports JavaScript and allows cookies. The browser must allow JavaScript execution.
- (b) City web browser platform must also allow Content Delivery by Network (CDN) for the FAMS user interface to work correctly.
- (c) FAMS is operating system (OS) agnostic; however, FAMS outputs are prepared in *.xlsx (MS Excel) and *.pdf format.
- (d) For full benefit and functionality, a business-class broadband internet connection should be used. Bandwidth of at least 3 MBitS is recommended.

SCHEDULE B
SUBSCRIPTION FEES AND TERMS

1. **Fees.** City shall pay Stantec the following fees:

- (a) **Initial Fee.** The Parties agree that upon the execution of this Agreement, City shall pay no configuration fee for City's use of FAMS.
- (b) **Subscription Fees.** The subscription fee schedule detailed below is based on a number of factors that impact the complexity of the service provided by Stantec, including the amount of data, the number of models, and the number of users, among other factors. Significant modification to one or more of these factors may require the renegotiation of the fee schedule detailed below before such modifications may be implemented.

For the initial term of this Agreement, there shall be no subscription fee. For the first renewal term, City may continue to receive annual access and support at an annual subscription fee of \$5,000.00 per model (**\$15,000.00 total**), payable in **monthly installments of \$1,250.00** in accordance with the terms of this Agreement.

- (c) **As-Needed Services.** Any consulting services as well as any modifications to FAMS to add, delete or alter any functions, scenarios, schedules or the user interface shall, upon the prior approval by Stantec, be provided by Stantec at the following rates:
 - i. Technical Advisor - \$350 per hour
 - ii. Project Principal - \$275 per hour
 - iii. Project Manager - \$200 per hour
 - iv. Consultant - \$170 per hour
 - v. Analyst - \$155 per hour
 - vi. Administration - \$100 per hour
- (d) **Out-of-Pocket Expenses.** City shall reimburse Stantec for reasonable, out-of-pocket expenses incurred by Stantec in providing services to City pursuant to the terms of this Agreement, so long as such out-of-pocket expenses receive City's prior approval and Stantec provides proper documentation of such expenses
- (e) **Fee Escalation.** All subscription fees, and hourly rates called for in this Agreement are subject to annual escalation of 3%, applied annually beginning the second renewal term.

2. **Term.** The term of this Agreement shall commence on the Effective Date and shall continue for a period of one (1) year. At the end of the initial term, this Agreement may be renewed for additional one (1) year periods unless otherwise terminated in accordance with the terms of this Agreement.

3. **Termination.** City may terminate this Agreement by providing written notice of its intent not to renew this Agreement to Stantec at least ninety (90) days before the commencement of such automatic renewal period. City may upgrade its level of service in accordance with paragraph (c) above at any time by providing thirty (30) days prior written notice to Stantec. City may downgrade its level of service in accordance with paragraph (c) above at the end



of the initial term or any subsequent renewal period by providing written notice to Stantec at least ninety (90) days before the commencement of an automatic renewal period.

All confidentiality, intellectual property, ownership, limitation of liability, indemnity and limitation of warranty provisions contained in this Agreement shall survive upon the termination of this Agreement.

4. **Modifications.** City may from time to time request that specific enhancements be made to FAMS. If specific modifications to FAMS are desired by City the feasibility and cost of making and installing such enhancements will be negotiated between Stantec and City before such modifications are made.

SCHEDULE C

TERMS AND CONDITIONS

1. **Right to Use.** With effect from the Effective Date, Stantec hereby grants to City a non-exclusive, non-transferable, non-sublicensable license to use FAMS for the duration of the Agreement.
2. **Confidentiality.** Stantec asserts that FAMS and FAMS access credentials are confidential commercial information (collectively, "**Confidential Information**"), created and/or compiled by Stantec, and that this proprietary information is protected under applicable trade secret, copyright and intellectual property laws. City hereby agrees that it shall use FAMS solely in accordance with the provisions of this Agreement and that it shall not at any time during or after expiry or termination of this Agreement, disclose any Confidential Information, whether directly or indirectly, to any third party without Stantec's prior written consent which may be arbitrarily withheld in Stantec's sole discretion.

Stantec asserts that FAMS is a trade secret under applicable state and federal laws, and City's access to FAMS under this Agreement is exempt from disclosure under such public records laws. City hereby agrees to provide prompt notice to Stantec of any public records requests seeking information relating in any way to FAMS, to allow Stantec the opportunity to seek to protect its claim against disclosure. The requirements of this section shall survive the termination of this Agreement for any reason.

Nothing in this Agreement shall be construed to supersede, conflict with or otherwise defeat any provision of the Missouri Revised Statutes Chapter 610 Governmental Bodies and Records (Missouri Sunshine Law).

3. **Ownership.** Stantec uses FAMS in its business of providing consulting services and associated models to towns, cities, counties, utility authorities and other government agencies. Stantec asserts that the Confidential Information embedded in FAMS includes trade secrets that provide Stantec with significant market advantages in its business, and that the Confidential Information and trade secrets are owned exclusively by Stantec. City agrees that any and all of the format, content, copyright, trade secrets, trademarks, trade names, patents and other intellectual property rights subsisting in or used in connection with FAMS, including all documentation and manuals relating thereto, shall be the sole property of Stantec. City shall not during or at any time after the expiry or termination of this Agreement dispute the ownership of these properties by Stantec. Further, City acknowledges and agrees that Stantec retains sole and exclusive ownership of FAMS (including all core configuration files, components and modifications) and any derivative works, and nothing herein, including license to use these properties, shall be construed to assign, transfer or otherwise convey to City any ownership right, title or interest in FAMS (including core configuration files, components and modifications) or any derivative works.
4. **Invoicing & Payment.** Charges for City's FAMS subscription will be made in accordance with the fees indicated in Schedule C. City shall pay all invoices issued by Stantec within thirty (30) days of its receipt thereof. City's 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 any licenses issued to City under this Agreement. Interest will accrue on accounts overdue by thirty (30) days at the lesser of 1.5% per month (18% per annum) or the maximum legal rate of interest.
5. **Permitted Uses.**
 - (a) **Use of Work Product** – City retains all ownership rights in any reports, data or information produced as a result from using FAMS in accordance with the terms of this Agreement (collectively, "**Work Product**").
 - (b) **Use of City Data** – City shall own all data, information or material that is entered into FAMS ("**City Data**"). City provides Stantec with a license to use City Data. City is solely responsible for the accuracy, quality, integrity, legality, reliability and appropriateness of all City Data and Stantec assumes no responsibility for the deletion, correction,



destruction, loss, infringement or failure of FAMS to store any Client Data. Stantec shall have no liability for any loss, deletion or manipulation of Client Data, whether caused by Stantec, any third-party service provider or any other party. Stantec agrees that any data from the City, its employees or customers or derived therefrom shall be stored in the United States of America. The data or any information derived therefrom shall not be transferred, moved or stored to or at any location outside the United States of America. All such data and any information derived therefrom shall be confidential and proprietary information belonging to either City or its customers or the users of the systems. Stantec agrees that Stantec, its subsidiaries or subcontractors shall not sell or give away any such City data or information derived therefrom.

6. **City Responsibilities.** City agrees not to, directly or indirectly, and shall ensure its Users do not:
- (a) upload or distribute in any way files that contain viruses, corrupted files or any similar software or programs that may damage the operation of FAMS;
 - (b) use FAMS for illegal purposes;
 - (c) interfere with or disrupt networks connected to FAMS;
 - (d) transmit or post any material that encourages conduct that could constitute a criminal offence or give rise to civil liability;
 - (e) duplicate, modify, decompile, reverse engineer, or disassemble FAMS or create any derivative works thereof;
 - (f) copy, sub-license, sell, rent, lease, distribute or otherwise transfer rights or provide any party with access to FAMS or any portion of FAMS;
 - (g) remove, delete or modify any copyright notices or other proprietary notices or legends on, in or from FAMS;
 - (h) use or replicate FAMS, or allow other parties to review the model or source code, use, or replicate FAMS to compete with Stantec in any aspect of Stantec's business;
 - (i) provide access to FAMS to any third parties without the prior written consent of Stantec; or
 - (j) use FAMS in any manner not authorized by this Agreement.

City is solely responsible for, at City's own expense, all equipment, facilities, third-party licenses and services necessary to utilize FAMS (including without limitation computer hardware, software, and Internet access).

Upon the commencement of this Agreement, City shall provide Stantec with a list of the names of the individuals to whom City would like to provide FAMS access, identifying the organization which employs such individuals. Stantec shall have the right to reject any individuals who are not directly employed by City. All individuals approved by Stantec shall be considered Users under this Agreement. City shall request Stantec's written approval in the manner described in this paragraph before providing access to any additional individuals. At any time, Stantec may request and City shall provide a list of the active Users who have access to FAMS and any Work Product. City shall ensure that all Users are legally required to comply with the terms of this Agreement, including the confidentiality provisions contained herein.

7. **No Warranty.** FAMS is provided "as is" without warranty of any kind, either express or implied, including (without limitation) the implied warranties of merchantability and fitness for a particular purpose. Stantec makes no warranty that FAMS will meet City's requirements, that FAMS will operate in combination with any other products, programs or software that City may select for its use or will be error-free, uninterrupted, timely or secure. City acknowledges that programs,



software and digital platforms in general are not error-free. Stantec further does not warrant or make any representations regarding the use, or the results of use, of FAMS or its interaction with City's Data with respect to their correctness, accuracy, reliability, or otherwise.

8. **Limitation on Liability.** Stantec shall not be liable to City for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with this Agreement, FAMS, its use, application, support or otherwise, except to the extent to which it is unlawful to exclude such liability under the applicable law. Notwithstanding the generality of the above, Stantec expressly excludes liability for any indirect, special, incidental or consequential loss or damage which may arise in respect of FAMS, its use or in respect of damage to or losses relating to equipment or property or for loss of profit, business, revenue, goodwill or anticipated savings. In the event that any exclusion contained in this Agreement shall be held to be invalid for any reason and Stantec becomes liable for loss or damage that may lawfully be limited, Stantec's total liability to City for all claims under this Agreement shall be limited to the lesser of: (i) the amount paid by City to Stantec under this Agreement for the preceding twelve (12) month period before such claim arose; and (ii) \$50,000.00 USD.
9. **Indemnity.** Intentionally deleted.
10. **Enhancements.** Stantec may make enhancements to FAMS from time to time. City acknowledges and agrees that it does not require or have entitlement to any upgrades to, or enhancements of, FAMS. Stantec shall not be liable for any loss or damage suffered by City arising from any defect in FAMS. All enhancements to FAMS, whether requested by City or otherwise, shall be the property of Stantec and all provisions of this Agreement will apply to such enhancements for the duration of the term of this Agreement.
11. **Force Majeure.** Except for the payment of a monetary amount which is due under the terms of this Agreement, neither party shall be responsible for a delay in performance under this Agreement if such delay is caused by a force majeure event or an event outside its reasonable control.
12. **Assignment.** This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. Neither Party shall assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party.
13. **Governing Law.** The validity, construction and performance of this Agreement shall be governed by the laws, without regard to the laws as to choice or conflict of laws, of the State of Missouri. The Parties shall comply with all applicable laws and regulations of any country, state or government agency relating to the use, sale or export of FAMS, including, but not limited to, the *Export Administration Act*, the United States Departments of Commerce, Treasury or other United States law. The validity, construction and performance of the Agreement and all disputes between the parties arising out of this Agreement or as to any matters related to but not covered by this Agreement shall be governed by the laws, without regard to the laws as to choice or conflict of laws, of the State of Missouri.
14. **Entire Agreement.** This Agreement embodies the entire agreement and understanding between the parties pertaining to the subject matter of this Agreement, and supersedes all prior agreements, understandings, negotiations, representations and discussions, whether verbal or written, of the parties, pertaining to that subject matter. Notwithstanding the foregoing, any existing agreements



between the parties in respect of the use and maintenance of FAMS through Microsoft Excel shall remain in full force and effect.

15. **Amendment and Waiver.** This Agreement may be amended or modified only by a written document executed by each of the parties. Either party may in writing waive any provisions of this Agreement to the extent such provision is for the benefit of the waiving party.
16. **Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions and shall be construed in all respects as if an invalid or unenforceable provision were omitted.
17. **Independent Parties.** Nothing in this Agreement is intended or shall be construed to establish or create an agency, partnership or joint venture relationship between the parties.
18. **No Third-Party Beneficiaries.** This Agreement is intended for the sole benefit of the signatories to this Agreement and is binding on their respective successors and permitted assigns. Nothing in this Agreement is intended or may be construed to give any person, firm, corporation or other entity, other than the signatories hereto any legal or equitable right, remedy or claim under this Agreement.
19. **Hold Harmless Agreement.** To the fullest extent not prohibited by law, Stantec shall indemnify and hold harmless the City, its directors, officers, agents and employees from and against all claims, damages, losses, and expenses (including but not limited to attorney's fees) for bodily injury and /or property damage arising by reason of any act or failure to act, negligent or otherwise, of Stantec, of any subcontractor (meaning anyone, including but not limited to consultants having an Agreement with Stantec or a subcontractor for part of the services), of anyone directly or indirectly employed by Stantec or by any subcontractor, or of anyone for whose acts Stantec or its subcontractor may be liable, in connection with providing these services. This provision does not, however, require Stantec to indemnify, hold harmless, or defend the City from its own negligence.
20. **No Waiver of Immunities.** In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either Party's rights or defenses with regard to each Party's applicable sovereign, governmental or official immunities and protections as provided by federal and state constitutions or laws.