



July 25, 2017

Andrew Burnham
Director
Stantec Consulting Services, Inc.
200 Business Park Cir., Suite 101
St. Augustine, FL 32095

Dear Mr. Burnham:

RE: RFP #48-0-2017/SB – Financial Rate & Management Consultant Services

Dear Mr. Burnham:

Please find attached your copy of the signed Agreement for the above mentioned services. Individual projects under this contract will be issued on a Task Order and Purchase Order basis.

We appreciate your interest in the City of Palm Bay and look forward to working with your company.

Sincerely,

CITY OF PALM BAY

Bobbye Marsala, CPPO, CPPB, C.P.M.
Chief Procurement Office
Procurement Department

Attachment: Service Agreement

**PROFESSIONAL CONSULTANT SERVICES AGREEMENT
FINANCIAL RATE & MANAGEMENT CONSULTANT SERVICES**

This is an agreement entered into this 17th day of July, 2017, by and between the City of Palm Bay, 120 Malabar Road, SE, Palm Bay, FL 32907 a Florida municipal corporation and political subdivision of the State of Florida, hereinafter referred to as CITY and Stantec Consulting Services, Inc. (11-2167170), 200 Business Park Cir., Suite 101, St. Augustine, Florida 32095 hereinafter referred to as CONSULTANT.

For and in consideration of the mutual agreements hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the CITY hereby retains the CONSULTANT and the CONSULTANT hereby covenants to provide professional services as prescribed herein.

SECTION 1 - GENERAL IDENTIFICATION OF SERVICES

The following documents are incorporated herein and made an integral part of this Agreement:

1. The City's Request for Proposal No **RFP #48-0-2017/SB, Financial Rate & Management Consulting Services** (Exhibit 1).
2. Proposal Submittal for CITY prepared by CONSULTANT dated May 18, 2017 (Exhibit 2).

All exhibits may also be collectively referred to as the "Documents". In the event of any conflict between the Documents or any ambiguity or missing specification or instruction, the following priority is established:

- Specific direction from CITY Manager (or designee).
- This Agreement and any attachments
- Exhibit 1
- Exhibit 2

All professional services provided by the CONSULTANT for the CITY shall be identified in the attached Consultant's Rate Schedule Proposal, Attachment "A" and Attachment "B" individual Statements of Work Orders. No additional work shall be performed under this Agreement without written authorization from the City. The written authorization for additional services shall constitute an addendum to this Agreement.

SECTION 2 - CITY OBLIGATIONS

The CITY agrees that it shall furnish to the CONSULTANT, upon request, any data available in the CITY'S files pertaining to the work to be performed under this Agreement.

SECTION 3 - PROFESSIONAL SERVICES

Upon receipt of Authorization to Proceed, CONSULTANT agrees to perform professional services set forth in Attachment "A" in accordance with the negotiated terms of this Agreement, and in accordance with accepted professional standards and practices.

In connection with professional services to be rendered pursuant to this Agreement, the CONSULTANT further agrees to:

- A. Maintain an adequate staff of qualified personnel.
- B. Comply with federal, state, county and local laws or ordinances applicable to the work.
- C. Cooperate fully with the CITY in scheduling and coordinating all phases of the work.
- D. Supervise and coordinate the work of any subconsultants.
- E. Cooperate and coordinate with other CITY consultants, as directed by the CITY.
- F. Report the status of the work to the CITY upon request and hold records, and other documents open to the inspection of the CITY or its authorized agent at any time during normal business hours.
- G. Submit for CITY review all data representative of the progress of the Work. Submit for CITY approval the final work product upon incorporation of any modifications requested by the CITY

- during any previous review. Any CITY approval of the CONSULTANT'S work shall not be deemed to diminish the CONSULTANT'S warranty set forth above.
- H. Confer with the CITY during the further development and implementation of improvements for which the CONSULTANT has provided services.
 - I. Interpret documents, correct errors and omissions and prepare any necessary revisions not involving a change in the scope of the work required, at no additional cost.

SECTION 4 - TIME OF COMPLETION

The services to be rendered by the CONSULTANT for each section of the work shall commence as specified in Section 7 of this Agreement.

SECTION 4.1-DELAY IN PERFORMANCE/FORCE MAJEURE

CITY shall be entitled to withhold progress payments from CONSULTANT for services rendered until completion of services to CITY's satisfaction.

Any delay due to a force majeure, shall not subject CITY to any liability to CONSULTANT, nor CONSULTANT any liability to the CITY. At CITY's option, the period specified for performance of services may be extended by the period of delay occasioned by any such circumstance, and services not performed by CONSULTANT shall be made or performed during such extension, or the time to perform the services not performed shall be extended for a period equal to such delay. During this period such delay shall not constitute a delay by CONSULTANT.

SECTION 5 – COMPENSATION

The CITY agrees to pay CONSULTANT for services rendered pursuant to this Agreement, all fees and other compensation computed in accordance with the Hourly Rate Schedule (Attachment A) for each hour of time engaged directly in the work.

Reimbursable Expenses – The CONSULTANT shall be compensated for certain work-related expenditures not covered by fees for CONSULTANT services, provided such expenditures are previously and expressly authorized by the CITY in writing. All basic reimbursable costs including reproduction, deliverables, and travel should be included in any proposed Hourly Rate Schedule. Other requests for reimbursable expenses must be brought to the attention and approved by the CITY before the work is performed. If authorized by the CITY and upon receipt of satisfactory back-up materials, the CONSULTANT will be compensated for such reimbursable expenses. Such expenses may include:

- a. Travel, Lodging and Meals, provided travel occurs in coach class and lodging and meals do not exceed the Domestic Per Diem rates listed in the current edition Appendix "A" of Chapter 301 of the Federal Travel Regulations.
- b. Courier Services.
- c. Facsimile (\$2.00 per facsimile).
- d. Photocopies (\$.0.15 per page).
- e. Long Distance and Conference Telephone Charges.
- f. 3rd Party expenses, such as printing, incurred on behalf of CITY.
- g. Other expenses approved by CITY in writing prior to the time CONSULTANT incurs such expenses.

SECTION 6 - PAYMENT AND PARTIAL PAYMENTS

Subject to the CITY'S right to withhold any amounts reasonably necessary to complete or correct defective or substandard work, the CITY may make monthly payments or partial payments to the CONSULTANT for all authorized work performed during the previous calendar month, and in accordance with Attachment "A" and Attachment "B", and under the provisions of Chapter 218, Part VII, (Local Government Prompt Payment Act), Florida Statutes. City shall promptly pay consultant any undisputed amounts consistent with the Local Government Prompt Payment Act. Proposed fee schedule will include all direct and indirect costs.

- A. The CONSULTANT shall submit signed invoices to the CITY.

- B. The amount of each invoice submitted shall be the amount due for all services performed to date in connection with authorized work, as certified by the CONSULTANT and approved by the CITY.

SECTION 7 - SCHEDULE OF WORK

The CITY shall have the sole right to determine on which units or sections of the work the CONSULTANT shall proceed, and in which order. Should a work revision effect a change in scope, cost or schedule, the CONSULTANT shall submit such revision(s) for review and, if warranted, written approval shall be provided by the CITY.

The CONSULTANT shall commence work within five working days of the Authorization to Proceed unless otherwise specified in the Authorization to Proceed.

SECTION 8 - RIGHT OF DECISIONS

All services by the CONSULTANT shall be performed in accordance with all professional standards and practices and to the reasonable requirements of the CITY. The CITY shall make all decisions on all claims, questions and disputes arising under this Agreement. In the event the CONSULTANT does not concur with any decision of the CITY, it must, within thirty (30) days after determination by the CITY unless such time is extended in writing by CITY, present written objections to the decision to the City Manager or her/his designee for resolution. Before taking any action to contest the CITY's determination in a court of competent jurisdiction, the CONSULTANT must follow the appeal process established in this Agreement and provided further that the CONSULTANT strictly abides by the time deadline set forth in this paragraph; failure to do so will result in making the CITY's decision final. During any appeal of, or objection to, the CITY's decision, CONSULTANT shall continue to perform all work in accordance with professional standards and practices and the requirements of this Agreement.

SECTION 9 - OWNERSHIP OF DOCUMENTS

All reports, tracings, plans, maps, and/or other work products developed by the CONSULTANT pursuant to this Agreement shall become the sole property of the CITY without restrictions or limitation upon their use and shall be made available by the CONSULTANT at any time upon request by the CITY. When each individual section of work requested pursuant to this Agreement is complete, all of the above work products shall be delivered to the CITY for its use.

CONSULTANT agrees that all documents maintained and generated pursuant to this Agreement shall be subject to all provisions of Chapter 119, Florida Statutes, should it apply.

It is further understood that any report, tracing, plan, map or other work product, without limitation, given by CITY to CONSULTANT pursuant to this Agreement shall at all times remain the property of CITY, shall be returned to CITY, and shall not be used by CONSULTANT for any other purpose without the express, written consent of the CITY Manager.

However, should CITY utilize the work product in connection with a project upon which CONSULTANT is not retained by CITY, CITY shall accept all responsibility for such utilization to the extent provided by law. Nothing contained in this paragraph or elsewhere in this Agreement is in any manner intended either to be a waiver of the limitation placed upon the CITY's liability as set forth in Section 768.28, Florida Statutes, or to extend the City's liability beyond the limits established in said Section; and no claim or award against the CITY shall include attorney fees, investigative costs, expert fees, suit costs or prejudgment interest.

SECTION 10 - REUSE OF DOCUMENTS

The CONSULTANT may not retain, reuse and/or copy data or work products developed by the CONSULTANT for the CITY without express written permission of the City Manager. The CONSULTANT will upon request provide the CITY additional copies of reports, tracings, plans, maps, and/or other work products produced pursuant to this Agreement at the cost for reproduction and not the cost of labor.

SECTION 11 - NOTICES

Any notices, reports or other written communications from the CONSULTANT to the CITY shall be considered delivered when posted by certified mail or delivered in person to the CITY.

CONSULTANT'S representative will be: Michael Burton
200 Business Park Cir., Suite 101
St. Augustine, FL 32095

CITY'S representative will be: Cassandra Smith
250 Osmosis Drive SE
Palm Bay, FL 32909

With Copies to: Bobbye Marsala
Chief Procurement Officer
120 Malabar Road SE
Palm Bay, FL 32907

Any notices, reports or other communications from the CITY to the CONSULTANT shall be considered delivered three (3) days after being posted by certified mail to the CONSULTANT at the last address left on the file with the CITY or immediately if delivered in person to said CONSULTANT or the CONSULTANT'S authorized representative.

SECTION 12 - AUDIT RIGHTS

The City reserves the right to audit the records of the Consultant related to this Agreement at any reasonable time during the prosecution of the work included herein. The Consultant agrees to provide copies of any records necessary to substantiate payment requests to the City as may be requested by the City, solely at the cost of reproduction.

SECTION 13 – PUBLIC RECORDS

The City is a public agency subject to Chapter 119, Florida Statutes. The Contractor shall comply with Florida's Public Records law. Specifically, the Contractor shall:

- a. Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform this service.
- b. Provide the agency with access to public records at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.
- c. Ensure that public records that are exempt or that are confidential and exempt from public record requirements are not disclosed except as authorized by law; and
- d. Meet all requirements for retaining public records and transfers to the City, at no cost, all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

The failure of the Contractor to comply with the provisions set forth in this section shall constitute a material breach of Agreement and shall be cause for immediate termination of the Agreement.

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 at the City of Palm Bay purchasing and Contracts Division, 120 Malabar Road, SE, Palm Bay, Florida 32907; 321-952-3424; or procurement@pbfl.org.

SECTION 14 - SUBCONTRACTING

The CONSULTANT shall not assign, or transfer any work under this Agreement without the express, written approval of the CITY. The CONSULTANT shall cause the name(s) of any subconsulting firms responsible for major portions (or separate specialty) of the work to be inserted in the pertinent documents or data.

The CONSULTANT shall be fully responsible to CITY for all acts and omissions of any officers, representatives, agents, employees, or subcontractors of CONSULTANT. Subcontractors of CONSULTANT shall have appropriate general liability, professional liability and workers' compensation insurance, or be covered by CONSULTANT's insurance. CONSULTANT shall furnish CITY with appropriate proof of insurance and releases from all subcontractors in connection with the work performed.

SECTION 15 - CONTINGENT FEES

The CONSULTANT warrants that no person or company was employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bonafide employees, any fee commission, contribution, donation, percentage, gift, or any other consideration, contingent upon, or resulting from award of this Agreement. For any breach or violation of this provision, the CITY shall have the right to terminate this Agreement, without liability, and, at its discretion, to deduct from the contract price or amounts due to CONSULTANT or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration and any damages related to the breach of the provision and shall report the details of such breach or violation to the proper legal authorities where and when appropriate.

SECTION 16 - TERMINATION/MODIFICATION OF AGREEMENT

1. The CONSULTANT agrees that the CITY may terminate this Agreement for any reason upon ten (10) days written notice to the CONSULTANT.
2. In the event of termination by the CITY, the CITY'S sole obligation to the CONSULTANT shall be for payment for those portions of work which has been authorized and satisfactorily completed. Such payment shall be determined on the basis of the percentage or work complete as estimated by the CITY and agreed upon by the CONSULTANT up to the time of termination. In the event of such termination, the CITY may, without penalty or other obligation to the CONSULTANT, elect to employ other persons or entities to perform the same or similar services. CONSULTANT shall not be entitled to any other amounts or damages including but not limited to anticipated profits, consequential damages or those set forth in Section 4 of this Agreement upon termination by CITY pursuant to this Section.
3. It is understood by CITY and CONSULTANT that any payment to CONSULTANT shall be made only if CONSULTANT is not in default under the terms of this Agreement as determined by the CITY.
4. The terms of this Agreement may only be modified upon the written, mutual agreement of the CONSULTANT and the CITY.
5. In the event that the CONSULTANT changes its name, merges with another company, becomes a subsidiary or makes other substantial changes in its business structure or its principals, the CITY reserves the right to terminate this Agreement.
6. In the event of termination of this Agreement, the CONSULTANT agrees to surrender any and all documents prepared by the CONSULTANT for the CITY and those documents delivered by the CITY to the CONSULTANT that pertain to this Agreement, of which, the CITY will have full ownership thereof, provided the CITY gives its written consent, CONSULTANT may retain copies of such documents for record purposes.

SECTION 17 - DURATION OF AGREEMENT

This Agreement shall remain in full force and effect for the duration of the PROJECT, unless it is terminated as provided herein.

SECTION 18 - DEFAULT

An event of default shall mean a breach of this Agreement by CONSULTANT as determined by the CITY. Without limiting the generality of the foregoing and in addition to those instances referred to as a breach, an event of default shall include but not be limited to the following:

- CONSULTANT has not performed services on timely basis;
- CONSULTANT has refused or failed to supply enough properly-skilled personnel;
- CONSULTANT has failed to make prompt payment to subcontractors or suppliers for any services;
- CONSULTANT has failed to fulfill representations made in this Agreement; or
CONSULTANT has refused or failed to provide the Services as defined in this Agreement.

In an Event of Default, CONSULTANT shall be liable for damages to the CITY resulting from lost funding and for the difference between the cost associated with procuring services from CONSULTANT and the amount actually expended by CITY, in procurement of another professional to perform the services of CONSULTANT. CITY shall be entitled to recover consequential damages and lost funding and administrative costs associated with the procurement of alternative professional services.

SECTION 19 – INDEMNIFICATION

For other and additional good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the CONSULTANT, including but not limited to the CONSULTANT's officers, officials, employees, representatives, agents, contractors officers, etc., subcontractors and their officers, etc. (hereinafter CONSULTANT) hereby agrees to indemnify, hold harmless and defend the City of Palm Bay, including but not limited to its officers, agents, subcontractors, officers, officials, representatives, volunteers, employees and all those others acting on the City's behalf (hereinafter CITY) against any and all liability, loss, costs, damages, expenses, claims or actions of whatever type or nature, including but not limited to attorney's fees for trials and appeals and expert's fees and costs that the City may incur arising wholly or in part due to any negligent or deliberate act, error or omission of CONSULTANT in the execution, performance or non-performance or failure to adequately perform CONSULTANT'S obligation(s) pursuant to this Agreement.

Nothing contained in this Agreement is in any manner intended either to be a waiver of the limitation placed upon the City's liability as set forth in Section 768.28 Florida Statutes, or to extend the City's liability beyond the limits established in said Section 768.28. No claim or award against the City shall include attorney's fees, investigative costs, extended damages, expert fees, suit costs or pre-judgment interest.

SECTION 20 - INSURANCE

The CONSULTANT and its subcontractors, subconsultants, assignees and suppliers will be required to procure and maintain, at its own expense and without cost to the CITY, until final acceptance by the CITY of all products or services covered by the Agreement, the following types of insurance in the following minimum amounts:

- A. **Commercial General Liability:** The Consultant shall provide minimum limits of \$1,000,000.00 each occurrence, \$2,000,000.00 general aggregate combined single limit for bodily injury and property damage liability. This shall include premises/operations, personal & advertising injury, products, completed operations, contractual liability, specifically confirming and insuring the indemnification and hold harmless clause of the contract. This policy of insurance shall be considered primary to and not contributing to any insurance maintained by the City of Palm Bay and shall name the City of Palm Bay as an additional insured with waiver of subrogation noted on the Certificate of Liability. The policy of insurance shall be written on an "occurrence" form.
- B. **Automobile Liability Insurance:**
Consultant shall provide minimum limits of liability of \$1,000,000.00 each accident, combined single limit for bodily injury and property damage. This shall include coverage for:
- Owned Automobiles
 - Hired Automobiles
 - Non-Owned Automobiles
- C. **Professional Liability Insurance or Errors and Omissions Insurance:**
Consultant shall provide professional liability insurance, or Errors and Omissions Insurance, with a minimum limit of one million dollars (\$1,000,000) aggregate with respect to acts, errors or omissions in connection with professional services to be provided under this Agreement. Any deductible is not to

exceed \$5,000 for each claim. CONSULTANT represents it is financially responsible for the deductible amount.

D. **Workers' Compensation Coverage:**

Consultant shall provide and maintain Workers' Compensation Insurance Coverage for all employees in the full amount required by statute and full compliance with the applicable laws of the State of Florida. Exemption certificates to this requirement are not acceptable. **Should the Named Vendor utilize a Professional Employer Organization, said Vendor acknowledges and agrees that all employees sent to the City of Palm Bay MUST be included on that PEO roster.** Said policy must include Employers' Liability insurance with limits of no less than:

- Each Accident \$ 100,000.00
- Disease – Policy Limit \$ 500,000.00
- Disease – Each Employee \$ 100,000.00

Consultant shall further insure that all of its sub-contractors maintain appropriate levels of workers' compensation insurance.

E. **Insurance Certificates:**

The City of Palm Bay is to be specifically included on all certificates of insurance **as a named additional insured** (with exception to Workers Compensation). **Waiver of Subrogation is required for Commercial General Liability and Automobile Liability.** All certificates must be received prior to commencement of service/work. In the event the insurance coverage expires prior to the completion of this contract, a renewal certificate shall be issued thirty (30) days prior to said expiration date. The certificate shall provide a thirty (30) day notification clause in the event of cancellation or modification to the policy.

The Consultant shall declare any self-insured retention or deductible amount in excess of \$5,000 for any policy. The City reserves the right to reject any self-insured retention or deductible in excess of \$5,000.

All insurance carriers shall be rated (A) or better by the most recently published A.M. Best Rating Guide. Unless otherwise specified, it shall be the responsibility of the Consultant to insure that all subcontractors comply with the insurance requirements set forth in this Agreement. The City may request a copy of the insurance policy according to the nature of the project. City reserves the right to accept or reject the insurance carrier.

Consultant shall obtain insurance on an "occurrence" basis if such insurance is available at commercially reasonable premium costs. Any insurance on a "claim made" basis shall be maintained for at least three (3) years after acceptance of the Work.

SECTION 21 - QUALITY CONTROL

The CONSULTANT warrants a high level of quality control and accuracy. The CITY may request additional data collection or reanalysis of data at no expense to the CITY. If the original data collected and/or data analysis is found to be accurate and reasonable, the CONSULTANT shall be compensated for the additional work in accordance with Section 5 of this Agreement.

The CONSULTANT acknowledges that the CITY may periodically evaluate the CONSULTANT'S performance and that the evaluation may be used by the CITY to determine the CONSULTANT'S qualifications for future contracts with the CITY.

SECTION 22 - NON EXCLUSIVE AGREEMENT

The parties acknowledge that this agreement is not an exclusive agreement, and the CITY may employ other consultants, professional or technical personnel to furnish services for the CITY, as the CITY, in its sole discretion, finds is in the public interest.

SECTION 23 - REPRESENTATIONS

- A. CONSULTANT represents that it is able to furnish all services, labor, equipment, and materials necessary and as may be required in the performance of this Agreement and all services performed under this Agreement shall be performed in a professional manner suitable to the CITY.
- B. CONSULTANT represents, with full knowledge that CITY is relying upon these representations when entering into this Agreement with CONSULTANT, that CONSULTANT has the professional expertise, experience and manpower to perform the services described in this Agreement.
- C. CONSULTANT shall, upon the request of CITY, promptly correct or replace all deficient work due to its errors and/or omissions without cost to CITY. CONSULTANT shall also be responsible for all damages resulting from CONSULTANT's deficient documents. Payment in full by CITY for services performed does not constitute a waiver of this representation.
- D. All services performed by CONSULTANT shall be to the satisfaction of CITY. In cases of disagreement or ambiguity, CITY shall, as provided in Section 8 of this Agreement, decide all questions, difficulties and disputes of whatever nature that may arise under this Agreement and the CONSULTANT agrees that the CITY's decision on all claims or questions is final.
- E. CONSULTANT represents that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this contract and that it has not paid or agreed to pay any company or person other than a bona fide employee working solely for CONSULTANT any fee, commission, percentage fee, gifts or any other considerations contingent upon or resulting from the award or making of this contract. For breach or violation of this representation, CITY shall have the absolute right to cancel this Agreement without liability to CONSULTANT or any third party.

SECTION 24 - INTEREST OF MEMBERS OF CITY AND OTHERS

No officers, members or employees of the CITY, and no members of its governing body, and no other public official of any other governmental entity, who exercise any functions or responsibilities in the review or approval of the undertaking or carrying out of this project, shall participate in any decision relating to this Agreement that affects their personal interest, or shall have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

SECTION 25 - INTEREST OF CONSULTANT

The CONSULTANT covenants that it presently has no conflict of interest and shall not acquire any interest, direct or indirect, that shall conflict in any manner or degree with the performance of services required to be performed under this Agreement. The CONSULTANT further covenants that in the performance of this Agreement, no person having such interest shall be employed by CONSULTANT, its subcontractors and subconsultants.

Furthermore, CONSULTANT covenants and agrees that it will not undertake the representation of any governmental entity, department or agency whose jurisdiction is within or covers any portion of Brevard County, Florida without the express, written consent of the City Council of the CITY.

Furthermore, CONSULTANT acknowledges that as of the effective date of this Agreement, CONSULTANT does not represent any client whose interest is currently adverse to the interest of the CITY. If during the term of this Agreement, CONSULTANT determines that a client it represents has or may potentially have an interest adverse to the interest of CITY, then CONSULTANT shall disclose such conflicting interest as required by this Section. Additionally, before proposing, advocating or otherwise advancing any legislation, administrative rule, regulation, or policy on behalf of a client, where such legislation, rule, regulation, or policy may potentially impact CITY and its operations, CONSULTANT shall, consistent with this Section, disclose the representation and provide a copy of the legislation, administrative rule, regulation, or policy to the City Manager.

The CONSULTANT further agrees that, in the performance of this Agreement, if any conflict of interest arises, it shall disclose, in writing, such interest to the CITY within three (3) days after the conflict arose. Such written disclosure shall provide sufficient information concerning the CONSULTANT's conflict including, but not limited to, name of the client presenting the conflicting position, the nature of the conflict, and the extent to which CONSULTANT is unable to provide the services described in this Agreement. The

City Manager may take any action necessary to address the conflict of interest disclosed by CONSULTANT, including termination of this Agreement.

SECTION 26 - INDEPENDENT CONTRACTOR

CONSULTANT and its employees, agents, contractors and subcontractors shall be deemed to be independent contractors and not CITY agents or employees. CONSULTANT, its employees or agents, contractors and subcontractors shall not attain any rights or benefits under CITY's Personnel Rules and Regulations or Pension Systems nor any rights generally afforded CITY's classified or unclassified employees. CONSULTANT, its agents, employees, contractors or subcontractors shall not be deemed entitled to the Florida Workers' Compensation benefits as a CITY employee.

SECTION 27-NON-DISCRIMINATION

CONSULTANT agrees that it will comply with all federal and state requirements concerning fair employment and will not discriminate by reason of race, color, age, religion, sex, national origin or physical handicap.

SECTION 28 -OTHER PROVISIONS

- A. Title and paragraph headings are for convenient reference and are not a part of this Agreement.
- B. No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision, and no waiver shall be effective unless made in writing.
- C. Should any provision, paragraph, sentence, word or phrase contained in this Agreement be determined to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida by a court of competent jurisdiction, such provision, paragraph, sentence, word or phrase shall be deemed modified in order to conform with Florida law or any order entered by such court. If not modifiable to conform to such law or order, then it shall be deemed severable and, in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect.
- D. The parties hereby waive the right to a trial by jury in any action, proceeding or counterclaim brought or filed by either of them against the other. Venue for any court action arising out of this Agreement shall be in Brevard County, Florida.
- E. There are no third party beneficiaries intended to be bound by or to enforce this Agreement.
- F. The Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system, in accordance with the terms governing use of the system, to confirm the employment eligibility of all persons employed by the Contractor during the term of the Contract to perform employment duties within Florida and all persons, including subcontractors, assigned by the Contractor to perform work pursuant to the Contract with the City.
- G. When applicable, the Consultant's employees are required to obtain, at no charge, from the City's Human Resources Department, a security identification badge prior to performance of its awarded contract. This law is established by the City Council through the City Ordinance Number 2007-48, Public Protection Act, as amended by City Ordinance Number 2007-96, with an effective date of November 15, 2007.

SECTION 29-LIMITATION OF LIABILITY

The CITY desires to enter into this Agreement only if in so doing the CITY can place a limit on the CITY's liability for any cause of action arising out of this Agreement. For other and additional good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, CONSULTANT expresses its willingness to enter into this Agreement with the knowledge that the CONSULTANT's recovery from the CITY to any action or claim arising from the Agreement is limited to a maximum amount of the contract value less the amount of all funds actually paid by the CITY to CONSULTANT pursuant to this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any manner intended either to be a waiver of the limitation placed upon the CITY's liability as set forth in Section 768.28, Florida Statutes, or to extend the City's liability beyond the limits established in said Section; and no claim or award against the CITY shall include attorney's fees and costs, investigative costs, expert fees, or pre-judgment interest. This section shall not prevent the CITY from taking court action it deems necessary

against, including but not limited to, the CONSULTANT, its subcontractors, subconsultants, suppliers, assignees and employees.

SECTION 30 - ENTIRETY OF AGREEMENT

This writing, together with documents referenced herein, embodies the entire agreement and understanding between the parties hereto, and there are no other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein.

No alteration, change, or modification of the terms of this Agreement shall be valid unless made in writing, signed by both parties and added as an addendum to this Agreement.

This Agreement, regardless of where executed, shall be governed by and construed according to the laws of the State of Florida. The venue for any litigation arising out of this Agreement shall be Brevard County, Florida. The parties hereto acknowledge and agree, for adequate and valuable consideration that they waive their right to trial by jury in any litigation that may arise out of any controversy that pertains to this Agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this 17th day of July, 2017.

ATTEST:


Terese Jones, City Clerk

CITY OF PALM BAY
BREVARD COUNTY, FLORIDA

By:


Bobbye Marsala, Chief Procurement Officer

WITNESS:

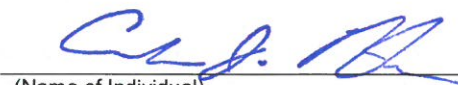
STANTEC CONSULTING SERVICES, INC.

By:


(Name of Individual)

Peter Napoli
Printed Name

By:


(Name of Individual)

Andrew Burnham
Printed Name

ATTACHMENT A

Stantec Consulting Services, Inc. hourly rates are presented below:

Project Principal	\$338
Technical Advisor	\$338
Project Manager	\$219
Project Consultant	\$172
Project Analyst	\$133
Project Admin	\$104

