

**CONTRACT NO. C523210567**

**PROFESSIONAL SERVICES AGREEMENT  
FOR  
PAVEMENT CONDITION SURVEY, DATA ANALYSIS,  
AND PAVEMENT MANAGEMENT APPLICATION (PMA)  
ROAD MATRIX UPDATE AND SERVICES  
BETWEEN  
THE CITY OF MILWAUKEE  
  
AND  
  
STANTEC CONSULTING SERVICES INC.**

**THIS AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between the City of Milwaukee, a municipal corporation organized under the laws of the State of Wisconsin acting through its Commissioner of Public Works (the "City"), and Stantec Consulting Services Inc., a corporation organized under the laws of the **State of Wisconsin** (the "Consultant").

**WHEREAS**, the City has requested the Consultant to provide services to the survey City maintained roadway pavement, data processing, update the City existing PMA system software application called Road Matrix previously supplied by the Consultant, application training, and reporting;

**WHEREAS**, the Consultant is the sole source of the services and proprietary software for the Project;

**WHEREAS**, such professional services include, without limitation, project set up and mobilization, field data collection, data processing, Road Matrix software data loading, data review, result reporting, onsite consulting and training of City staff;

**WHEREAS**, after reviewing the proposal submitted by the Consultant, which has specific insight from previous knowledge of the City's current PMA software service and the Consultant's proprietary Road Matrix software being utilized for the PMA and planned data analysis, the City selected the Consultant as the sole vendor to perform such services;

**WHEREAS**, the Consultant desires to provide the professional services to the City upon the terms and conditions hereinafter set forth;

**WHEREAS**, the Consultant represents itself as being capable, experienced, and qualified to undertake and perform those certain services as hereinafter set forth as are required in accomplishing fulfillment of its obligation under the terms and conditions of this Agreement as an independent Consultant and not as an employee of the City;

**WHEREAS**, the Common Council of the City of Milwaukee adopted Resolution File No. \_\_\_\_ on \_\_\_\_\_, 2021 to create the funding source with authorizes the Commissioner of Public Works (the "Commissioner") to engage the Consultant to undertake these professional services;

**NOW, THEREFORE**, in consideration of the mutual promises contained in this Agreement and other good and valuable consideration, the City and the Consultant promise and agree as follows:

**ARTICLE I  
Retention of Services**

The City hereby agrees to engage the Consultant and the Consultant hereby agrees to personally perform, as an independent Consultant and not as an employee of the City, the services identified in the first whereas clause and hereinafter set forth, all in accordance with the terms and conditions of this Agreement, the Consultant's Proposal dated August 13, 2021 (Exhibit A) (the "Contract Documents").

## **ARTICLE II**

### **Term of Agreement and Early Termination**

2.1 **Term of Agreement.** The term of this Agreement shall commence on the date hereof, and shall end within 60 days from execution or from delivery by Consultant to the City of all pertinent data, whichever is later. In addition to all other remedies inuring to the City should this Agreement not be completed by the dates specified in this Section 2.1, in accordance with all the terms, requirements, and conditions set forth in the Contract Documents, the Consultant shall continue to be obligated thereafter to fulfill the Consultant's responsibility to complete the scope of services and to execute any necessary amendments to this Agreement.

2.2 **Changes.** The City may authorize changes in the Contract Documents. Such changes, including any increase or decrease in the contracted scope of services and/or increase or decrease in the amount of the Consultant's compensation and/or completion date which are mutually agreed upon by and between the City and Consultant, shall be incorporated in written amendments to the Contract Documents. No changes to this Contract shall be valid unless incorporated as a written, mutually agreed amendment thereto. Determination of the cost for a change in an individual work order shall be based on the original work order hourly rates.

2.3 **Termination for Cause.** If, through any cause, the Consultant shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Consultant shall violate any of the covenants, agreements, or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement by giving written notice to the Consultant of such termination and specifying the effective date, at least ten days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, reports or other materials related to the services performed by the Consultant under this Agreement for which compensation has been made or may be agreed to be made shall, at the option of the City, become the property of the City. Notwithstanding the foregoing, the Consultant shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Consultant, and the City may withhold any payments to the Consultant for the purpose of setoff until such time as the exact amount of the damages due to the City from the Consultant is determined.

2.4 **Termination for Convenience.** The City may terminate this Agreement at any time and for any reason by giving written notice to the Consultant of such termination and specifying the effective date, at least seven days before the effective date of such termination. If this Agreement is terminated by the City pursuant to this Section 2.5, the Consultant will be paid an amount which bears the same ratio to the total compensation as the services actually and satisfactorily performed bear to the total services of the Consultant covered by this Agreement, less payments for such services as were previously made. The value of the services rendered and delivered by the Consultant will be determined by the City.

2.5 **Beginning of Term.** The time for completion shall be construed to begin upon execution of this Agreement or upon delivery by the City to the Consultant of all pertinent project data, whichever is later, and shall end with the City's written notification to the consultant acknowledging formal acceptance of the completed work. Said time shall not be extended because of any delay attributable to the Consultant but acceptance of the completed work. Said time shall not be extended because of any delay attributable to the Consultant but may be extended by the City in the event of a delay attributable to the City or its authorized representative, or because of unavoidable delays caused by an act of God, war, governmental actions, or other conditions beyond the control of the Consultant.

2.6 **Continuation of Services.** Services by the Consultant shall proceed continuously and expeditiously through completion of each phase and as a continuation of prior service order project work.

2.7 **Notification of Completion.** The Consultant shall notify the City in writing when the Consultant has determined that the services under this Contract have been completed. Upon the City's subsequent determination that the work has been satisfactorily completed, the City will provide written notification of the Consultant acknowledging formal acceptance of the completed services.

## **ARTICLE III**

### **Scope of Services**

3.1 **Scope.** The Consultant is required to perform, do and carryout in a satisfactory, timely, and professional manner to the City's reasonable satisfaction the services set forth in the Contract Documents. The Consultant is required to furnish all services and labor necessary as indicated in the Contract Documents, including without limitation, materials, equipment, supplies, and incidentals. The scope of services to be performed hereunder shall include, without limitation, those services set forth in Exhibit A attached hereto. The City may, from time to time, request the Consultant to perform additional services which are not set forth in the Contract Documents. In the event that such a request is made, the performance of such services shall be subject to the terms, conditions and contingencies set forth in this Agreement.

3.2 **Errors or Omissions.** The Consultant shall be responsible for the accuracy of the services performed under this Contract, and shall promptly make necessary revisions or corrections to its services resulting from its negligent acts, its errors or its

omissions without additional compensation. The Consultant shall give immediate attention to these revisions or corrections to prevent or minimize delay to the Contract. The Consultant shall be responsible to the City for any losses or to costs to repair or remedy as a result of the Consultant negligent acts, errors, or omissions.

#### **ARTICLE IV**

##### **Responsibilities of the City**

4.1 During the term of this Agreement, the City shall assist the Consultant in the performance of the services set forth in the Contract Documents by: (i) Designation of a City representative to respond to questions and provide information to the Consultant on an as needed basis. (ii) Scheduling meetings at the request of the City or the Consultant for the purpose of discussing and reviewing the services under this Contract.

#### **ARTICLE V**

##### **Standards of Performance**

5.1 The Consultant agrees that the performance of the services, pursuant to the terms, conditions and agreements of this Agreement, shall be performed in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances providing like services. The Consultant agrees to abide by all federal, state and local laws, regulations, and ordinances, and all provisions of this Agreement.

#### **ARTICLE VI**

##### **Compensation and Terms of Payment**

6.1 Compensation. The Consultant will be compensated by the City for the services provided under this Agreement on an actual cost not-to-exceed basis, subject to the terms, conditions and contingencies set forth within the Contract Documents.

6.2 Not to Exceed. Notwithstanding the foregoing Section 6.1, total compensation to the Consultant under this Agreement shall not exceed \$277,230.

6.3 Invoicing and Payments. Payments to the Consultant for services rendered under this Agreement will be based on itemized invoices submitted on a monthly basis by the Consultant to the City. These invoices shall document costs to date of the Task Units of the work performed to the same level of detail as the Task Unit spreadsheet found in Exhibit A along with percent completion of each task. Invoices shall be reviewed and approved by the Commissioner of Public Works or his designee. The final five percent (5%) of the contract amount shall be retained. The final payment of the balance due the Consultant for the completed services shall be made upon completion and acceptance by the City of the services performed by the Consultant under this Agreement. All payments made under this Agreement shall be subject to the City's prompt payment policy set forth in section 6.4, below.

6.4 Prompt Payment Policy. The City, as a matter of policy, shall strive to make timely payment on all invoices. Payments to the Consultant will be deemed timely if the payment is mailed, delivered, or transferred within forty-five calendar days after receipt of a properly completed invoice or receipt and acceptance of the service under the work order, whichever is later. If the City does not make payment by the 45<sup>th</sup> calendar day, the City shall pay simple interest beginning with the 31<sup>st</sup> calendar day at the rate of one percent per month (unless the City disputes the amount of the invoice).

6.5 Reimbursable Expenses. The following items will be charged at cost plus 10% and are, for purposes of this Agreement, deemed reimbursable expenses: (i) postage and handling; (ii) long distance telephone calls; (iii) out of town travel; and (iv) permits and approval fees.

6.6 Additional Fringe or Employee Benefits. The Consultant shall not receive nor be eligible for any fringe benefits or any other benefits to which City employees are entitled to or are receiving.

6.7 Taxes, Social Security, Insurance, and Government Reporting. Personal income tax payments, social security contributions, insurance, and all other governmental reporting and contributions required as a consequence of the Consultant receiving payment under this Agreement shall be the sole responsibility of the Consultant.

6.8 Withholding of Salaries. If in the performance of this Agreement, there is an underpayment of salaries by the Consultant or by any subcontractor thereunder, the City shall withhold from the Consultant out of payments due to it an amount sufficient to pay employees underpaid the difference between the salaries required hereby to be paid and the salaries actually paid such employees for the total number of hours worked. The amounts withheld shall be disbursed by the City for and on account of the Consultant or subcontractor, if any, to the respective employees to whom they are due.

**ARTICLE VII**  
**Personnel, Qualifications, Subcontracting**

7.1 Required Personnel. The Consultant represents that it has or will secure at its own expense all personnel required to perform the services set forth in the Contract Documents. These personnel shall not be employees of or have any contractual relationship to the City.

7.2 Fully Qualified. The Consultant represents that all personnel engaged in the performance of the services set forth in the Contract Documents shall be fully qualified and shall be authorized or permitted under state and local law to perform the services.

7.3 Subcontracting. None of the services to be performed under the Contract Documents shall be subcontracted without the prior written approval of the City. If any of the services are subcontracted, the performance of such services shall be specified by written contract and shall be subject to each provision of this Agreement. The Consultant shall be as fully responsible to the City for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by it, as it is for acts and omissions of persons directly employed by it.

**ARTICLE VIII**  
**Indemnification and Defense of Suits**

In case any action in court, claim, or proceeding before an administrative agency is brought against the City or any of its officers, agents, or employees for the failure, omission, or neglect of the Consultant, in whole or in part, to perform any of the covenants, acts, matters, or things by this Agreement undertaken, or for injury or damage caused by the negligence of the Consultant, its officer, agents and employees, the Consultant shall defend, indemnify, and save harmless the City and its officers, agents, and employees from all losses, damages, costs, expenses, judgments, or decrees arising out of such action. Provided, however, that in no event shall consultant's total liability for loss (indemnity or defense) exceed consultant's prorata share of all fault causing any injury or loss. The City shall tender the defense of any claim or action at law or in equity to the Consultant or the Consultant's insurer, and upon such tender, it shall be the duty of the Consultant or the Consultant's insurer to defend such claim or action without cost or expense to the City or its officers, agents, or employees. The Consultant shall be solely responsible for the conduct and performance of the services required under the terms and conditions of this Agreement and for the results therefrom. Nothing in this Article VIII shall be construed to impose liability on the Consultant for the negligence of the City, or of its officers, agents, or employees in the performance of this Agreement.

**ARTICLE IX**  
**Insurance**

The Consultant shall be solely responsible to meet the Consultant's insurance needs as required by the City, including public and professional liability and property damage, during the term of this Agreement or any extension thereof. A Certificate of Insurance shall be provided to the City as evidence thereof naming the City as an additional insured for public liability and property damage, and providing for a thirty (30) day notice to the City prior to termination or cancellation of the policy. The City reserves the right to require review and approval of the actual policy of insurance before it executes this Agreement. The minimum limits of insurance required by the City under this Agreement are set forth in Exhibit B attached hereto.

**ARTICLE X**  
**Conflicts of Interest**

10.1 The City - Governing Body. No officer, employee or agent of the City who exercises any functions or responsibilities in connection with the carrying out of any services or requirements to which this Agreement pertains, shall have any personal interest, direct or indirect, in this Agreement. No member of the Governing Body of the locality and no other public official of such locality who exercises any functions or responsibilities in the review or approval of the carrying out of this Agreement, shall have any personal interest, direct or indirect, in this Agreement.

10.2 Consultant. The Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Consultant further covenants that in the performance of this Agreement no person having any conflicting interest shall be employed. An interest on the part of the Consultant or its employee must be disclosed to the City.

**ARTICLE XI**  
**Non-Discrimination and Equal Employment**

11.1 Discrimination. The Consultant agrees not to discriminate against any qualified employee or qualified applicant for employment because of sex, race, religion, color, national origin or ancestry, age, disability, lawful source of income, marital status, sexual orientation, gender identity or expression, past or present membership in the military service, familial status, or based upon affiliation with, or perceived affiliation with any of these protected categories; not to discriminate for the same reasons in regard to tenure, terms, or conditions of employment; not to deny promotion or increase in compensation solely for these reasons; not to adopt or enforce any rule or employment policy which discriminates between employees on account of sex, race, religion, color, national origin or ancestry, age, disability, lawful source of income, marital status, sexual orientation, gender identity or expression, past or present membership in the military service, familial status, or based upon affiliation with, or perceived affiliation with any of these protected categories; not to penalize any employee or discriminate in the selection of personnel for training, solely on the basis of sex, race, religion, color, national origin or ancestry, age, disability, lawful source of income, marital status, sexual orientation, gender identity or expression, past or present membership in the military service, familial status, or based upon affiliation with, or perceived affiliation with any of these protected categories.

11.2 Subcontracts. The Consultant shall include or cause to be included in each subcontract covering any of the services to be performed under this Agreement a provision similar to the above paragraph, together with a clause requiring such insertion in further subcontracts that may in turn be made.

**ARTICLE XII**  
**Addresses and Notices**

Unless otherwise provided in the Contract Documents, any notice, communication, request, reply or advice (herein severally and collectively, for convenience, called "notice"), herein provided or permitted to be given, made or accepted by one party to the other must be in writing and may be given or be served by depositing the same in the United States mail, postage paid and certified and addressed to the party to be notified, with return receipt requested. Notice deposited in the mail in the manner described above shall be conclusively deemed to be effective, unless otherwise stated in this Agreement, from and after the expiration of three (3) days after it is deposited. Notice given in any other manner should be effective only if and when received by the party to be notified. For the purpose of notice, the address of the parties shall be as follows:

If to the City, to:	Commissioner of Public Works City of Milwaukee Frank P. Zeidler Municipal Building 841 North Broadway, Room 516 Milwaukee, WI 53202 Attn: Holly Rutenbeck
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If to the Consultant, to:	<COMPANY NAME> Attention: <CONTACT NAME> <ADDRESS> <CITY STATE ZIP>
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**ARTICLE XIII**  
**Records, Audits, Confidentiality**

13.1 Access to Records. The Consultant shall maintain books, records, documents and other evidence directly pertinent to performance under this Agreement in accordance with accepted applicable professional practices. The City, or any of its duly authorized representatives, shall have access to such books, records, documents, papers, or any records of the Consultant which are directly pertinent to this Agreement, for the purpose of making audits, examinations, excerpts and transcriptions.

13.2 Establishment and Maintenance of Records / Public Records Law. Records shall be maintained in accordance with requirements prescribed by the City with respect to all matters covered by this Contract. Both parties understand that the City is bound by the Wisconsin Public Records Law, and as such, all of the terms of this Agreement are subject to and conditioned on the provisions of Wis. Stat. Section 19.21, *et seq.* Consultant acknowledges that it is obligated to assist the City in retaining and producing records that are subject to the Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of this Agreement, and that the Consultant must defend and hold the City harmless from liability under that law. Except as otherwise authorized, those records shall be maintained for a period of seven (7) years after receipt of the final payment under this Agreement.

**ARTICLE XIV**

### **Office of Equity and Inclusion Participation**

14.1 **Policy and Goal.** In accordance with Chapter 370 of the Milwaukee Code of Ordinances, Small Business Enterprise requirement, it is the City's policy to accomplish Small Business Enterprise (SBE) participation in all contracting activities in the City's Department of Public Works. The City has established for itself an overall goal of eighteen percent (18%) SBE participation for Public Works contracts. In an effort to meet these overall goals, the Commissioner of Public Works, as Contracting Officer for the City, expects the Consultant to use its best efforts to enable SBEs to be considered fairly as subcontractors and material suppliers under all Public Works contracts. The requirement for this Agreement is 0% SBE participation.

14.2 **Forms and Reports.** The Consultant shall prepare and submit accurate and timely SBE utilization forms and reports to the City. The reports shall include, but not be limited to, Project Participation (SBE Form A), Monthly Utilization (SBE Form D), and SBE Subcontractor Payment Certification (Form E) forms as directed. Failure to submit the required forms and reports to the City may result in disqualification of future bids, delay of payments, or other appropriate sanctions. Final contract payments will not be made until final SBE Utilization Reports and SBE Subcontractor Payment Certification forms are on file with the City.

14.3 **Compliance Reviews.** During the performance of this Agreement, the Commissioner reserves the right to conduct compliance reviews. If the Consultant is not in compliance with the specifications, the Commissioner will notify the Consultant in writing of the corrective action that will bring the Consultant into compliance. If the Consultant fails or refuses to take corrective action as directed, the Commissioner may take one or more of the following actions: (i) Terminate or cancel this Agreement, in whole or in part; (ii) Remove the Consultant from the list of qualified firms and refuse to accept future proposals for a period not to exceed three years; or (iii) Impose other appropriate sanctions.

### **ARTICLE XV**

#### **Additional Provisions**

15.1 **Ownership of Documents.** Upon payment of all monies properly due and payable to the Consultant and not otherwise held by the City for services that have not been accepted by the City or that are properly held by the City as setoff per this Agreement, all plans, studies, sketches, drawings, reports, data, and specifications of Work Product, with the exception of the Pavement Management Software and its documentation, User Manuals, and Surface Condition Training Manuals as herein required, are the property of the City. In the event this contract is terminated for cause or convenience, and at the end of the term of this contract, all such plans, studies, sketches, drawings, reports and specifications shall be delivered immediately to the City. The Consultant may retain one copy of each documents for his records, but shall have no proprietary rights to them. The Consultant agrees that it shall not use, or otherwise reproduce beyond its internal organization, the information, data, and reports provided by the City in the execution of the Contract without the written consent of the City. The Consultant agrees that the City hereby receives a royalty-free, non-exclusive and irrevocable right to use for internal purposes, the software and documentation/user manuals to be prepared under this contract. The City agrees not to reproduce or circulate beyond its own organization, either verbally or written by word, information pertaining to the working components of the software and the documentation/user manuals provided by the Consultant, either in part or in full without the written consent of the Consultant. The City, however, may use and display at its discretion and without limitation, the reports and other information output produced by the software. Included with this provision are:

1. Subject to immunities, limitations, and defenses available to the City under law and without waiving same, the City agrees, to the fullest extent permitted by law, to indemnify and hold the Consultant harmless from any claim, liability or cost (including reasonable attorney's fees and defense costs) arising or allegedly arising out of any reuse or modification of the Work Product by the City or any person or entity that obtains the Work Product directly from the City.
2. The Consultant shall retain a permanent, irrevocable, non-exclusive, royalty-free license to use any such documents, concept, product or process produced by or resulting from the Services rendered by the Consultant.

15.2 **Captions.** The captions appearing at the first of each numbered section of this Agreement are inserted and included solely for convenience, but shall never be considered or given any effect in construing this Agreement or the duties, obligations or liabilities of the respective parties hereto, or in ascertaining intent if any questions of intent should arise.

15.3 **Severability.** The provisions of this Agreement are severable. If any provision or part of this Agreement or the application thereof to any person or circumstance shall be held by a court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part thereof to other persons or circumstances shall not be affected thereby.

15.4 **Entire Agreement.** This Agreement, and the Exhibits attached hereto, constitute the entire agreement between the parties hereto relating to the subject matter hereof, and all prior agreements, correspondence, discussions and understandings of the parties (whether oral or written) are merged herein and made a part hereof, it being the intention of the parties hereto that this Agreement shall serve as the complete and exclusive statement of their agreement together.

15.5 No Additional Waiver Implied. The failure of any party to insist, in any one or more instance, upon performance of any of the terms, covenants, or conditions of this Agreement shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant or condition by any other party hereto, but the obligation of such other party with respect to such future performances shall continue in full force and effect.

15.6 Amendment. This Agreement shall be amended only by formal written supplementary amendment. No oral amendment of this Agreement shall be given any effect. All amendments to this Agreement shall be in writing executed by both parties.

15.7 Applicable Law and Venue. This Agreement and all questions arising in connection herewith shall be governed by and construed in accordance with the internal laws of the State of Wisconsin. Venue for any action arising out of or in any way related to this Agreement shall be exclusively in Milwaukee County for matters arising under state law and in Federal District Court for the Eastern District of Wisconsin for matters arising under federal jurisdiction.

15.8 Independent Consultant. In performing its obligations under this Agreement, the Consultant shall act as an independent consultant solely for its own account and not as an agent, representative, or employee of the City.

15.9 Assignment. This Agreement shall be binding on the heirs, successors, and assigns of each party hereto. The employment by the City of the Consultant to perform the services set forth in this Agreement is a personal contract and the Consultant shall not assign, sublet or transfer the Consultant's interest or obligations under the provisions of this Agreement without the prior written consent of the City. Provided, however, that claims for money due or to become due the Consultant from the City under this Contract may be assigned to a bank, trust company, or other financial institution without such prior written consent. Notices of any such assignment or transfer shall be furnished promptly to the City. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the City.

15.10 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered but one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day, month and year set forth above.

**STANTEC CONSULTING SERVICES INC.**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Date: \_\_\_\_\_

**CITY OF MILWAUKEE**

**COUNTERSIGNED**

By: \_\_\_\_\_  
Commissioner of Public Works

By: \_\_\_\_\_  
Comptroller

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**CITY ATTORNEY**

**CITY ATTORNEY**

Examined and approved as to content  
This \_\_\_\_ day of \_\_\_\_\_, 2020

Examined and approved as to execution  
This \_\_\_\_ day of \_\_\_\_\_, 2020

\_\_\_\_\_  
Assistant City Attorney

\_\_\_\_\_  
Assistant City Attorney