

December 11, 2016

City of Columbia, Missouri
701 E. Broadway
Columbia, MO 65205

Attention: Ms. Heather Guess

Reference: Licensing and Maintenance Agreement for the Use of FAMS-XL© (See Attachment)

Dear Heather:

As you may be aware, on May 6th, 2016, MWH Global Inc., and its subsidiaries, including **Burton & Associates, Inc. ("Burton")** were acquired by Stantec Inc. As part of the on-going integration of the service offerings of the combined MWH and Stantec companies, effective January 1, 2017, **Burton** will be dissolved and all of its assets and liabilities, including existing contracts, will be assigned to Stantec Consulting Services Inc. ("**Stantec**"), with the result that the **Burton** operations will be carried on through **Stantec**. **Stantec** will maintain **Burton's** present office locations with no interruption in operations or client services, and all future projects and operations will be transitioned to the **Stantec** name in the upcoming months. The **Stantec** community unites approximately 22,000 employees working in over 400 locations across six continents. Our work—engineering, architecture, interior design, landscape architecture, surveying, environmental sciences, project management, and project economics, from initial project concept and planning through design, construction, and commissioning—begins at the intersection of community, creativity, and client relationships. With a long-term commitment to the people and places we serve, **Stantec** has the unique ability to connect to projects on a personal level and advance the quality of life in communities across the globe. **Stantec** trades on the TSX and the NYSE under the symbol STN. Visit us at stantec.com or find us on social media.

Stantec's vision includes working with the best clients on the best projects and providing the best services. Accordingly, please be assured that the continuity of your model support will be unaffected by this new arrangement. The caliber of the personnel currently working on your models will not change and, except for the assignment requested herein, no other aspect will be affected.

In this regard, we request your approval to assign all existing contracts in the name of MWH and its subsidiaries to **Stantec**. Kindly indicate your consent to the request for assignment by returning a duplicate copy of this letter, executed on behalf of the City of Columbia to me via return email.

Sincerely,

Burton & Associates, Inc.

Andrew J. Burnham
Senior Vice President

The undersigned hereby consents to the assignment of the contract noted above to Stantec Consulting Services Inc. effective January 1, 2017.

CITY OF COLUMBIA, MISSOURI

APPROVED AS TO FORM:

By: _____
Mike Matthes, City Manager

By: _____
Nancy Thompson City Counselor

Date: _____

ATTEST:

By: _____
Sheela Amin, City Clerk

Introduced by McDavid Council Bill No. R 41-15

A RESOLUTION

authorizing a license agreement with Burton & Associates, Inc. for use of the FAMS-XL[®] financial forecasting model for the Sanitary Sewer Utility and Stormwater Utility cost of service and rate recommendations study.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF COLUMBIA, MISSOURI, AS FOLLOWS:

SECTION 1. The City Manager is hereby authorized to execute a license agreement with Burton & Associates, Inc. for use of the FAMS-XL[®] financial forecasting model for the Sanitary Sewer Utility and Stormwater Utility cost of service and rate recommendations study. The form and content of the agreement shall be substantially as set forth in "Exhibit A" attached hereto and made a part hereof.

ADOPTED this 2nd day of March, 2015.

ATTEST:



City Clerk



Mayor and Presiding Officer

APPROVED AS TO FORM:



City Counselor

Permanent Record
Filed in Clerk's Office

BURTON & ASSOCIATES

License Agreement for the Use of FAMS-XL©

This License Agreement by and between the City of Columbia, Missouri (hereinafter “City”), a municipal corporation, and Burton & Associates, Inc. (hereinafter, “B&A”), a corporation organized in the State of Florida and with authority to transact business within the State of Missouri is entered into on the date of the signatory last noted below (the “Effective Date”). City and B&A are each individually referred to herein as a “Party” and collectively as the “Parties.”

NOW, THEREFORE, the Parties hereto, for good and sufficient consideration, the receipt of which is hereby acknowledged, intending to be legally bound, do hereby agree as follows.

A. Background, Condition Precedent, Limitation.

FAMS-XL© is a financial planning model that simulates the financial dynamics of a utility enterprise over a ten (10) year projection period. FAMS-XL© was developed by B&A and is being set up and adapted for City’s ten (10)-year planning horizon, specific financial structure and flow of funds during the Utility Rate Study (Rate Study) that B&A is conducting for City.

Condition Precedent. This Agreement, even if executed by both parties, is only valid upon completion of the above referenced Rate Study by B&A and payment in full for those services by City.

Limitation. FAMS-XL© is an extensive spreadsheet model and must be run on Microsoft Excel©, however, Microsoft Excel© is not included as a part of this Agreement.

B. License Agreement.

B&A agrees to grant City a ten (10) year license, renewable upon written agreement of both parties for an unlimited number of ten (10) year terms, to use FAMS-XL© under the following terms and conditions:

1. FAMS-XL© Applications Included in this Agreement.

The FAMS-XL© Utility Applications included in this Agreement are as follows:

- a. Sewer Enterprise Fund multi-year financial forecasting model
- b. Stormwater Enterprise Fund multi-year financial forecasting model

All provisions of this Agreement apply equally to each of the above referenced FAMS-XL© Utility Applications.

2. **License Fee.**

There is no license fee for the use of FAMS-XL©, assuming that the above referenced Rate Study is completed by B&A (and payment in full for those services is made by City).

3. **Ownership and Use of FAMS-XL© by City.**

FAMS-XL© is owned by B&A and upon execution of this Agreement all ownership of FAMS-XL© will be retained by B&A and City will have a license to use the FAMS-XL model. This Agreement provides that City and City's employees and officers (City as used hereinafter in this Agreement includes City's employees and officers) can use FAMS-XL©, for the sole benefit of City in its utility rate and financial planning. City may not use FAMS-XL© for the benefit of other parties, nor may City allow other parties to use FAMS-XL© for any purpose or reason. City may not copy or replicate FAMS-XL© in any way or form and City may not give, sell, or allow access to FAMS-XL© to any other party for any purpose or reason. Notwithstanding the foregoing, City may make copies for disaster recovery and back up purposes.

4. **Trade Secrets and Public Information Request Notification.**

B&A asserts that FAMS-XL© is a proprietary product of B&A and that it includes trade secrets as protected by and defined in the Missouri Revised Statutes (MRS) Title 26: Trade and Commerce, Chapter 417: Trademarks, Names and Private Emblems, Section 417.453 - Definitions, which states: "(4) *'Trade secret'*, information, including but not limited to technical or nontechnical data, a formula, pattern, compilation, program, device, method, technique or process, that: (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy." As such, B&A asserts that the FAMS-XL© model and its source code are exempt from public records laws based upon the above referenced definition and the other provisions of MRS, Chapter 417 Trademarks, Names and Private Emblems. Should City receive a public records request related to the FAMS-XL© model, City shall notify B&A within three (3) business days of receipt of such request. As of the date of this Agreement, the Parties agree that any report generated by the FAMS-XL© model is an open record pursuant to Chapter 610 RSMo (the Missouri Sunshine Law) and will be disclosed by City in response to a public records request. Unless there is a change in law, the Parties further agree the FAMS-XL© model is a closed record pursuant to Section 610.021(14) and (21) RSMo and will not be disclosed by City in response to a public records request.

Notwithstanding the foregoing, the Parties agree that hard copy printouts or pdf files of output schedules from the FAMS-XL© model may be disclosed to others for the purpose of accomplishing City's business.

5. **Source Code.**

FAMS-XL© is programmed in Microsoft Excel©. As such, its source code is not compiled and although the FAMS-XL© model will be delivered to City with protection features enacted on cells including the source code, the source code is available to City through the normal Excel© functions if the protection features are disabled. In order to ensure that the FAMS-XL© model functions properly, City agrees not to disable the protection features and not to change the formulas in any cells of the FAMS-XL© model. All input cells and otherwise accessible cells in the model will be highlighted in green and the City can change values in any cells highlighted in green. However, City agrees to use caution when it uses the FAMS-XL© model to enter appropriate data in the appropriate portions of the model so that the model will produce accurate results.

6. **Warranties.**

B&A warrants that at the time that FAMS-XL© is delivered to City, the results of FAMS-XL© represent the financial dynamics of City's applicable utilities as defined by City during the set-up and adaptation of FAMS-XL© by B&A for City's use. Because it is possible for City to alter the source code by disabling the protection features referred to in Section B.5, and because it is possible for City to enter information into the FAMS-XL© model incorrectly, if City uses the FAMS-XL© model without the assistance or verification of B&A, B&A does not warrant that FAMS-XL© will represent the above described financial dynamics of City's applicable utilities at any time after FAMS-XL© is delivered to City.

7. **Enhancements.**

- a. In the course of its business, B&A may make enhancements to the FAMS-XL© model from time to time. If enhancements are made, each year on the anniversary date of this Agreement B&A will notify City of such available enhancements and City may opt to have those enhancements installed on City's FAMS-XL© model. The cost of installing such enhancements will be negotiated between B&A and City at such time as City opts to have the enhancements installed. Should the Parties reach an agreement, the Parties shall enter into a written agreement for the enhancements.
- b. In addition, City may from time to time desire that specific enhancements be made to City's version of FAMS-XL©. If such specific enhancements are desired, the cost of making and installing such enhancements will be negotiated between B&A and City at such time as the enhancements are requested by City.

Should the Parties reach an agreement, the Parties shall enter into a written agreement for the enhancements.

- c. If enhancements are made to City's version of FAMS-XL© under the provisions of Sections B.7.a. and B.7.b., the enhancements will become the proprietary property of B&A and all provisions of this Agreement will apply to such enhancements for the duration of the term of this Agreement.

C. Maintenance.

Should City desire to hire B&A to perform maintenance or to assist City in the use of the FAMS-XL© model to perform annual or periodic updates, or verification of City's use of the model, Parties shall negotiate an agreement and enter into a written agreement for those services.

D. Data Ownership and Security.

1. B&A's services and the FAMS-XL© model shall at all times comply with the terms of this Agreement, good financial industry and accounting practices, applicable laws, and SSAE16 or successive applicable auditing standards.

2. Duty to Report.

B&A 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 B&A FAMS-XL© programs and applications. 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.

3. Binding Subcontractors and Subsidiaries to Data Security Standards.

B&A shall include similar provisions in B&A's agreements with subcontractors and subsidiaries that perform work or services related to these B&A FAMS-XL© programs and applications and or have access to City's data contained therein or in the cloud storage.

4. No Harmful Code.

B&A warrants that the B&A FAMS-XL© programs and applications do not contain Harmful Code. For purposes of this Agreement, "Harmful Code" is any code containing any program, routine, or device which is designed to delete, disable, deactivate, interfere with or otherwise harm any software, program, data, device, system or service, including without limitation, any time bomb, virus, drop-dead device, malicious logic, worm, Trojan horse or trap or back door. B&A shall include in contracts with any subcontractor a provision which prohibits the use of Harmful Code.

5. Data Ownership and Storage.

B&A covenants that any data from 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. B&A covenants that B&A, its subsidiaries or subcontractors shall not sell or give away any such City data or information derived therefrom.

E. Miscellaneous.

1. Missouri Sunshine Law.

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). Should B&A copyright any material or software provided to City or claim trade secret protection, City shall provide B&A with notice of the receipt of an open records request to allow B&A to seek to protect its claim as provided for in Section B.4.

2. No 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.

3. Notices.

Any notice, demand, request, or communication required or authorized by the Agreement shall be delivered either by hand, facsimile, overnight courier or mailed by certified mail, return receipt requested, with postage prepaid, to:

If to City:

City of Columbia
Public Works Department
P.O. Box 6015
Columbia, MO 65205-6015
ATTN: Heather Guess

If to B&A:

Burton & Associates
1000 N. Ashley Dr.
Suite 513
Tampa, FL 33602
ATTN: Andrew Burnham

The designation and titles of the person to be notified or the address of such person may be changed at any time by written notice. Any such notice, demand, request, or

communication shall be deemed delivered on receipt if delivered by hand or facsimile and on deposit by the sending Party if delivered by courier or U.S. mail.

4. **No Third-Party Beneficiary.**

No provision of the Agreement is intended to nor shall it in any way inure to the benefit of any customer, property owner or any other third party, so as to constitute any such Person a third-party beneficiary under the Agreement.

5. **Amendment.**

No amendment, addition to, or modification of any provision hereof shall be binding upon the Parties, and neither Party shall be deemed to have waived any provision or any remedy available to it unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the applicable Party or Parties.

6. **Governing Law and Venue.**

This Agreement shall be governed, interpreted, and enforced in accordance with the laws of the State of Missouri and/or the laws of the United States, as applicable. The venue for all litigation arising out of, or relating to this Agreement document, shall be in Boone County, Missouri, or the United States Western District of Missouri. The Parties hereto irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of Missouri. The Parties agree to waive any defense of forum non conveniens.

7. **General Laws.**

B&A shall comply with all federal, state, and local laws, rules, regulations, and ordinances.

8. **HOLD HARMLESS AGREEMENT.**

To the fullest extent not prohibited by law, B&A shall indemnify and hold harmless the City of Columbia, 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 B&A, of any subcontractor (meaning anyone, including but not limited to consultants having an Agreement with B&A or a subcontractor for part of the services), of anyone directly or indirectly employed by B&A or by any subcontractor, or of anyone for whose acts the B&A or its subcontractor may be liable, in connection with providing these services. This provision does not, however, require B&A to indemnify, hold harmless, or defend the City of Columbia from its own negligence.


9. **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.


[SIGNATURE PAGE FOLLOWS]

By affixing of signatures below, both Parties agree to all terms and conditions of this Agreement the day and the year of the last signatory noted below.


CITY OF COLUMBIA, MISSOURI

By: 
Mike Matthes, City Manager
Date: 3-3-15

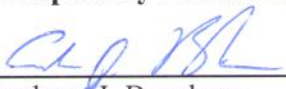
ATTEST:


Sheela Amin, City Clerk
Date: 3-3-15

APPROVED AS TO FORM:


Nancy Thompson, City Counselor
Date: 3-3-15

Accepted by Burton & Associates:


Andrew J. Burnham
Senior Vice President
Date: 2-16-15