

EMPLOYMENT AGREEMENT

This **AGREEMENT** ("Agreement") made as of the 14th day of January 2020, by and between the City of Marshall ("Employer") and Jason Anderson ("Employee").

In consideration of the mutual covenants and promises contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Employer and Employee agree as follows:

1. POSITION. Employer agrees to employ Employee as its Director of Public Works/City Engineer. Employee agrees to serve as Director of Public Works/City Engineer in accordance with the position description attached hereto as Appendix A, as such description now exists or may be amended from time to time, and in accordance with state statutes, City Charter and City ordinances, City policies, and other workplace expectations, and to perform such other legally permissible and proper duties and functions as are contained herein or as the City Council shall from time to time assign to Employee.

2. TERM OF EMPLOYMENT. Employee shall commence employment with Employer under the terms of this Agreement on February 3, 2020 and shall continue until such employment is terminated in accordance with this Agreement.

3. PENSION PLAN. Employer shall contribute to Minnesota Public Employees Retirement Association (PERA) as required by State law for Employee or an alternate pension plan, if selected by Employee and authorized by State law.

4. SALARY. Employer shall pay Employee a gross salary of \$111,072 per year starting February 3, 2020 prorated and payable consistent with the City's normal payroll practices and subject to any authorized withholdings. Thereafter, Employee shall be eligible for future salary adjustments at the same time as they are granted to other management employees, subject to a satisfactory performance evaluation. Deductions from Employee's salary may be made as permitted by law. In

the first year of employment, the Employee will be given a six month (August 2020) and annual performance review (February 2021) and thereafter the Employee shall be given an annual performance review. Failure by either party to complete the matters described in this paragraph shall not constitute a breach of this Agreement.

5. SICK LEAVE. Employee shall accrue sick leave as provided to and under the same conditions as all other non-union employees. Accrued sick leave may be carried over from year to year as provided to and under the same conditions as all other non-union employees.

6. VACATION LEAVE. Employee shall accrue vacation leave as provided to and under the same conditions as all other non-union employees. Accrued vacation leave may be carried over from year to year as provided to and under the same conditions as all other non-union employees.

7. HOLIDAYS. Employee shall be compensated for holidays as provided to and under the same conditions as all other non-union employees.

8. GENERAL INSURANCE. Employer shall provide Employee the same group medical, dental, life and disability insurance benefits as provided to and under the same conditions as all other non-union employees.

9. DEFERRED COMPENSATION. The Employer shall make available the option for payroll deductions from gross salary to deferred compensation and/or Roth elective deferral programs as provided to and under the same conditions as all other non-union employees.

10. DUES AND SUBSCRIPTIONS. Employer shall budget for and pay the professional dues and subscriptions for Employee, which the Employer deems necessary for Employee's continued participation in national, regional, state and local associations necessary and desirable for Employee's continued professional participation, growth and advancement.

11. PROFESSIONAL DEVELOPMENT. Employer shall pay the ordinary, reasonable and necessary travel and subsistence expenses of Employee for professional and official travel,

meetings and occasions the Employer deems adequate to continue the professional development of Employee and for Employee to represent Employer on official bodies or groups of which Employer is a member. Employee shall use good judgment in his outside activities, so he will not neglect his primary duties to the Employer. Some of the meetings Employee expects to attend include, but are not limited to, meetings of the City Engineers Association of Minnesota (CEAM) and the MnDOT District 8 Area Transportation Partnership. Employer shall also pay the ordinary, reasonable and necessary travel and subsistence expenses of Employee for short courses or seminars, which the Employer deems appropriate for his professional growth, including the attendance of the American Public Works Association conference-subject to approval as per the Employer's policy. Expenses for professional development shall be reimbursed in accordance with the Employer's policies for reimbursement.

12. CELL PHONE. At the Employee's choice; the Employee will be paid a monthly cell phone allowance as specified in City policy, or Employee shall be authorized to utilize a City-issued cell phone. Employee understands the use of a personal cell phone for employment purposes is subject to data requests.

13. ELECTRONIC DEVICE. Employee shall be authorized to utilize a City-issued electronic device for City and personal business subject to applicable electronic use policies afforded to all employees.

14. COMMUNITY PARTICIPATION. Employer shall reimburse Employee for the membership dues of a community service organization of Employee's choice as appropriate under Minn. Stat. § 471.96, as the same may be amended. Meals and other charges associated with membership shall not be reimbursed by the Employer.

15. AUTOMOBILE. Employee shall be paid a monthly allowance for use of his personal automobile for Employer business subject to applicable personnel policies and Internal

Revenue Service (IRS) regulations. For travel outside of the Marshall area, Employee will be reimbursed for mileage at the approved IRS rate.

16. JOB-RELATED EXPENSES. Employer shall reimburse Employee for job-related expenses, which are incurred by Employee and are submitted by Employee in accordance with Employer's policies for reimbursement.

17. FRINGE BENEFITS. Employee will receive fringe benefits to the extent of and under the same terms as full-time, nonunion employees of the City to the extent such benefits and terms are not inconsistent with the terms of this Agreement.

18. HOURS OF WORK. Employee agrees to perform the duties specified in this Agreement at the times and locations determined by Employer. Employee shall devote all Employee's professional time, attention, knowledge and skills solely to the business and affairs of Employer. Employee will work on a "full-time" basis, as determined by Employer under its policies so as to meet the business needs of Employer. Employee shall be present at City Hall during regular business hours, unless performing other duties, business and affairs of Employer or as determined by the City Council. It is understood that the position of Director of Public Works/City Engineer requires attendance at evening meetings and occasionally weekend meetings. It is understood by Employee that additional compensation and compensatory time shall not be allowed for such additional or extraordinary expenditures of time. It is further understood, however, that Employee maybe absent from his office to a reasonable extent during normal business hours following federal and state Fair Labor Standard Acts regulations of an exempt employee, in consideration for extraordinary time spent in evening and weekend meetings.

19. TERMINATION BENEFITS. In the event that Employee is terminated by Employer during a time when Employee is willing and able to perform the duties of Director of Public Works/City Engineer, then Employer agrees to pay Employee, at the time of receipt of his

last pay check, a lump sum cash payment equal to six months' salary and to continue to provide and pay for the Employer's share of the Employee's health benefits as provided to other non-union employees for a period of six months following termination (collectively, "termination benefits"). Payment of accrued vacation at the time of separation shall be paid to Employee as provided to and under the same conditions as all other non-union employees. Employee shall be paid his accrued sick leave at the time he leaves employment as provided to and under the same conditions as all other non-union employees. However, in the event Employee is terminated because of (1) his malfeasance in office, (2) gross misconduct, (3) conviction of a crime resulting from his employment with Employer, (4) conviction for an illegal act involving personal gain to Employee, (5) Employee's breach of any material obligations under this Agreement or any other agreement with Employer, (6) Employee's willful and/or repeated failure or refusal to perform or observe Employee's duties, responsibilities and obligations to Employer, (7) Employee's use of alcohol or other drugs in a manner which affects the performance of Employee's duties, responsibilities and obligations to Employer, (8) Conviction of Employee, or plea of *nolo contendere*, for a felony or of any crime involving theft, mismanagement, fraud or moral turpitude, or (9) Commission by Employee of any other willful or intentional act which could reasonably be expected to injure the reputation of Employer and/or Employee, then Employer shall have no obligation to pay the termination benefits provided in this paragraph.

If Employer, at any time during the employment term, reduces the salary or other financial benefits of Employee by a greater percentage than an across-the-board reduction for all non-union employees, or if Employer refuses, following written notice, to comply with any other provisions of this Agreement benefiting Employee, or if Employee resigns following a formal suggestion by Employer that he resign, then Employee may, at his option, be deemed to be "terminated" on the effective date of Employee's resignation and the Employee shall be entitled to receive the termination

benefits set forth above.

If Employee voluntarily resigns his position with Employer, Employee agrees to give Employer forty-five (45) days advance notice. If Employee voluntarily resigns his position with Employer, there shall be no termination benefits due to Employee, except for payment of vacation at time of separation shall be paid to Employee as provided to and under the same conditions as all other non-union employees, and accrued sick leave at the time he leaves employment as provided to and under the same conditions as all other non-union employees.

20. DEATH OR DISABILITY BENEFITS. If Employee's employment is terminated due to Employee's death or disability, regardless of the date of termination, Employee or Employee's estate or heirs, as appropriate, shall only be paid (i) Employee's earned salary and accrued paid leave not paid; (ii) any unpaid expense reimbursements; and (iii) any benefits payable under any life insurance policy maintained by Employer for the benefit of Employee, subject to the terms and conditions of such policy.

21. TERMINATION OF EMPLOYMENT. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employer to terminate the services of Employee at any time, for any reason, without cause, subject only to the provisions of this Agreement and the City Charter. Furthermore, nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employee to resign at any time from his position with Employer, subject only to the provisions of this Agreement.

22. INDEMNIFICATION. Employer shall defend and indemnify Employee pursuant to Minn. Stat. § 466.07 and § 465.76. In addition, Employer shall defend, hold harmless, and indemnify Employee from all claims based on tort, civil damages, penalties, fines, and claims based on violation of statutes, ordinances and rules, provided Employee was acting in good faith in the performance of the duties of his position at the time in question and was not guilty of malfeasance in

office or willful neglect of duty.

23. VOLUNTARY AND KNOWING ACTION. The parties, by executing this Agreement, state that they have carefully read this Agreement and understand fully the contents thereof; that in executing this Agreement they voluntarily accept all terms described in this Agreement without duress, coercion, undue influence, or otherwise, and that they intend to be legally bound thereby.

24. AUTHORIZED SIGNATORIES. The parties each represent and warrant to the other that (1) the persons signing this Agreement are authorized signatories for the parties represented, and (2) no further approvals, actions or ratifications are needed for the full enforceability of this Agreement; each party indemnifies and holds the other harmless against any breach of the foregoing representation and warranty.

25. GOVERNING LAW. This Agreement and all questions arising in connection with it shall be governed by the laws of the State of Minnesota. The rule of construction of interpreting a contract against its drafter will not apply to this Agreement.

26. BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of Employer, its successors and assigns, and Employee, Employee's heirs and legal representatives.

27. ASSIGNMENT. The rights of Employee hereunder are personal and may not be assigned or transferred unless consented thereto in writing by Employer.

28. ENTIRE AGREEMENT; AMENDMENT. This Agreement constitutes the entire agreement between the parties and supersedes all prior oral and written agreements between the parties and between Employee and any other former employer relating to the same subject matter. The parties have made no agreements, representations, or warranties relating to the subject matter of this Agreement which are not set forth herein. This Agreement may be amended only if it is in writing and signed by each of the parties.

29. SEVERABILITY. The invalidity of any portion of this Agreement will not and shall not be deemed to affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provisions.

30. WAIVER. The failure of either party to complain of any default by the other party or to enforce any of such party's rights, no matter how long such failure may continue, will not constitute a waiver of the party's rights under this Agreement. No waiver of any provision of this Agreement shall constitute waiver of any other provision or a waiver of the same provision at any later time.

31. ARBITRATION OF DIFFERENCES. Any breach or dispute arising out of, or regarding the interpretation of, this Agreement shall be submitted to the Minneapolis Regional Office of the American Arbitration Association for binding arbitration of said dispute(s) pursuant to the rules and procedures thereof. This article shall not preclude Employee from submitting a breach or dispute arising out of, or regarding the interpretation of, this Agreement initially through any internal City appeal or grievance process.

32. HEADINGS. Headings are provided solely for the convenience of the parties and shall not affect the interpretation of this Agreement.

33. NOTICE. All notices required under this Agreement shall be in writing and shall be deemed to have been duly given if sent via certified mail, first class mail-postage prepaid, hand delivery or overnight courier, and properly addressed to the party at the party's last known address or any other address that any party may designate by written notice to the other. Mailed notices shall be deemed to have been given at the time posted plus three business days.

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IN WITNESS WHEREOF, Employer has caused this Agreement to be executed on its behalf by its Mayor and Clerk, and Employee has signed this Agreement, in duplicate, as of the day and year first written above.

EMPLOYER:

By: _____
Robert J. Byrnes, Its Mayor

Date

By: _____
Kyle Box, Its City Clerk

Date

EMPLOYEE:

Jason Anderson

Date