



MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT BETWEEN CONSULTANT AND CLIENT (hereinafter referred to as the "Agreement") is entered into by and between Landrum & Brown ("Consultant") having a place of business at 14665 Galaxy Ave Suite 130, Apple Valley, Minnesota 55124 and the City of Marshall ("Client") having a place of business at 344 W. Main Street, Marshall, Minnesota 56258 and has an Effective Date based upon the full execution of this Agreement. Consultant and Client are each individually referred to as a "Party" and collectively as the "Parties".

In consideration of the mutual promises or covenants contained in this Agreement, the Parties agree as follows:

- A. **Services:** This Agreement establishes the terms and conditions under which Consultant agrees to provide services to Client on specific projects related to Southwest Minnesota Regional Airport (hereinafter referred to as the "Project").

For each project, Client and Consultant will enter into a mutually agreed upon Task Order, executed by both parties, which will be appended hereto (each a "Task Order") as Exhibit A in numerical order based on the date of commencement of the services of that Task Order. Each Task Order will describe the services to be performed ("Services"), pricing, commencement date of the project and estimated performance period all of which shall be negotiated independently for each Task Order. The results and proceeds performed under this agreement will be summarized as Deliverables (the "Deliverables"). In the event of a conflict in terms between this Agreement and any Task Order, the Agreement shall control.

- B. **Term, Termination and Survival:** Unless otherwise terminated as herein provided, the term of this Agreement shall commence on the Effective Date and shall continue for a one (1) year period. In the event this Agreement is not terminated thirty (30) days prior to the end of the initial one (1) year term (or a successive one-year term) pursuant to the terms hereof, this Agreement shall automatically renew and extend for an additional successive one (1) year term unless otherwise terminated as herein provided. Notwithstanding the foregoing, the Services shall be performed within the term specified in the relevant Task Order. Any terms of this Agreement which by their nature extend beyond termination of this Agreement shall survive and bind the parties and their successors and assigns.
- C. This Agreement is subject to the Terms and Conditions contained below, and the provisions of the exhibits attached hereto and made a part hereof:

Exhibit A: *Task Orders (Sample included); all future executed Task Order shall be appended in sequential numerical order.*



TERMS AND CONDITIONS

Client and Consultant agree that the following provisions shall be part of this Agreement:

- 1. Assignment.** This Agreement shall not be assigned by either Client or Consultant without the prior written consent of the other. Neither Client nor Consultant shall assign claims arising from the Agreement without the prior written consent of the other.
- 2. Non-Waiver.** Consultant's or Client's waiver of any term, condition or covenant shall not constitute the waiver of any other term, condition or covenant. Consultant's or Client's waiver of any breach of this Agreement shall not constitute the waiver of any other breach of the Agreement.
- 3. Unenforceable Terms; Effect.** If any term, condition or covenant of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall be valid and binding on both the Client and Consultant.
- 4. Confidentiality.** Both parties shall adhere to the obligations and requirements of the state's open records as may be applicable and the confidentiality provisions set forth hereafter are subject to those requirements. Consultant agrees to regard and preserve as confidential all information related to the business and activities of Client that may be obtained by Consultant as a result of performing Services under this Agreement. Client agrees to regard and preserve as confidential all information related to the business and activities of Consultant that may be obtained by Client as a result of this Agreement and the performance of Services contemplated hereby, including, without limitation, all information regarding pricing of Services. Both parties agree to hold such information in trust and confidence for the other party and not to disclose such information to any person, firm, or enterprise, or use any such information to its own benefit, or to the benefit of any third party, unless authorized in writing by the party in interest. Information shall not be considered confidential to the extent that such information is: (i) already known free of any restriction at the time it is obtained; (ii) subsequently learned from an independent third party free of any restriction; or (iii) generally available to the public.
- 5. Intellectual Property.** In the course of performance under this Agreement, Consultant may use products, materials, tools, and methodologies that are proprietary to Consultant or to third parties (collectively, "Proprietary Items"). Client will not have or obtain any rights in such Proprietary Items other than (i) to use them as authorized by Consultant in writing from time to time solely for purposes of performing its responsibilities under this Agreement. If Proprietary Items are made available to the Client, they will be made available "AS IS" and without express or implied warranties of any kind. Nothing in this Agreement will preclude Consultant from marketing, developing, or using for itself or others, services or products that are the same as or similar to those provided to Client by Consultant pursuant to this Agreement. Furthermore, Consultant will continue to be free to use its general knowledge, skills, and experience and any ideas, concepts, know-how, and techniques related to the scope of this Agreement and used in the course of performing its obligations hereunder.
- 6. Limited License.** Client agrees not to use or permit any other person to use plans, specifications, drawings, cost estimates, reports or other documents (hereafter "work product") prepared by Consultant which are not final and/or not signed by Consultant. Client further agrees that final plans, specifications, drawings, cost estimates, reports or other documents are for the exclusive use of Client and may be used by Client only for the Project described on page 1 of this Agreement and/or project specified in appended Task Order and such use is subject to the terms and conditions of this Agreement. Such final plans, specifications, drawings, cost estimates, reports or other documents may not be changed or used on a different project without written authorization or approval by Consultant.



7. **Scope of Services:** Client acknowledges that Consultant will be providing services specified in individual Task Orders. The Parties acknowledge and agree that work items not expressly listed in a Task Order are excluded from Consultant's Services. These "Excluded Services" include, without intent to limit, construction, engineering, design related skill or service, legal advice, as well as any other item not expressly listed in an executed Task Order
8. **Not a Municipal Advisor.** Consultant is not registered with the U.S. Securities & Exchange Commission as a municipal advisor, is not acting as a municipal advisor, and does not assume any fiduciary duties or provide advisory services as described in Section 15B of the Securities Exchange Act of 1934 or otherwise. Consultant does not make recommendations or advice regarding any action to be taken by our clients with respect to any prospective, new, or existing municipal financial products or issuance of municipal securities including with respect to the structure, timing, terms or other similar matters concerning municipal financial products or the issuance of municipal securities.
9. **Payment Terms.** Client agrees to pay Consultant for Services rendered under any Task Order pursuant to the pricing information contained in such Task Order. In addition to Consultant's fees for Services, Client agrees to reimburse Consultant for all actual expenses incurred in the course of providing Services to Client including, but not limited to, travel and ordinary business expenses. Travel expenses will be reimbursed separately at cost and without markup. On hourly assignments, fees for travel time will be billed at one-half of the hourly rate. On hourly assignments, fees charged during travel assignments will have a minimum fee of one-half day at the hourly rate. Consultant will bill Client on a monthly basis unless agreed otherwise in a Task Order. Client shall make payment to Consultant within thirty (30) days of the date of Consultant's invoice. It is agreed that late payments by Contra will be subject to an interest charge of one (1) percent per month. Payment shall be made to the address set forth in such invoice.
10. **Revisions Required by Authority Having Jurisdiction.** If Consultant, pursuant to this Agreement, produces plans, specifications, or other documents and/or performs field services, and such plans, specifications, or other documents and/or field services are required by any governmental agency, and such governmental agency changes its ordinances, codes, policies, procedures or requirements after the date of this Agreement, any additional services thereby required shall be paid for by Client as extra services in accordance with paragraph 20.
11. **Additional Services (aka Variations).** Client agrees that if Client requests services not specified in the scope of services for a Task Order, Client will authorize and execute an amended or new Task Order for all such additional services requested. Amended Task Orders shall have the original number and obligation but will be distinguished by a decimal (i.e. Task Order 1.1) and all changes or additions specified. Any new or Amended Task Order must be executed by both parties prior to commencement of the additional services. The Consultant is not obligated to perform additional services without an executed Task Order specific to the change.
12. **Delays.** Consultant is not responsible for delay caused by activities or factors beyond Consultant's reasonable control, including but not limited to, force majeure accidents or equipment malfunctions, acts of God, failure of Client to furnish timely information or approve or disapprove of Consultant's services or instruments of service promptly, faulty performance by Client or other third parties. When such delays beyond Consultant's reasonable control occur, Client agrees Consultant shall not be responsible for damages nor shall Consultant be deemed to be in default of this Agreement.
13. **Indemnification.** The parties shall indemnify, defend and hold harmless one another from and against any and all suits, proceedings at law or in equity, claims, liabilities, costs, payments, and expenses (including reasonable attorney fees) asserted against or incurred by such indemnitee, arising out of or in connection with any claim by any party with respect to the indemnifying party's negligence in the performance of this Agreement; provided, however, the indemnifying party shall have no obligation to indemnify, defend or hold harmless the indemnitee for the indemnitee's willful misconduct or gross negligence in the performance of this Agreement.



- 14. **Limitation of Liability.** Client agrees to limit the liability of Consultant, its principals, employees and subconsultants, to Client for actual damages to an amount equal to the amounts paid by Client to Consultant under the relevant Task Order under which the claim or claims arose. This limitation will apply regardless of the form of action, whether in contract or in tort, including negligence. In no event will either party be liable for any lost revenues, lost profits, incidental damages, consequential damages, or other economic damages, even if advised of the possibility of such damages. In addition, except to the extent a specific obligation of indemnification is provided under this Agreement, neither party will be liable for any damages claimed by the other based on any third-party claims.
- 15. **Disclaimer of Individual Professional Liability.** To the fullest extent permitted by applicable law, Consultant’s individual professional employees and officers shall not be liable for negligence, and any claims arising in relation to the Services provided under this Agreement shall be brought against Consultant and not its individual professional employees.
- 16. **Contractors.** Client acknowledges that Consultant is not responsible for the performance of work by third parties including, but not limited to, a construction contractor and its subcontractors.
- 17. **No Warranty.** Consultant makes no warranty, either express or implied, as to its findings, recommendations, plans, specifications, or professional advice except that the services were performed pursuant to generally accepted standards of professional practice in effect at the time of performance.
- 18. **Venue.** Client agrees that in the event Consultant institutes litigation to enforce or interpret the provisions of this Agreement, such litigation is to be brought and adjudicated in the appropriate court in the county in which Consultant’s principal place of business is located, or where the Project is located, and Client waives the right to bring, try or remove such litigation to any other state, county, territory or judicial district.
- 19. **Notice.** All notices which are required or may be given pursuant to this Agreement must be in writing and sent to the individual listed below or his successor at the address above first written. Notices shall be delivered by a recognized courier service such as Federal Express, USPS or UPS, with package tracing capability.
- 20. **Mediation.** Client and Consultant agree that all disputes between them arising out of or relating to this Agreement shall be submitted to mediation, unless the parties mutually agree otherwise.
- 21. **Integration and Merger.** This Agreement contains the entire and integrated agreement between Client and Consultant relating to the Project and the provision of services for the project. Any prior agreements, promises, proposals, negotiations or representations not expressly set forth in this Agreement are of no force or effect. Subsequent modifications to this Agreement shall be in writing and signed by both Client and Consultant.

WHEREAS, the parties hereto entered into this Agreement as of the Effective Date.

Landrum & Brown, Inc.

City of Marshall

By: _____

By: _____

Name: Dan Benson

Name: _____

Title: EVP

Title: _____

Date: _____

Date: _____



EXHIBIT "A"

TASK ORDER

This Task Order No. 1 between Landrum & Brown, Inc. ("Consultant") and the City of Marshall ("Client") is governed by the Professional Services Agreement ("MSA") in effect between the parties and, upon execution of this Task Order by both parties, is incorporated therein pursuant to MSA Section A "Services". All terms and conditions of the MSA shall apply to this Task Order unless clearly stated to the contrary herein.

| | |
|-----------------------------------|-----------------------------------|
| <u>CONTACT INFORMATION</u> | |
| L&B (CONSULTANT) | John DeCoster, AVP |
| CLIENT | Sharon Hanson, City Administrator |

| <u>TITLE</u> | <u>DESCRIPTION</u> |
|---------------------------|--|
| SERVICES TO BE PERFORMED: | L&B to provide the following services: As outlined in the letter dated January 26, 2021 (attached) Coordinate with appropriate City staff as determined by each subject area identified by the City to pursue. <u>Deliverables:</u> Completed documents for the selected assignments. |
| PRICING: | Fee: Time and materials at \$250 per hour up to a not to exceed amount of \$10,000. Expenses: Travel-related (e.g. mileage at the IRS stated rate hotel, meals, etc.) will be reimbursed separately. |
| COMMENCEMENT DATE: | February 1, 2021 |
| DURATION: | Month to Month |

The parties hereto accepted and approved this Task Order as of the latest date written below and this Task Order may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Any signature delivered by facsimile shall be treated for all purposes as an original.

Landrum & Brown, Inc.

City of Marshall

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____