



PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (the "Agreement") is entered into by and between City of Marshall whose address is 344 West Main Street, Marshall, MN 56258 and SRF Consulting Group, Inc. whose address is 3701 Wayzata Blvd., Suite 100, Minneapolis, MN 55406; who are the parties.

RECITALS

1. City of Marshall seeks to enter into an agreement for the purposes of providing professional services for the Marshall Comprehensive Plan (the "Project"), subject to the terms and conditions of this Agreement.
2. SRF Consulting Group, Inc. represents it is qualified to furnish the services according to the provisions of this Agreement and SRF's Scope of Work and Cost Summary ("SRF's Proposal"), attached and incorporated as Attachment 1, described in SRF's Proposal (collectively referred to as the "Services") dated February 3, 2021. For purposes of this Agreement, City of Marshall is defined as the "Client" and SRF Consulting Group, Inc. is defined as "SRF."
3. Therefore, it is agreed:

AGREEMENT

ARTICLE 1: SERVICES / SCOPE OF WORK.

- (a) ~~SRF shall provide the Services described in SRF's Proposal (collectively "Services"), will perform the duties specified in Attachment 1 (the "Services") which is attached and incorporated into this Agreement.~~ Services not set forth in **Attachment 1** are Additional Services. Except as already noted in **Attachment 1**, SRF shall not subcontract any portion of the work to be performed under this Agreement without the prior written approval of the Client's authorized representative.
- (b) SRF agrees to perform Services in accordance with the terms and provisions set forth in this Agreement. No terms and conditions or other documents shall be binding on SRF unless a copy of any such terms and conditions or documents has been furnished to SRF and made part of this Agreement.
- (c) SRF will perform all professional Services in a manner consistent with the care and skill ordinarily used by members of SRF's profession practicing under similar conditions at the same time and general location (the "Standard of Care"). SRF makes no warranties, expressed or implied, under this Agreement or otherwise, in connection with SRF's Services. SRF will re-perform any Services not meeting this Standard without additional compensation.
- (d) Any changes in Services to be performed by SRF requires an amendment ("Amendment") to this Agreement and will not be effective until it has been executed and approved by the Parties. A memo to either Party indicating changes is not legally binding and is not sufficient to make the changes.
- (e) SRF agrees that in the performance of the Services herein, SRF shall comply in all respects with all applicable legal requirements governing the duties, obligations, and business practices and shall obtain any permits or licenses necessary for its operations.

ARTICLE 2: CONTRACT REQUIREMENTS.



- a) **Government Data Practices and Intellectual Property Rights.** SRF shall comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to: (1) all data provided by the Client pursuant to this Agreement; and (2) all data, created, collected, received, stored, used, maintained, or disseminated by SRF pursuant to this Agreement. SRF is subject to all the provisions of the Minnesota Government Data Practices Act, including but not limited to the civil remedies of Minnesota Statutes Section 13.08, as if it were a government entity. In the event SRF receives a request to release data, SRF will immediately notify the Client. The Client will give SRF instructions concerning the release of the data to the requesting party before the data is released.
- b) **Data Disclosure.** Under [Minn. Stat. § 270C.65](#), Subd. 3, and other applicable law, SRF consents to disclosure of its federal employer tax identification number, and/or Minnesota tax identification number, already provided to the State, to federal and state tax agencies and state personnel involved in the payment of state obligations.
- c) **Workers Compensation.** SRF certifies that it is in compliance with [Minn. Stat. §176.181](#), Subd. 2, pertaining to workers' compensation insurance coverage. SRF's employees and agents will not be considered the Client employees. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees and any claims made by any third party as a consequence of any act or omission on the part of these employees are in no way the Client's obligation or responsibility.
- d) **Records – Availability and Retention.** SRF's shall comply with [Minn. Stat. § 16C.05](#), Subd. 5 as it applies to audits, availability, and record retention associated with this Agreement for at least 6 years after the end of the Agreement:
 - (1) Books,
 - (2) Records,
 - (3) Documents,
 - (4) Accounting procedures, and
 - (5) Accounting practices of SRF, its subcontractors, or suppliers
- e) **Regulatory Changes.** SRF shall be compensated for changes in the Services necessitated by the enactment or revisions of codes, laws or regulations that are made applicable to the Project subsequent to execution of this Agreement, and its time for performance shall be extended if the changes(s) result in delay to the Project Schedule. Such changes shall be made by an Amendment pursuant to this Article.
- f) **Affirmative Action.** SRF agrees not to discriminate against any employee or applicant for employment because of race, color, creed, religion, national origin, sex, marital status, status in regard to public assistance, membership or activity in a local commission, disability, sexual orientation, or age in regard to any position for which the employee or applicant for employment is qualified. [Minn. Stat. §363A.02](#). SRF agrees to take affirmative steps to employ, advance in employment, upgrade, train, and recruit minority persons, women, and persons with disabilities.
- g) SRF shall not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. SRF agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Minnesota Rules, part [5000.3500](#).



ARTICLE 3: CLIENT OBLIGATIONS.

In addition to other responsibilities of the Client as set forth in this Agreement, the Client shall: (1) provide full information as to the requirements for the Services; (2) assist SRF by placing at SRF's disposal, information in possession of the Client which it believes is pertinent to the Services, and SRF may rely on the accuracy and completeness of this information; (3) give prompt written or verbal notice to SRF whenever the Client observes or otherwise becomes aware of any development that affects the scope or timing of SRF's Services, observes or otherwise becomes aware of the presence at the Project site of any constituent of concern, or of any defect or nonconformance in SRF's Services, the work, or in the performance of any contractor; and (4) provide SRF in writing any and all policies and procedures of the Client applicable to SRF's performance of Services under this Agreement. SRF will comply with such policies and procedures pursuant to the Standard of Care set forth in Article 1(c) and to the extent compliance is not inconsistent with professional practice requirements (the "Client's Duties").

ARTICLE 4: TERM OF AGREEMENT; PERFORMANCE SCHEDULE.

- (a) This Agreement shall be in effect from the latter of the two signature dates set forth below (the "Effective Date") and will expire on the date all services are completed and final payment has been issued, unless terminated pursuant to Article 8. The obligation to perform the Services per the Standard of Care which impose obligations continuing in their nature and which must survive in order to give effect to their meaning will survive the expiration or termination of this Agreement.
- (b) SRF shall comply with all time requirements and deadline dates described in **Attachment 1**. Notwithstanding the foregoing, this is not a warranty or guarantee and in no event will SRF be responsible for damages due to delays beyond SRF's reasonable control.

ARTICLE 5: KEY PERSONNEL.

With respect to this Agreement, SRF and the Client shall designate specific individuals to act as SRF's and the Client's representatives with respect to the Services to be performed or furnished by SRF and responsibilities of the Client under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions related to the Project on behalf of the respective Party whom the individual represents.

SRF Key Personnel: Stephanie Falkers
Client Key Personnel: Ilya Gutman

Commented [JH1]: Is this the City's project manager as defined in Scope of Work?

ARTICLE 6: CONSIDERATION AND PAYMENT.

- (a) SRF will be paid ~~on an hourly basis in the amounts set out in the Cost Summary of according to the breakdown of costs contained in Attachment 1.~~ The total obligation of the Client for all compensation and reimbursements to SRF shall not exceed \$ ~~64,955.00~~(the "Contract Maximum").
- (b) For reimbursable expenses, the compensation shall be the actual expense incurred by SRF and SRF's subcontractor(s), without mark-up. Requests for reimbursements shall be accompanied by supporting documentation, as well as any documentation of actual costs incurred and paid by SRF in performing the Services hereunder, and such other documentation as the Client may reasonably request.
- (c) It is understood and agreed that Client will not be responsible for payment of any costs incurred by SRF above the then authorized total amount as further set forth in **Attachment 1**.

ARTICLE 7: INVOICING AND REPORTS.

- (a) SRF shall provide Client with reports summarizing allowable costs associated with this Agreement, including all invoices, on a monthly basis during the term of this Agreement.



- (b) SRF shall submit monthly progress report forms prescribed by the Client.
- (c) The Client will make undisputed payments no later than thirty-five (35) days' after receiving SRF's invoices for Services performed.
- (d) The Client shall not withhold amounts from SRF's compensation to impose a penalty or liquidated damages on SRF, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless SRF agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

ARTICLE 8: TERMINATION AND SUSPENSION.

- (a) **Termination by Client.** Client may terminate this Agreement at any time, with or without cause by providing ten (10) days' written Notice of Termination to SRF pursuant to the requirements as set forth in Article 10. Upon termination, SRF will be entitled to payment, determined on a pro rata basis, for Services satisfactorily performed. How? Written Notice? - Time- (Notice pursuant to requirements as set forth in Article 10 below.)
- (b) **Termination for Insufficient Funding.** The Client may immediately terminate this Agreement if it does not obtain funding from the State, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. The Client is not obligated to pay for any Services that are provided after Notice and effective date of termination. However, SRF will be entitled to payment, determined on a pro rata basis, for Services satisfactorily performed to the extent that funds are available. The Client must provide SRF notice of the lack of funding within a reasonable time of Client's receiving that notice.
- (c) **Suspension.** If the Client fails to make payments to SRF in accordance with this Agreement, and said payments are not otherwise disputed by the Client, then SRF may suspend its Services under this Agreement. If SRF elects to suspend services, it shall give ten (10) days' written notice to the Client before doing so. SRF shall have no liability to the Client for delay or damage caused by such suspension of Services. Before resuming Services, SRF shall be paid all undisputed sums due prior to suspension and any undisputed expenses incurred in the interruption and resumption of the SRF's Services.

ARTICLE 9: - OWNERSHIP AND USE OF DOCUMENTS.

- (a) The Client owns all rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in the Works created under this Agreement and for which SRF has received Final Payment. To the extent possible, those Works eligible for copyright protection under the United States Copyright Act will be deemed to be "works made for hire." "Works" includes Documents. "Documents" are comprised of written and electronic forms of deliverables created under the terms of this Agreement, and of Electronic Data including the originals of any data or databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks, or other materials, whether in tangible or electronic forms, prepared by SRF, its employees, agents or subcontractors, in the performance of Services under the terms of this Agreement.. Reuse or modification of the SRF's Documents in any manner, or authorization of reuse or modification by others, without the SRF's professional involvement will be at the Client's sole risk and without liability to SRF.
- (b) This Agreement does not affect the ownership of each Party's pre-existing, intellectual property. Each Party further acknowledges that it acquires no rights under this Agreement to the other Party's pre-existing intellectual property, other than any limited right explicitly granted in this Agreement.

ARTICLE 10: NOTICES.



Any notice required under this Agreement shall be in writing and addressed to the primary point of contact ("POC") as designated by both Parties at the address provided by both primary POC's. All notices shall be delivered via certified mail and effective upon the certified mail return date of receipt.

ARTICLE 11: CONTROLLING LAW AND VENUE.

The laws of the state of Minnesota govern this Agreement. Venue for all legal proceedings arising out of this Agreement, or breach of this Agreement, is in state or federal court with competent jurisdiction in the county where the Project is located.

ARTICLE 12: LIABILITY AND INDEMNIFICATION.

- (a) To the fullest extent permitted by law, SRF hereby agrees to indemnify and hold harmless the Client from and against any and all liability for claims, losses, damages, and expenses (including reasonable attorneys' fees) to the comparative extent the same is proximately caused by the negligent or wrongful acts, errors, or omissions of SRF or of anyone acting under its control in its provision of Services under this Agreement.
- (b) Nothing in this Agreement shall constitute a waiver or limitation of any immunity or limitation on liability to which the Client is otherwise entitled by state statute to which statutory tort limits apply.
- (c) SRF and Client waive all consequential or special damages, including, but not limited to, loss of use, profits, revenue, business opportunity, or production, for claims, disputes, or other matters arising out of or relating to the Agreement or the Services provided by SRF, regardless of whether such claim or dispute is based upon breach of contract, willful misconduct or negligent act or omission of either of them or their employees, agents, subconsultants, or other legal theory, even if the affected party has knowledge of the possibility of such damages. This mutual waiver shall survive termination or completion of this Agreement.
- (d) Notwithstanding any other provision of this Agreement, SRF shall not be in breach of this Agreement nor shall it be liable to Client for any losses or damages of any type, including, without limitation, consequential or incidental damages or damages for lost profits, arising from delays or changes in the Services due to any act or neglect of Client or its employees.
- (e) Neither party shall be held liable or responsible to the other party nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any obligation under this Agreement when such failure or delay is caused by or results from causes beyond the reasonable control of the affected Party, including but not limited to fire, floods, natural disasters or other adverse weather conditions not reasonable foreseeable, riots, acts of war or terrorism, acts of God, or acts, omissions or delays in acting by any governmental authority, delays in transportation, unavoidable casualties, diseases, pandemics/epidemics, outbreaks of infectious disease or any other public health crisis, including quarantine or other employee restrictions, strikes, or other labor disturbances or any other cause, whether similar or dissimilar to any of the foregoing, which could not have been prevented by such Party with reasonable care (each, a "Force Majeure Event"). Either Party shall provide the other Party with prompt written notice of any delay or failure to perform that occurs by reason of force majeure. The time for performance required of the affected Party shall be extended by the period of such delay provided the Party is exercising diligent efforts to overcome the cause of such delay.
- (f) The duties and obligations imposed by this Agreement and the rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

Commented [TB2]: Request modification is accepted.

ARTICLE 13: CONTRACTUAL RELATIONSHIP.



No contractual relationship will be recognized under the Agreement other than the contractual relationship between SRF and Client.

ARTICLE 14: REPRESENTATIONS.

- (a) SRF has not directly or indirectly offered or given any gratuities (in the form of entertainment, gifts, or otherwise) to any representative of the Client with a view toward securing favorable treatment with respect to any determinations concerning the performance of this Agreement.
- (b) SRF will not contract with subcontractors, vendors or supplier who are currently suspended or debarred or have a suspension or debarment end date within the past three years by the federal government, the state of Minnesota, or any of its departments, commissions, agencies, or political subdivisions. SRF represents and warrants that it is not presently suspended or debarred or proposed for suspension or debarment by any government agency.

ARTICLE 15: INSURANCE.

- (a) SRF shall procure and maintain with a company or companies lawfully authorized to do business in the jurisdiction in which the project is located, the types of insurance and policy limits as follows:

Worker's Compensation:	Minnesota Statutory
Employer's Liability:	\$1,000,000 Each Accident \$1,000,000 Disease (Policy Limit) \$1,000,000 Disease (EA Employee)
Commercial General Liability:	\$1,000,000 Each Occurrence \$2,000,000 Annual Aggregate Including Premises and Operations Bodily Injury and Property Damage, Independent Contractors, Products and Completed Operations Liability, Personal and Advertising Injury.
Business Automobile Liability:	\$2,000,000 Combined single limit each occurrence coverage or the equivalent covering owned, non-owned and hired automobiles.
Professional Liability:	Professional Liability Insurance providing coverage for all claims SRF may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to SRF's professional services performed under this Agreement. Minimum limits of liability shall be: \$2,000,000 Each Claim \$2,000,000 Annual Aggregate
Umbrella/Excess Liability	An Umbrella or Excess Liability insurance policy may be used to supplement SRF's policy limits to satisfy the full policy limits required under this Agreement.



- (b) Policies shall name the Client as an Additional Insured limited to General Liability and Automobile Liability.
- (c) SRF shall require all subcontractors, and any other subcontractors to which the Parties agree in writing are subcontractors of SRF, to carry and maintain insurance against the risks set forth above, in the amounts and under terms as determined to be appropriate by SRF to fulfill its obligations of this Agreement. SRF shall not allow its subcontractors to commence work until the insurance required has been obtained and the corresponding certificate(s) of insurance have been approved by SRF with copies of each corresponding certificate provided to the Client upon request.

ARTICLE 16: PROHIBITION AGAINST ASSIGNMENT.

This is a bilateral Professional Services Agreement. Neither Party shall have the power to or will assign any of the duties or rights or any claim arising out of or related to this Agreement, whether arising in tort, contract, or otherwise, without the written consent of the other Party. Any unauthorized assignment is void and unenforceable.

ARTICLE 17: OTHER.

- (a) The headings contained in this Agreement have been inserted for convenience of reference only and shall in no way define, limit, or affect the scope and intent of this Agreement.
- (b) This Agreement, including any Attachments or Exhibits hereto, constitutes the entire and exclusive agreement of the Parties and supersedes any prior agreements whether oral or written, concerning the subject matter hereof.
- (c) The invalidity or partial invalidity of any portion of this Agreement shall not invalidate the remainder thereof, and the remainder shall be construed as if the invalidated portion shall have never been part of this Agreement.
- (d) Nothing in this Agreement confers or purports to confer on any third party any benefits or any right to enforce any terms of this Agreement.

ARTICLE 18: SERVICES AND CONTRACT DOCUMENTS.

- (a) This Agreement includes the following documents which are incorporated and attached to this Agreement:

Attachment 1: ~~Scope of Work SRF's Proposal~~
Attachment 2: ~~SRF Proposal dated February 3, 2021~~

- (b) SRF shall insert all or some part of a term and condition that is required or necessary to be so included in all lower-tier subcontracts and shall require all lower-tier subcontractors to comply with such provisions for the duration of their respective subcontracts.

ARTICLE 19: INTERPRETATION.

This Agreement has been drafted through a cooperative effort of SRF and Client and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

ARTICLE 20: SIGNATURES.



The individual signing this Agreement represent and warrant that they have the power and authority to enter into this Agreement and bind the Parties for whom they sign. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute a single Agreement.

ARTICLE 21: ELECTRONIC SIGNATURES.

Each Party agrees that the electronic signatures of the Parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as wet ink signatures.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in their behalf.

SRF CONSULTING GROUP, INC.
(with delegated authority)

Signed:

Title:

Date:

City of Marshall
(with delegated authority).

Signed:

Printed Name: Robert Byrnes

Title: [Mayor](#)

Date:

Attest:

Signed

Print Name: Kyle Box

Title: City Clerk

Date:

Commented [TB3]: Signature Block has been updated.

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