

AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made and entered into this ___ day of _____, 20___, by and between the **CITY OF MANTECA**, a public body, corporate and politic ("City") and **MTM Transit, LLC**, a Limited Liability Company ("Contractor").

RECITALS

A. City has determined that a contractor is necessary to provide services relating to the operation of Fixed Route and Dial-A-Ride/ADA Paratransit system in the City of Manteca.

B. Contractor is specially trained, experienced, and competent to perform the professional services required by this Agreement.

C. Contractor represents that it possesses the skill, experience, ability, background, certification, and knowledge to provide the services described in this Agreement on the terms and conditions specified herein.

D. City desires to retain Contractor to render the professional services set forth in this Agreement.

AGREEMENT

1. Scope of Services. Contractor shall perform the Transit Operations Contract Services described in the attached Attachment 1 that is incorporated by this reference, and pursuant to the Proposal submitted by Contractor dated March 2, 2023, and attached hereto as Attachment 2. Contractor shall provide these services at the time, place, and in the manner specified in Attachment 1, subject to the direction of the City through its staff that may be provided from time to time. Performance of the Transit Operations Contract Services is sometimes referred to herein as “the Project.”

2. Complete Agreement. The complete Agreement between the parties shall consist of the following component parts, to-wit: this Agreement (including the attachments hereto); the “Request For Proposals for Transit Operations Contract Services (including all attachments and Appendices including the four (4) addenda; the Contractor’s accepted Proposal, including all required attached documents; and the Contractor’s Best and Final Offer (BAFO). This Agreement and the other documents described in Paragraph 1 hereinabove constitute the complete Agreement between the parties and the said other documents are as fully a part of this Agreement as if hereto attached or herein repeated.

3. Work Through City Staff. City Staff assigned to Project shall manage all communications, information or documentation shared or requested by Contractor or Contractor’s staff. Contractor shall not communicate with any other City staff or City Council Members without the prior written consent of the City, provided, however, that Contractor is authorized to request clarification of information from City in order to effectively perform its

obligations under this Agreement. All Contractor requests shall be noted to City in an expeditious manner.

4. Agreement Term. Time is of the essence in the performance of services under this Agreement and the timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Contractor's services shall commence pursuant to this Agreement and upon receipt of a written Notice to Proceed from City, and shall be completed in accordance with the aforementioned Scope of Services and complete Agreement as described in Paragraphs 1 and 2, stated herein above. The term of this Agreement (Agreement Term) shall be for a base term of (36) months with two (2) one-year optional extensions. The Agreement Term shall start on the Commencement Date, July 1, 2023, or upon issuance of written notice to proceed, whichever comes first. The first year of the base term shall be from July 1, 2023 through June 30, 2024, and each subsequent year of the Agreement Term shall be from July 1 through June 30 of the following year.

A. Optional Extensions. At least ninety (90) calendar days prior to the end of the last year of the 36 month base term, City shall notify Contractor in writing whether it intends to exercise the option. The decision to exercise the option at the rates established for the applicable option year shall be mutually agreed to by both City and Contractor. City also reserves the right to exercise the option on a month-to-month basis. The option under this Agreement is the mutual agreement of City and Contractor to provide transit services for the option years involved, at the fixed monthly fee and rate per Revenue Hour specified in Contractor's BAFO, for the applicable option year. The Contractor acknowledges and agrees that it shall, upon a mutual agreement to exercise the option, provide the services described hereunder, in satisfaction of all requirements of this Agreement, at the rates established for the applicable option year as specified in Contractor's BAFO.

5. Staffing. Contractor acknowledges that City has relied on Contractor's capabilities and on the qualifications of Contractor's principals and staff as identified in its Proposal to City. The Contractor shall maintain the General Manager identified in its Proposal and/or BAFO throughout the Agreement Term. The General Manager shall be 100 percent dedicated to providing services for City under this Agreement. This includes reporting to the Manteca Transit Center and utilizing the City-provided office during transit operating hours unless City provides prior written Approval for a lesser time dedication. If City approves a variance to the time dedication level of the General Manager, this variance is subject to immediate reversal at the discretion of City and shall be provided to Contractor in writing.

Contractor shall not, without prior written approval by City, remove or reassign any Key Personnel identified in its proposal, or appoint any new individual to any Key Personnel position (whether in an acting or permanent capacity), at any time during the Agreement Term; provided that the Contractor may, following written notice and explanation to City, remove any such individual for misconduct or cause pursuant to the Contractor's established personnel policies.

Contractor shall notify City, in writing, of any proposed change of Contractor's project staff prior to any change and City is granted the right of approval of all original, additional and replacement personnel at City's sole discretion.

6. Compensation. Without additional authorization from the City, compensation to be paid to Contractor shall be in accordance with the Schedule of Chargers set forth in Contractor's BAFO, attached hereto as Attachment 3, and incorporated herein by reference. In no event shall the Contractor's compensation exceed Two Million, Two hundred fifty-one thousand seventy-three DOLLARS and eighty-four cents (\$2,251,073.84) in Fiscal Year 23/24; Two Million, Three hundred two thousand four hundred fifty-eight DOLLARS and two cents (\$2,302,458.02) in Fiscal Year 24/25; Two Million, Three hundred sixty-six thousand ninety-eight DOLLARS and sixty-one cents (\$2,366,098.61) in Fiscal Year 25/26. Payment by City under this Agreement shall not be deemed a waiver of any defects, even if those defects were known to the City at the time of payment.

7. Method of Payment. During the Agreement Term, Contractor shall submit one invoice each month to the City by the 10th business day of the month for the prior months' service, in a format prescribed by City. The amount payable under such invoice will be equal to the sum of (a) 100 percent of the applicable Fixed Monthly Fee, plus (b) the number of scheduled Revenue Hours actually operated through the last day of the prior month, separated by service mode (Fixed Route and Dial-a-Ride/ADA Paratransit), times the applicable Rate per Revenue Hour.

City shall pay Contractor no later than 30 days after approval of the monthly invoice by City staff. Payments may be delayed by City if Contractor fails to provide services in accordance with the Scope of Services, unless the City has provided prior written consent. If City determines, based on its review of an invoice, that payment has been requested for services that were not provided in accordance with this Agreement, or if City otherwise questions or objects to the contents of an invoice, City shall so notify Contractor in writing and give Contractor the opportunity to correct the invoice. If the invoice is not corrected to the satisfaction of City, City may withhold payment of the disputed amount and make payment of any undisputed amount due.

8. Extra Work. At any time during the term of this Agreement, City may request that Contractor perform Extra Work. Any such request shall be in writing, and absent special circumstances shall be submitted at least five (5) business days in advance of the date that the Extra Work will be needed. As used herein, the term "Extra Work" means any work that is determined by City to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the time of execution of this Agreement or which was outside the original Scope of Services. Contractor shall not perform, nor be compensated for, Extra Work without the City's prior written authorization. An expectation for performance of, and compensation for Extra Work, if deemed applicable and appropriate, shall be subject to the mutual agreement of the parties.

In the event of an unanticipated and exceptional change in applicable Federal, State or Local laws or regulations after the date of execution of this Agreement that results in additional costs of providing operations services hereunder, the Contractor may request an adjustment in its Fixed Monthly Fee or rate per Revenue Hour, by submitting a written request to City, supported by appropriate documented justification. City agrees to review, discuss, and consider in good faith any request of the Contractor under this paragraph, but the decision as to whether or not to agree to such request shall be in the sole discretion of City.

At any time during the term of this Agreement, City may request that Contractor perform Extra Work. As used herein, the term "Extra Work" means any work that is determined by City to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the time of execution of this Agreement. Contractor shall not perform, nor be compensated for, Extra Work without the City's prior written authorization.

9. Termination – Mutual Consent, Breach, and Convenience. City may terminate Agreement at any time for convenience by giving Contractor thirty (30) calendar days' prior written notice. Notice of termination shall be by certified mail, return receipt requested, personal service, UPS, or Federal Express. Upon receipt of the notice of termination, Contractor shall cease work, wrap up and conclude work without undertaking any new tasks or work, deliver to City all work performed unless agreement and offset against the price for work retained by Contractor, as agreed by City. City will pay Contractor the cost for all materials, etc., ordered and received by Contractor, plus reasonable overhead and profit for the portion of work through termination.

Should Contractor default in the performance of this Agreement or materially breach any of its provisions, at its option City may terminate this Agreement upon fifteen (15) days' advance notice to Contractor, unless such material breach is cured by Contractor before the end of such 15 day period or, in the case of a breach which cannot be cured within 15 days, Contractor is diligently and with commercially reasonable efforts attempting to cure. In the event the default is not remedied within the cure period, the termination date shall be the effective date of the notice. For the purposes of this section, material breach of this Agreement shall include, but not be limited to, any of the following: failure to perform required services or duties, willful destruction of City's property by Contractor, dishonesty or theft.

10. Ownership of Documents; Confidentiality.

A. All plans, studies, documents, and other writings prepared by and for Contractor, its officers, employees, agents, and subcontractors in the course of implementing this Agreement, except working notes and internal documents, shall become the property of City upon payment to Contractor for such work. City shall have the sole right to use such materials in its discretion without further compensation to Contractor or to any other party. Contractor shall, at Contractor's expense, provide such reports, plans, studies, documents and other writings to City upon written request by City. Contractor shall not be responsible for any unauthorized modification or use of such information for other than its intended purpose.

B. All memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other documents and data, either created by or provided to Contractor in connection with the performance of this Agreement, shall be held confidential by Contractor. These materials shall not, without the City's prior written consent, be used by Contractor for any purposes other than the performance

of the services under this Agreement. Nor shall these materials be disclosed to any person or entity not connected with the performance of services under this Agreement. Nothing furnished to Contractor that is otherwise known to Contractor, or is generally known, or has become known to the related profession shall be deemed confidential. Contractor shall not use City's name or insignia, photographs relating to the Project for which Contractor's services are rendered, or any publicity pertaining to the Contractor's services under this Agreement in any magazine, trade paper, newspaper, television or radio production, or other similar medium without the City's prior written consent.

11. Contractor's Books and Records.

A. Contractor shall maintain all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to City, for a minimum period of three years, or for any longer period required by law, from the date of final payment to Contractor under this Agreement.

B. Contractor shall maintain all records that document performance under this Agreement for a minimum period of three years, or for any longer period required by law, from the date of termination or completion of this Agreement.

C. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit at any time during regular business hours, upon written request by the City Manager, City Attorney, City Auditor, or a designated representative of any of these officers. Copies of such documents shall be provided to City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Contractor's address specified in Section 16 of this Agreement.

D. Where City has reason to believe that records or documents may be lost or discarded due to the dissolution or termination of Contractor's business, City may, by written request, require that custody of the records be given to the City and that the records and documents be maintained in City Hall. Access to these records and documents shall be granted to any party authorized by Contractor, Contractor's representatives, or Contractor's successor-in- interest.

12. Independent Contractor. In the performance of the work and services required by this Agreement, Contractor shall act as and be an independent contractor and not an agent, or employee of the City. Contractor shall obtain no rights to retirement or other benefits that accrue to City's employees, and Contractor expressly waives any claim it may have to any such rights.

13. Interest of Contractor.

A. Contractor represents that neither it nor any employee has any investment or interest in real property, and shall not acquire any such interest, direct or indirect, within the area covered by this Agreement, or any other source of income, interest in real property, or investment that would be affected in any manner or degree by the performance of Contractor's

services hereunder. Contractor further represents that, in the performance of its duties hereunder, no person having any such interest shall perform any services under this Agreement.

B. Contractor is not a designated employee within the meaning of the Political Reform Act because Contractor:

- (1) will conduct research and arrive at conclusions with respect to its rendition of information, advice, recommendation, or counsel independent of the control and direction of the City, or of any City official, other than normal Agreement monitoring; and
- (2) possesses no authority with respect to any City decision beyond the rendition of information, advice, recommendation, or counsel. (FPPC Reg. 18700(a)(2).)

14. Professional Ability of Contractor.

A. City is relying upon the professional training and ability of Contractor to perform the services hereunder as a material inducement to enter into this Agreement. Contractor shall therefore provide skilled professional and technical personnel to perform all services under this Agreement. All work performed by Contractor shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Contractor's field of expertise.

B. The primary provider of the services required by this Agreement shall be MTM Transit, LLC. A list of other individuals assigned to the Project will be provided to City for its review and approval, and these individuals shall not be replaced without the City's prior written consent.

15. Compliance with Laws. Contractor shall use the customary standard of care in its profession to comply with all applicable federal, state, and local statutes, codes, ordinances, and regulations.

16. Licenses. Contractor represents and warrants to City that it has all licenses, permits, qualifications, insurance, and approvals that are legally required of Contractor to practice its profession. Contractor represents and warrants to City that Contractor shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, insurance, and approvals that are legally required of Contractor to practice its profession.

17. Indemnification and Hold Harmless. Contractor agrees to defend, indemnify, and hold harmless the City, its officers, officials, agents, employees, and volunteers, from and against any and all claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all costs and expenses in connection therewith), arising out of Contractor's performance of this Agreement, or Consultant's failure to comply with any of its obligations contained in this Agreement; excluding, however, any claim arising out of the active negligence or willful misconduct of the City, its officers, agents, employees, or volunteers.

18. Insurance Requirements.

A. Job specific insurance requirements are outlined in the RFP for Transit Operations Contract Services (Attachment 1). Other insurance provisions can be found below:

B. Endorsements. Each general liability and automobile liability insurance policy shall be with insurers possessing an A.M. Best's rating of no less than A:VII and shall be endorsed with language substantially as follows:

- (1) The City, its elected and appointed officers, officials, employees, agents and volunteers are to be covered as additional insureds with respect to liability arising out of work performed by or on behalf of the Consultant, including materials, parts, or equipment furnished in connection with such work.
- (2) The policy shall be considered primary insurance as respects the City, its elected and appointed officers, officials, employees, agents and volunteers. Any insurance maintained by the City, including any self-insured retention the City may have, shall be considered excess insurance only and shall not contribute with it.
- (3) The insurance shall apply to each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.
- (4) The insurer waives all rights of subrogation against the City, its elected and appointed officers, officials, employees, and agents.
- (5) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected and appointed officers, officials, employees, agents, or volunteers.
- (6) The insurance provided by the policy shall not be suspended, voided, canceled, or reduced in coverage or in limits except after 30 days written notice has been received by the City.
- (7) The City will not accept any endorsements that were issued in 2004. Acceptable endorsement forms are CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01.

C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the City's option, Contractor shall demonstrate financial capability for payment of those deductibles or self-insured retentions.

D. Certificates of Insurance. Contractor shall provide to City certificates of insurance with original endorsements as evidence of the required insurance coverage. Certificates of insurance shall be filed with the City on or before commencement of performance

of this Agreement. Current certification of insurance shall be kept on file with the City at all times during the term of this Agreement.

19. Notices. Any notice required to be given under this Agreement shall be in writing and either served personally or sent prepaid, first class mail. Any such notice shall be addressed to the other party at the address set forth below. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to City: City of Manteca
 1001 W. Center Street
 Manteca, CA 95337
 Attention: Juan Portillo, Public Works Manager – Transit

If to Contractor: MTM Transit, LLC
 16 Hawk Ridge Circle
 Lake St. Louis, MO 63367
 Attention: Scott Transue, Regional Vice President

20. Entire Agreement. This Agreement and its attachments and exhibits contain the entire understanding between Contractor and City. Additional or new terms contained in this Agreement which vary from Contractor's proposal are controlling and are deemed accepted by Contractor by commencement of performance hereunder. All previous proposals, offers and communications relative to this Agreement, whether oral or written, are hereby superseded except to the extent that they have been incorporated into this Agreement. No future waiver of, or exception to, any of the terms, conditions, and provisions of this Agreement shall be considered valid unless specifically agreed to in writing by the parties.

21. Amendments. Both parties to this Agreement understand that it may become desirable or necessary during the execution of this Agreement, for City or Contractor to modify the scope of services provided for under this Agreement. Any material extension or change in the scope of work shall be discussed with City and the change and cost shall be memorialized in a written amendment to the original contract prior to the performance of the additional work. Until a written amendment is so executed and approved by Manteca City Council, City will not be responsible to pay any charges Contractor may incur in performing such additional services, and Contractor shall not be required to perform any such additional services.

22. Assignment and Subcontracting. The parties recognize that a substantial inducement to City for entering into this Agreement is the professional reputation, experience, and competence of Contractor. Assignments of any or all rights, duties, or obligations of the Contractor under this Agreement will be permitted only with the express written consent of the City. Contractor shall not subcontract any portion of the work to be performed under this Agreement without the written authorization of the City. If City consents to such subcontract, Contractor shall be fully responsible to City for all acts or omissions of the subcontractor. Nothing in this Agreement shall create any contractual relationship between City and subcontractor nor shall it create any obligation on the part of the City to pay any monies due to any such subcontractor other than as may be required by law.

23. Waiver. Waiver of any breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach or default of the same or any other provision under this Agreement.

24. Severability. If any provision of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

25. Controlling Law; Venue. This Agreement and all matters relating to it shall be governed by the laws of the State of California, and any legal action relating to this Agreement shall take place in the Superior Court, County of San Joaquin.

26. Litigation Expenses and Attorneys' Fees. If either party to this Agreement commences any legal action against the other party arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and attorneys' fees.

27. Mediation. The parties agree to make a good faith attempt to resolve any disputes arising out of this Agreement through mediation prior to commencing litigation. The parties shall mutually agree upon the mediator and shall divide the costs of mediation equally. If the parties are unable to agree upon a mediator, the dispute shall be submitted to JAMS/ENDISPUTE ("JAMS") or its successor in interest. JAMS shall provide the parties with the names of five qualified mediators. Each party shall have the option to strike two of the five mediators selected by JAMS, and thereafter the mediator remaining shall hear the dispute. If the dispute remains unresolved after mediation, either party may commence litigation.

28. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy has been signed by both parties.

29. Authority to Enter Agreement. Contractor warrants that it has all requisite power and authority to conduct its business and to execute, deliver, and perform this Agreement. Each party warrants to the other that the signatories to this Agreement have the legal power, right, and authority to enter into this Agreement and to bind each party.

30. Prohibited Interests.

A. Contractor warrants that it has not employed or retained any person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor warrants that it has neither paid nor agreed to pay any person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For any breach or violation of this warranty, City shall have the right to rescind this Agreement without liability.

B. For the term of this Agreement, no member, officer, or employee of City, during the period of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

31. Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer, and it shall not discriminate against any subcontractor, employee, or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex, or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

32. Precedence. In case of conflict between Contractor's Proposal/Contractor's attachments and the City's Agreement/City's attachments, the City's Agreement and City's attachments shall take precedence over Contractor's proposal/Contractor's attachments.

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ATTACHMENT 5

TO EFFECTUATE THIS AGREEMENT, each of the parties has caused this Agreement to be executed by its duly authorized representative as of the date set forth in the introductory paragraph on page 1 above.

CITY OF MANTECA:

CONTRACTOR:

Gary Singh,
Mayor

MTM Transit, LLC

ATTEST:

By: _____

(Signature)

Cassandra Candini-Tilton,
Director of Legislative Services

Scott Transue, Regional Vice President

COUNTERSIGNED:

By: _____

(Signature)

Jared Hansen,
Deputy Director of Finance

(Type name and title)

COUNTERSIGNED:

Address: _____

16 Hawk Ridge Circle

Dawn Cortesi,
Interim Director of Human Resources

Lake St. Louis, MO 63367

Telephone: _____

636-695-5634

APPROVED AS TO FORM:

L. David Nefouse,
City Attorney

ATTACHMENT 1
REQUEST FOR PROPOSAL

ATTACHMENT 2
CONSULTANT'S PROPOSAL

ATTACHMENT 3

SCHEDULE OF CHARGES SET FORTH IN
CONTRACTOR'S BAFO