

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 **JPMORGAN CHASE BANK, N.A.**, a national banking association ("Consultant").

RECITALS

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

B. Consultant possesses the skill, experience, ability, background, certification, and knowledge to provide the services described in this Agreement on the terms and conditions specified herein.

C. City desires to retain Consultant to render the professional services set forth in this Agreement.

AGREEMENT

1. Scope of Services. Subject to the terms of this Agreement, including the JPM Terms attached to this Agreement and incorporated herein by reference, Consultant shall perform the treasury banking services (the "Services") described in the attached Attachment 1 that is incorporated by this reference, and pursuant to the Proposal submitted by Consultant dated _____, and attached hereto as Attachment 2. Consultant 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.

2. Work Through City Staff. Consultant shall perform its Services pursuant to this Agreement solely through City staff. No communications, information or documentations shall be made directly to any applicant to the City without the prior written consent of the City. This shall not apply to the sole request of information or clarification of information by Consultant from the applicant. All requests shall be noted to City in an expeditious manner.

3. Time of Performance. Consultant's services will commence upon execution of this Agreement and shall be completed in accordance with the Schedule of Activities, attached hereto as Attachment 3. All work shall be completed no later than _____. Failure to submit work products in accordance with the Schedule of Activities may result in the City withholding progress payments. Repeated failure to complete work products in accordance with the Schedule of Activities may result in a reduction of the total compensation provided for in Section 4 herein.

4. Compensation. Without additional authorization from the City, compensation to be paid to Consultant shall not exceed _____ DOLLARS (\$_____). The City will compensate Consultant at the per-unit prices in accordance with the

“Schedule of Charges” as set forth in Consultant’s Proposal. 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.

5. Method of Payment. Consultant shall submit monthly account analysis statements to the City for the Services performed pursuant to this Agreement via the Consultant’s online banking portal. Each account statement must itemize the Services rendered by task, if specific tasks are detailed in the Scope of Work, and the amount due in accordance with the Compensation Schedule or any approved variance.

Unless the City selects another payment method acceptable to Consultant, City authorizes Consultant to: (a) apply City’s earnings credit allowance against the fees and other amounts due as reflected in the account analysis statement made available to City for each billing period and (b) automatically debit from City’s accounts on the fifteenth (15th) calendar day of each month (or the next banking day if the fifteenth (15th) falls on a weekend or bank holiday) any fees and other amounts due that remain unpaid after Consultant applies the earnings credits allowance for such billing period.

City’s obligation to pay for Services performed as described above is in addition to City’s obligation to pay, reimburse or indemnify Consultant under Consultant’s Account Terms (“JPM Terms”) set forth in Exhibit D and incorporated as part of this Agreement.

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

7. Termination. This Agreement may be terminated by the City immediately for cause, or by either party without cause upon 30 days’ prior written notice of termination. Upon termination, Consultant shall be entitled to compensation for services performed up to the effective date of termination and for those Services that were in the process of being performed that could not reasonably be cancelled prior to the effective date of termination upon submittal of an invoice for same.

Consultant may, upon 30 days’ prior written notice, terminate this Agreement in whole if (a) the City defaults in payment, in the aggregate, of sums due and payable to the Consultant under this Agreement or (b) any action or inaction by the City under this Agreement or otherwise directly and materially prevents Consultant from performing a material part of its obligation under this Agreement; and such default, action or inaction has not been cured after notice of such default, action or inaction has been given by the Consultant to the City. The Consultant also may, by written notice to the City, immediately terminate this Agreement, in whole, if such termination is required, directly or indirectly, by any law, regulation, order, judgment, degree, injunction, or other legal requirement or process binding upon the Consultant.

In addition to the termination rights set forth in this Agreement, either party may close an account and/or terminate a Service pursuant to the JPM Terms and may terminate this Agreement if it terminates all accounts and Services.

8. Ownership of Documents; Confidentiality.

A. 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 Consultant in connection with the performance of this Agreement, shall be held confidential by Consultant. These materials shall not, without the City's prior written consent, be used by Consultant for any purposes other than the performance of the Services under this Agreement or as permitted in the JPM Terms. Nor shall these materials be disclosed to any person or entity not connected with the performance of Services under this Agreement. Nothing furnished to Consultant that is otherwise known to Consultant, or is generally known, or has become known to the related profession shall be deemed confidential. Consultant shall not use City's name or insignia, photographs relating to the Project for which Consultant's services are rendered, or any publicity pertaining to the Consultant'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.

9. Consultant's Books and Records.

A. Consultant 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 Consultant under this Agreement.

B. Consultant 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 Consultant'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 Consultant'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 Consultant, Consultant's representatives, or Consultant's successor-in-interest.

E. Notwithstanding anything to the contrary in this Agreement, Consultant's maintenance, return, removal or destruction of any books or records is subject to Consultant's standard record retention policy and retention periods established thereunder for each category of records. Nothing in this Agreement shall require Consultant to disclose or permit access to any confidential or proprietary records, examination reports, internal audit reports, records relating to personnel who are not primarily responsible for managing Consultant's performance of this Agreement, records relating to other parties, or any records or information that Consultant does not disclose to customers in the ordinary course of its business. Further, any audit, inspection or review under this Agreement shall be conducted at a mutually agreeable date, time and place and is: (a) subject to Consultant's receipt of a written request from the City specifically describing the books or records required, (b) solely for the purpose of verifying Consultant's compliance with this Agreement and (c) subject to Consultant's record retention policies. If the City requests access to Consultant's property, such access will be subject to Consultant's health, safety and security standards and Consultant may impose reasonable restrictions on the number of individuals allowed access, the frequency and length of access, and the areas accessed.

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

11. Interest of Consultant.

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

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

- (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).)

12. Professional Ability of Consultant.

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

B. The Relationship Manager, responsible for the management of the Agreement between the City and Consultant shall be Andrea Bead. 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 written notice to the City.

13. Compliance with Laws. Consultant shall use the customary standard of care in its profession to comply with all applicable federal, state, and local statutes, codes, ordinances, and regulations in the provision of the Services. Notwithstanding any provision of this Agreement to the contrary, Consultant's obligation to comply with, and Consultant's representations, warranties and certifications with respect to, any charters, codes, laws, orders, ordinances, policies, rules, regulations, standards or statutes ("**Legal Requirements**") is limited to the extent that such Legal Requirements are binding on Consultant in its performance of the Services or are relevant to the Relationship Team. To the extent that the Legal Requirements of **the City** currently, or in the future, impose requirements upon its contractors or consultants that provide services contemplated in this Agreement, which requirements are not expressly set forth in this Agreement, Consultant will, if notified of such requirements, endeavor to comply with the same, except to the extent that it reasonably concludes that compliance with such requirements subject it to additional obligations, liability or expense or impose upon it reporting requirements of confidential or non-public information or information that it does not currently monitor. If Consultant makes such determination, and the parties are unable to resolve these issues through mutually agreeable amendments to this Agreement, either party may terminate this Agreement for convenience upon notice to the other. Nothing in this Agreement shall be construed to require any party to: (a) violate any Legal Requirement binding upon such party, (b) comply with any Legal Requirement from which it is exempt or (c) take, or refrain from taking, any action that would conflict with any

request or demand of a regulatory authority, governing body or law enforcement agency.

14. Licenses. Consultant represents and warrants to City that it has all licenses, permits, qualifications, insurance, and approvals that are legally required of Consultant to practice its profession. Consultant represents and warrants to City that Consultant 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 Consultant to practice its profession.

15. Indemnification and Hold Harmless. Consultant 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, (including any and all costs and expenses in connection therewith), directly arising out of Consultant's negligence or willful misconduct in its 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.

Notwithstanding anything to the contrary in this Agreement, Consultant shall not be liable for any Claim arising from acts or omissions that are in accordance with commercially reasonable standards or instructions or information provided or confirmed by the City or any Indemnitee.

16. Insurance Requirements.

A. Job specific insurance requirements can be found on the attached Attachment
4. 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, and employees. 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, and employees.
- (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, and employees.

- (6) Contractor can endeavor to send notice if changes to the policy are below the minimum requirements of this contract or for cancellation. 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. Certificates of Insurance. Consultant 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.

17. 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: _____
If to Consultant:	_____ _____ _____ Attention: _____

18. Entire Agreement. This Agreement constitutes the complete and exclusive statement of Agreement between the City and Consultant. All prior written and oral communications, including correspondence, drafts, memoranda, and representations, are superseded in their entirety by this Agreement.

19. Amendments. This Agreement may be amended only by a written document executed by both Consultant and City and approved as to form by the City Attorney.

20. 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 Consultant. Assignments of any or all rights, duties, or obligations of the Consultant under this Agreement will be permitted only with the express written consent of the City. Consultant 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, Consultant 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.

Notwithstanding anything to the contrary in this Agreement, Consultant may assign this Agreement without the prior written consent of the City to a successor in interest in connection with a merger, reorganization, consolidation, or a disposition of a particular business to which this Agreement relates, and may assign this Agreement to an affiliate or subsidiary. In the event of such assignment, the Contractor shall notify the City and the City shall have the right to immediately terminate this Agreement upon notice if it objects to such assignment.

For all purposes under this Agreement, inclusive of all attachments hereto, and any proposal submitted by Consultant as a condition of the award of this Agreement, “subcontractor” and “sub-consultant” and “subcontract” shall refer to a third party or an agreement with such third party, if any and as applicable, engaged by Consultant to specifically aid in the performance of its obligations under this Agreement, but shall not include any third party engaged by Consultant, from time to time, in the performance of certain operational, technological, incidental, or back office functions that assist Consultant in its performance of services, on a common basis, for all or most of its customers utilizing such services, such latter category of third parties being referred to as JPM Suppliers. Consultant shall not be required to notify or obtain written consent from the City or any other party to its engagement of any JPM Supplier.

21. 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.

22. 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.

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

24. 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.

25. 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.

26. Consultant. Notwithstanding use of the term “Consultant” to refer to JPMorgan Chase

Bank, N.A. in this Agreement, such term is used solely for ease of reference under this Agreement. The Services to be provided by JPMorgan Chase bank, N.A. under this Agreement do not involve making or participating in government decisions and JPMorgan Chase Bank, N.A. shall not be deemed a “consultant” to District for purposes of California Government Code.

27. 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.

28. Authority to Enter Agreement. Consultant 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.

29. Prohibited Interests.

A. Consultant warrants that it has not employed or retained any person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has neither paid nor agreed to pay any person, other than a bona fide employee working solely for Consultant, 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.

30. Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer, and it shall prohibit discrimination 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.

31. Precedence. In case of conflict between Consultant’s Proposal/Consultant’s attachments and the City’s Agreement/City’s attachments, the City’s Agreement and City’s attachments shall take precedence over Consultant’s proposal/Consultant’s attachments.

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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:**CONSULTANT:**

Gary Singh,
Mayor

(Type name of Consultant/form of organization)*

ATTEST:

By: _____

(Signature)

Cassandra Candini-Tilton,
Director of Legislative Services

(Type name and title)

COUNTERSIGNED:

By: _____

(Signature)

Matthew Boring
Director of Finance

(Type name and title)

COUNTERSIGNED:

Address: _____

Stephanie Van Steyn,
Director of Human Resources

Telephone: _____

APPROVED AS TO FORM:

Riana Daniel,
Interim City Attorney

ATTACHMENT 1
REQUEST FOR PROPOSAL

ATTACHMENT 2
CONSULTANT'S PROPOSAL

ATTACHMENT 3
SCHEDULE OF ACTIVITIES