

**AGREEMENT FOR TRANSPORTATION
MOBILITY MANAGER**

This Agreement for Transportation Mobility Manager ("AGREEMENT") is made and entered into this ___ day of July 2016 by and between MANITOWOC COUNTY, 1010 South Eighth Street, Manitowoc, WI 54220 ("COUNTY") and CITY OF MANITOWOC, WISCONSIN, 900 Quay Street, Manitowoc, WI 54220 ("CITY") (collectively the "PARTIES" or individually a "PARTY").

WHEREAS, COUNTY has applied to the Wisconsin Department of Transportation for a grant pursuant to 49 U.S.C. § 5310 (Enhanced Mobility of Seniors and Individuals with Disabilities) ("GRANT") to fund a Transportation Mobility Manager position ("MOBILITY MANAGER"); and

WHEREAS, CITY is interested in moving COUNTY's Mobility Manager to the CITY's Intermodal Transfer Center;

NOW, THEREFORE, in consideration of the premises set forth above, and the mutual agreements, covenants, promises, and obligations set forth below, the sufficiency of which is hereby acknowledged, the PARTIES agree as follows:

1. TERM AND TERMINATION.

(a) The initial term of this AGREEMENT is for three (3) years commencing at 12:00 a.m. on July 1, 2016 and ending at 11:59 p.m. on July 1, 2019.

(b) At the end of its initial term, this AGREEMENT will automatically renew for up to two (2) successive one-year terms unless either PARTY provides the other PARTY with a notice of non-renewal at least 120 days before the end of the calendar year.

(c) COUNTY may, subject to the provisions contained in Paragraph 4, terminate this AGREEMENT in the event that COUNTY is not awarded the GRANT in an amount sufficient to fully fund the MOBILITY MANAGER.

(d) Either PARTY may, subject to the provisions contained in Paragraph 13, terminate this AGREEMENT in the event of a default.

2. CITY RIGHTS AND RESPONSIBILITIES.

(a) CITY agrees to use the monies provided to it pursuant to this AGREEMENT to hire a MOBILITY MANAGER as described in COUNTY's GRANT application, which is attached hereto and incorporated herein as *Exhibit A*. The MOBILITY MANAGER generally shall coordinate and manage transportation programs for the elderly and disabled citizens of Manitowoc County. The MOBILITY MANAGER's duties and responsibilities shall be as defined by CITY, but shall include:

1. Coordinating and monitoring services provided by contracted transportation providers;
2. Recruiting, screening, training, and scheduling volunteers to provide transportation services to elderly and disabled citizens of Manitowoc County;
3. Responding to citizen requests for transportation service by ensuring eligibility, assessing needs, and arranging for transportation;
4. Responding to transportation requests from COUNTY Human Services case managers and Lakeland Care District;
5. Scheduling vehicles for necessary maintenance according to established vehicle maintenance schedule;
6. Processing reimbursements for volunteer drivers when they use their own vehicles;
7. Making and receiving referrals to and from staff from Aging & Disability Resource Center of the Lakeshore and COUNTY Human Services;
8. Writing grant applications and completing associated reports.

(b) CITY shall collect and maintain passenger ride information as required by COUNTY on forms provided by COUNTY. CITY shall provide COUNTY with passenger information monthly by the 15th day of the month following the month in which ridership took place.

(c) CITY shall collect and maintain volunteer in-kind tracking logs as required by COUNTY on forms provided by COUNTY. CITY shall provide COUNTY with the volunteer in-kind tracking logs monthly by the 15th day of the month following the month in which the volunteer in-kind tracking log was completed.

(d) CITY agrees to provide COUNTY with monthly transportation reports, including, but not limited to summaries of rides and expenses. CITY agrees to provide to COUNTY monthly fiscal reports within thirty (30) working days of the end of each month and to complete other reports as requested by COUNTY. CITY agrees to submit quarterly transportation reports as required by the GRANT. CITY agrees to submit a final year-end report by February 15th following completion of each calendar year.

(e) CITY agrees to maintain accounting records as required by 49 U.S.C. § 5310 and this AGREEMENT and to submit these records on a timely basis to COUNTY and WisDOT as required.

(f) CITY agrees to comply with reasonable reporting requirements as specified from time to time by COUNTY. CITY shall adhere to and arrange for such independent financial and compliance audits, completed in accordance with Generally Accepted Auditing Standards (GAAS), as may be requested by COUNTY and with such specification and requirements as required by COUNTY. COUNTY reserves the right to conduct an independent audit of CITY if CITY fails to provide COUNTY with an audit meeting its specifications and requirements, secure an audit covering all funds, or a follow-up review is determined to be necessary by COUNTY. In the event CITY fails to secure an audit satisfactory to COUNTY, any costs incurred by COUNTY for completing an audit shall be paid by CITY.

(g) CITY agrees to comply with the Americans with Disabilities Act (ADA) of 1990 and all U.S. Department of Transportation regulations relating to enforcement of the Act.

(h) CITY agrees to submit proposed modifications in the duties and responsibilities of the MOBILITY MANAGER to the COUNTY in writing at least fourteen (14) days before implementation.

(i) CITY will conduct volunteer background checks for volunteer drivers in accordance with established COUNTY policy. COUNTY shall reimburse CITY for costs associated with conducting volunteer background checks.

(j) CITY agrees to conduct outreach and marketing for the Enhanced Mobility of Seniors and Individuals with Disabilities in coordination with COUNTY.

3. COUNTY RIGHTS AND RESPONSIBILITIES.

(a) COUNTY agrees to annually apply to WisDOT for the GRANT to fund the MOBILITY MANAGER position described in this AGREEMENT.

(b) COUNTY agrees to reimburse CITY up to the full salary and benefits of the MOBILITY MANAGER in addition to all reasonable expenses related to the MOBILITY MANAGER PROGRAM in an amount not to exceed the actual amount of the GRANT as received by COUNTY from WisDOT.

(c) COUNTY agrees to be responsible for providing the 20% local match required to secure the GRANT. It is understood and agreed to by the PARTIES that COUNTY's 20% match may result from, *inter alia*, the provision of volunteer services.

(d) COUNTY shall be solely responsible for billing passengers and Lakeland Care District for transportation services, and retain all proceeds in its sole discretion.

(e) If WisDOT does not award COUNTY the GRANT in an amount sufficient to fully fund the MOBILITY MANAGER, COUNTY may either

immediately terminate this AGREEMENT by providing written notice to CITY or elect to continue this AGREEMENT by providing written notice to CITY.

4. COUNTY VEHICLES.

(a) COUNTY currently owns four (4) vehicles as listed on *Exhibit B*, which attached hereto and incorporated herein ("VEHICLES"). COUNTY shall make the VEHICLES available for use by CITY for the Enhanced Mobility of Seniors and Individuals and Disabilities program. The VEHICLES are provided "as-is/where-is" without any representations or warranties as to the condition or usability of any VEHICLE for any purpose.

(b) CITY agrees to maintain the VEHICLES in good operating order and to perform preventive maintenance on the VEHICLES at a level no less than the manufacturers recommended specifications. COUNTY shall fully reimburse CITY for all costs associated with the VEHICLES, including, but not limited to, maintenance, fueling, and, licensing.

(c) COUNTY has no responsibility or obligation to provide any or all of the VEHICLES at any time. CITY's use of the VEHICLES is limited to the availability of the VEHICLES at the sole discretion of COUNTY. COUNTY has no obligation to replace any VEHICLE for any reason.

(d) CITY agrees that it will not alter, deface, remove, or supplement the license plates, titles, identification tags, or markings of the VEHICLES.

(e) CITY agrees to maintain such information and records about the use of the VEHICLES as COUNTY may require and to submit such records to COUNTY promptly upon request.

(f) CITY agrees to ensure that VEHICLES are used in a skillful and proper manner and only driven by persons that with a valid license.

(g) CITY agrees that no alterations are to be made to the VEHICLES unless authorized in writing by COUNTY.

(h) COUNTY shall obtain motor vehicle liability insurance for the VEHICLES issued by a company authorized to do business in Wisconsin with limits of at least \$1,000,000 combined single limit and to keep it in force at all times during the term of this AGREEMENT.

5. AUDIT AND RECORD DISCLOSURES.

(a) CITY agrees to maintain financial and accounting records, supporting documents, reports, and other materials pertinent to this AGREEMENT in accordance with the Wisconsin Department of Health and Human Services Allowable Cost

Policies Manual and shall retain such records and supporting documentation for a period of at least three years from the date of termination of this AGREEMENT.

(b) CITY agrees that it shall allow representatives of the COUNTY to have access to such records upon reasonable notice and during normal business hours as may be necessary to confirm compliance with this AGREEMENT.

(c) CITY agrees to submit a certified annual financial and compliance audit report to COUNTY which is in accordance with the Department of Health and Human Services Provider Agency Audit Guide and the Federal Government Office of Management and Budget Circular A-128, if required because of the funding.

6. INDEMNIFICATION.

(a) Each PARTY agrees to hold harmless and defend the other and, as applicable, its officers, employees, departments, boards, commissions, committees, agents, elected and appointed officials, and volunteers ("Representatives") from and against any and all causes of action, claims, costs, demands, expenses, judgments, legal fees, liabilities, or losses (including, without limitation, reasonable attorney fees), for damage to property or injury to or the death of any person that arises out of or is in any way related to any act or omission of such PARTY and its Representatives in connection with this AGREEMENT. The indemnifying PARTY will have the right to control the defense and to select counsel to be used in fulfilling its defense obligations. The PARTIES agree that the covenants contained in this Paragraph shall survive the termination of this AGREEMENT.

(b) The foregoing notwithstanding, neither PARTY waives any immunity or limitation on damages or liability that is available to the PARTY under Wisconsin law, including, but not limited to, Wis. Stat. § 893.80.

7. INSURANCE.

(a) CITY shall obtain general liability insurance issued by a company authorized to do business in Wisconsin with limits of at least \$1,000,000 per person and \$2,000,000 aggregate and to keep it in force at all times during the term of this AGREEMENT.

(b) CITY shall obtain workers compensation insurance issued by a company authorized to do business in Wisconsin and to keep it in force at all times during the term of this AGREEMENT.

(c) The required insurance shall be provided by companies or underwriters authorized to do business in the State of Wisconsin who are reasonable acceptable to COUNTY, shall name COUNTY as an additional insured, and shall provide that coverage will not be canceled or non-renewed unless COUNTY is provided notice in accordance with the term of the policy. CITY shall furnish certificates evidencing such insurance to COUNTY.

(d) CITY agrees that it will not exercise any rights and privileges granted under this AGREEMENT unless all required insurance is in full force and effect.

(e) COUNTY may, at its sole discretion, immediately terminate this AGREEMENT if any insurance policy issued to comply with the terms of this AGREEMENT is canceled or terminated without notice to COUNTY or without another policy having been issued and in effect at the time of such cancellation or termination.

8. WAIVER OF SUBROGATION. To the extent of its insurance coverage, CITY waives any and all rights of recovery against COUNTY, or against the officers, employees, agents or representatives of COUNTY, for loss or damage to CITY, its property, or the property of others under its control, where such loss or damage is insured against by any insurance policy in force at the time of such loss or damage. It is the intention and agreement of COUNTY and CITY that CITY shall look to its insurer for reimbursement of any such loss and, further, that the insurer involved shall have no subrogation rights against COUNTY. CITY shall advise its insurance company of this waiver of subrogation; and all policies procured in accordance with this AGREEMENT shall contain a waiver of all rights of subrogation by the insurer against COUNTY.

9. IMMUNITY. The PARTIES are governmental entities entitled to governmental immunity under law, including Wis. Stat. § 893.80, as applicable. Nothing contained in this AGREEMENT shall waive the rights and defenses to which either PARTY may be entitled under law, including all immunities, limitations, and defenses under Wis. Stat. § 893.80 or any subsequent amendment thereof. The rights and obligations set forth in this Paragraph shall survive the termination or expiration of this AGREEMENT.

10. NOTICE.

(a) Any notice given under this AGREEMENT shall be in writing and delivered in person or by certified mail, return receipt requested, addressed as follows:

If to COUNTY: Director, ADRC of the Lakeshore
 Cathy Ley
 4319 Expo Drive
 P.O. Box 935
 Manitowoc, WI 54221-0935

If to CITY: City Clerk and City Transit Manager
 900 Quay Street
 Manitowoc, WI 54220

Either PARTY may, in writing, designate another address to which notice shall thereafter be given or mailed. Any notice given by mail shall be deemed delivered when deposited postage pre-paid in the United States mail.

11. MODIFICATION. This AGREEMENT may not be altered, amended, or modified except by a written agreement which expressly states that it constitutes an amendment to this AGREEMENT and which has been signed by duly authorized representatives of both PARTIES.

12. CIVIL RIGHTS COMPLIANCE ASSURANCE. CITY shall comply with the Civil Rights Compliance Assurance as provided in Appendix B to this AGREEMENT.

13. DEFAULT. The failure by either PARTY to perform any of the covenants, conditions, or obligations imposed on it by this AGREEMENT where the failure continues for a period of fifteen (15) days after written notice from the non-breaching PARTY, unless a shorter time is specified in this AGREEMENT, shall constitute a material default and breach of this AGREEMENT.

14. REMEDIES CUMULATIVE. All of the rights and remedies given in this AGREEMENT are cumulative and no one is exclusive of any other. A PARTY shall have the right to pursue any one or all of such remedies or any other remedy or relief that may be provided by law, whether stated in this AGREEMENT or not.

15. RESERVATION OF RIGHTS; NO WAIVER. No condition, covenant, or term of this AGREEMENT shall be waived unless the waiver is made in writing and signed by duly authorized representatives of both PARTIES.

A PARTY's performance of its duties under this AGREEMENT with knowledge of the other PARTY's breach or default in the observation of performance of any condition, covenant, or term of this AGREEMENT shall not be deemed a waiver of any condition, covenant, or term of this AGREEMENT.

The failure of a PARTY to take action with respect to any breach by the other PARTY of any covenant, condition, or obligation in this AGREEMENT shall not be a waiver of such covenant, condition, or obligation or a subsequent breach of the same or any other covenant, condition, or obligation.

16. RELATIONSHIP OF THE PARTIES. The PARTIES agree and understand that they shall perform their obligations under this AGREEMENT as independent parties to the AGREEMENT. Nothing in this AGREEMENT shall be construed to make either PARTY an agent, employee, employer, partner, or representative of the other PARTY or to otherwise create any other association between the parties.

17. SUBCONTRACTING. CITY agrees that it will not subcontract any service it is permitted to undertake pursuant to this AGREEMENT without the express written consent of COUNTY.

18. ASSIGNMENT PROHIBITED. CITY shall not assign or transfer any interest in this AGREEMENT in any manner unless approved in writing by COUNTY. CITY agrees that any assignment shall expressly provide for the assignee to assume and become bound by all of CITY's obligations under this AGREEMENT. CITY agrees that no assignment shall relieve CITY of any of its obligations, express or implied, under this AGREEMENT. CITY shall provide COUNTY with an executed copy of all assignments.

19. SUCCESSORS AND ASSIGNS BOUND. All of the provisions, covenants, terms, conditions, and specifications in this AGREEMENT shall extend to and bind the legal representatives, successors, and assigns of the respective PARTIES.

20. FORCE MAJEURE. The performance of all obligations under this AGREEMENT shall be postponed and suspended during the period that performance is prevented by acts of God, accidents, earthquake, epidemic, fire, flood, lightning, storm, and weather, including any resulting conditions; boycotts, lockouts, and other labor troubles; inability to secure adequate supplies, labor, materials, merchandise, or products; acts of enemies, civil war, hostilities, insurrection, rebellion, revolution, riot, sabotage, terrorism, or war; the declaration or existence of a national emergency and any related or resulting conditions; the exercise of power by the state or federal government, either through the taking of the premises or the imposition of regulations restricting the conduct of business; any interference, restriction, limitation, or prevention by decree, order, regulation, or request of a local, state, or federal government entity or its agents, employees, officials, and officers, including any court of competent jurisdiction; or any other delay or contingency beyond the reasonable control of COUNTY or CITY.

21. CHOICE OF LAW. This AGREEMENT shall be construed and enforced in accordance with the laws of the State of Wisconsin. Any lawsuit related to or arising out of a dispute under this AGREEMENT shall be commenced and tried in the circuit court of Manitowoc County, Wisconsin, and COUNTY and CITY submit to the exclusive jurisdiction of the circuit court of Manitowoc County, Wisconsin for such lawsuits.

22. PARAGRAPH HEADINGS. All paragraph and subparagraph headings contained in this AGREEMENT are for convenience in reference only, and are not intended to define or limit the scope of any provision.

23. SEVERABILITY. The provisions of this AGREEMENT are severable and if any condition, covenant, or term is found to be invalid, unenforceable, or void by a court of competent jurisdiction, then the remainder of the AGREEMENT shall remain in full force and effect and shall not in any way be affected, impaired, or invalidated.

24. SIGNATURE AUTHORITY. The persons signing this AGREEMENT warrant that they have been authorized to enter into this AGREEMENT by and on behalf of their respective PARTIES and that they have full and complete authority to bind their respective PARTIES by executing this AGREEMENT.

25. COUNTERPARTS. This AGREEMENT may be executed in several counterparts, each of which shall be taken to be an original, and all collectively but one instrument.

26. ENTIRE AGREEMENT. This AGREEMENT constitutes the entire agreement between the PARTIES and supersedes any and all other agreements, oral or written, between the PARTIES with respect to its subject matter. Each PARTY acknowledges that no agreement, inducement, promise, or representation has been made by or on behalf of any PARTY except as specifically set forth herein. Each PARTY agrees that no agreement, promise, or statement that is not contained in this AGREEMENT shall be binding on any PARTY. Each PARTY acknowledges and agrees it has relied on its own judgment in entering into this AGREEMENT.

IN WITNESS WHEREOF, the PARTIES, intending to be legally bound, have executed this AGREEMENT on the date first written above.

MANITOWOC COUNTY

CITY OF MANITOWOC

By:

Title:

By:

Title:

By:

Justin M. Nickels, Mayor

By:

Jennifer Hudon, City Clerk/Deputy
City Treasurer