

Driver Services Request for Proposal (RFP)



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City of Fargo, City of Moorhead Driver Services RFP

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RFP Overview

The Cities of Fargo and Moorhead are seeking one, qualified vendor to provide public mass transportation driver services for the Fargo-Moorhead MATBUS system. Services to be provided include driver operations and record keeping functions required by the Cities of Fargo and Moorhead, States of North Dakota and Minnesota, and the Federal Transit Administrations.

The Cities of Fargo and Moorhead provide dispatch and vehicles, including maintenance, storage and fuel for transit services.

Bidders will provide a bid for both the City of Fargo, North Dakota and City of Moorhead, Minnesota, but each City will execute a separate contract. The resulting contracts will require all bus operators be cross trained and utilized in both Cities.

The Cities of Fargo and Moorhead currently supply 61 transit vehicles for this service: 34 Fargo Fixed Route and deviated Fixed Route, 12 Moorhead Fixed Route, 15 Paratransit. Ridership annually is approximately 1.8 Million passengers between the Fargo and Moorhead fixed route systems; and approximately 54,000 on Paratransit.

The City of Fargo owns and operates a transfer terminal entitled the Ground Transportation Center (GTC), located at 502 NP Avenue, Fargo, North Dakota, which has furnished office space for one (1) office for the Contractor's supervisory staff plus 2 cubicles, and one (1) conference room that can be used for meetings and training when reserved. A shared employee break room, and restroom facilities are provided for all staff at the location. The GTC serves as a layover point for many of the fixed routes.

The Cities of Fargo and Moorhead share a combined storage and maintenance facility located at 650 23rd St N, Fargo, North Dakota, which has two (2) furnished office spaces for the Contractor. Along with a shared employee break room, locker room and restroom facilities for staff.

This project will receive federal 5307 funds, CFDA #20.507, up to 50% by Federal Transit Administration.

RFP Administrators

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Section 1 – Submission of Proposal

1. Conditions for Responding

a. Scope

- i. The following terms and conditions shall prevail unless otherwise modified by the Cities within this RFP. The Cities reserve the right to reject any proposal, which take exception to these terms and conditions.

b. Definitions as Used Herein

- i. The terms "request for proposal, RFP, proposal, bid, offer" are synonymous and mean a solicitation of a formal sealed proposal and refer to the product required by the Request for Proposals.
- ii. The terms "City of Fargo, City of Moorhead, Cities, Cities of Fargo and Moorhead, MAT, MATBUS, Fargo Transit, Moorhead Transit, Grantee, Transit Office", are synonymous and mean the Cities of Fargo and/or Moorhead.
- iii. The terms "Bidder, Contractor, Offerer, Proposer, Vendor, Firm, Company" are synonymous and mean the offerer or vendor.
- iv. Additional Acronyms Used throughout the document
 1. GTC – Ground Transportation Center
 2. MTG – Metro Transit Garage
 3. FTA – Federal Transit Administration
 4. NDDOT – North Dakota Department of Transportation
 5. MNDOT – Minnesota Department of Transportation
 6. Collision – Contact between one or more vehicles with another vehicle or object. Interchangeable with the word Accident.
 7. AVA – Automatic Voice Announcement System
 8. AVL – Automatic Vehicle Location System
 9. Metro COG – Metropolitan Council of Governments

2. Required Competitive Procurement Proposal Form

- a. The Cities of Fargo and Moorhead will employ the competitive procurement purchase process in the award of this offer. Offers shall be submitted in two (2) separate packages. Package I shall contain twelve (12) copies and one (1) electronic copy of the "Technical Proposal". Package II shall contain twelve (12) copies and one (1) electronic copy of the "Price Offer" (which includes the spreadsheets on "Cost Summary / Bid Price" and "Estimated Budget to Support Bid Price"). Each package shall be sealed, and shall clearly reflect the specifications title, Package Number and Content, and shall reflect the vendor's name.
- b. All information must be legible. Any and all corrections and/or erasures must be initialed. Authorized respondent must sign each proposal and required information must be provided. A neatly typed document of reasonable length, following the RFP outline, is preferred. Expenses incurred in developing and



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submitting a proposal are borne entirely by bidder. Bidders will not include any such expenses as part of the price proposed in response to this RFP.

- c. Before completing the Bid Proposal Form, Proposers should read the entire Request for Proposals (RFP) carefully to insure that any proposals submitted are responsive to this request. Particular attention should be made of the completion of all forms enclosed and submission of proposals in required format. Failure to provide all information requested herein may cause the proposal to be rejected as nonresponsive.
- d. Proposals shall provide a concise delineation of the proposer's capability to satisfy the requirements of the RFP. A duly authorized officer of the company will sign each proposal.
- e. Bidders will provide a bid for both the City of Fargo and City of Moorhead, but each City will execute a separate contract. The resulting contracts will require all bus operators and staff/management team be cross trained and utilized in both Cities.

3. Proposal Security

a. Fargo

- i. No proposal will be considered by the City to be responsive to this request unless accompanied by a cashier's check payable to the City of Fargo by a responsible, solvent bank in the United States in an amount equal to five percent (5%) of the first year of the Fargo contract amount; or, a bond executed by a surety company authorized to transact business in the State of North Dakota in an amount equal to five percent (5%) of the first year Fargo contract amount. The first year Fargo contract amount on which this shall be computed is the Fargo Only total from the Cost Summary / Bid Price spreadsheet. Such surety will be retained by the City of Fargo if the successful proposer fails, neglects or refuses to execute the contract, or fails to commence service as required under the contract. The check or bond of the highest ranked proposer will be returned after commencement of service. The check or bond of the second highest ranked proposer will be returned after the execution of the contract with the successful proposer. The checks or bonds of all other proposers will be returned promptly after the award of the contract by the City of Fargo.

b. Moorhead

- i. No proposal will be considered by the City to be responsive to this request unless accompanied by a cashier's check payable to the City of Moorhead by a responsible, solvent bank in the United States in an amount equal to ten percent (10%) of the first year of the Moorhead contract amount; or, a bond executed by a surety company authorized to transact business in the State of Minnesota in an amount equal to ten percent (10%) of the first year Moorhead contract amount. The first year contract amount on which this shall be computed is the Moorhead Only total from the Cost Summary / Bid Price spreadsheet. Such surety will be retained by the City of



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Moorhead if the successful proposer fails, neglects or refuses to execute the contract, or fails to commence service as required under the contract. The check or bond of the highest ranked proposer will be returned after commencement of service. The check or bond of the second highest ranked proposer will be returned after the execution of the contract with the successful proposer. The checks or bonds of all other proposers will be returned promptly after the award of the contract by the City of Moorhead.

4. Projected Schedule

a. The following is a schedule of dates/deadlines that pertain to all proposals received:

i. NOTE: Throughout this proposal, COB is “close of business” – this is 4:30pm CDT (Central Daylight Time).

ii. Calendar of Events

Date	Description
08/17/2020	Cities release RFP document; publish advertisement, notify private sector
09/07/2020	Deadline for proposer’s submittal of written requests for clarification or modification of the RFP
09/09/2020	Cities’ response to written request for clarification or modification of the RFP and pre-bid conference
09/16/2020	Deadline for proposer’s submittal of written bid protests regarding the solicitation (RFP)
09/23/2020	Deadline for receipt of sealed proposals by 2:00pm CDT in the Metro Transit Garage, 650 23 rd Street North, Fargo, North Dakota 58102
10/07/2020	Cities’ review and evaluate proposals, interview finalists
10/14/2020	Deadline for proposer’s submittal of written pre-award bid protests
10/26/2020	Fargo City Commission award of contract and notice to proceed issued, contingent upon Moorhead City Council approval
10/26/2020	Moorhead City Council award of contract and notice to proceed issued, contingent upon Fargo City Commission approval
10/31/2020	Deadline for proposer’s submittal of written post-award protests
11/07/2020	Cities’ response to post-award protests
11/13/2020	Deadline for proposer’s submittal of written appeal of post-award decision to appropriate City governing board
11/23/2020	Hold hearing of appeal of post-award decision with Fargo City Commission and Moorhead City Council



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11/25/2020	Cities' final written determination on appeal issued. All decisions regarding protest shall be considered final.
01/01/2021	Successful proposer commences service.

5. Pre-Bid Conference

- a. A pre-bid conference will be held on September 9, 2020, at 11:30am Central Daylight Time (CDT) at the Metro Transit Garage, 650 23rd Street North, Fargo, North Dakota. All respondents are requested and urged to attend. This conference is intended to provide respondents the opportunity to make a formal presentation (limited to approximately 10 minutes per company), have answered any questions, and/or receive clarification of any requirement of the RFP. The presentation could include background qualifications/experience of their company, and why the company feels they are most qualified and should be selected to operate in Fargo-Moorhead. Please note that the full evaluation team may not be present during the pre-bid conference. The Cities of Fargo and Moorhead will review the selection process at this time. To facilitate the clarification of requirements, respondents are requested to submit questions in writing, by COB September 8, 2020 to the RFP Administrators listed on page 1.
- b. Due to the COVID-19 pandemic, the pre-bid conference will also be held virtually. If you wish to attend virtually, please email proposals@matbus.com for a virtual link to the meeting prior to September 8, 2020 COB.

6. Addenda

- a. In the event it becomes necessary to revise any part of this RFP, or if additional information is necessary to enable the Proposer to make an adequate interpretation of the provisions of this RFP, a written addendum to the RFP will be provided to each prospective proposer by mail or e-mail. Receipt of all addenda must be acknowledged by each prospective proposer as requested on the Bid Proposal Form; acknowledgements for email receipt of addenda will be done by recipient sending an email acknowledgement. Oral instructions by the City of Fargo/City of Moorhead representatives are not binding.

7. Request for Modification or Clarification

- a. Requests for clarification or modification of this RFP must be in writing. The Cities must receive any such request by COB September 7, 2020. Any request must be accompanied by all relevant information supporting the request for modification, interpretation, clarification or amendment of this solicitation.
- b. Inquiries about Fargo-Moorhead Transit services and the Request for Proposal shall be directed to the RFP Administrators listed in this document on page 1.
- c. All communications related to this RFP will be posted on our website; <http://matbus.com/doing-business/current-procurements>.

8. Bid Protest Procedures



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- a. General: Protests will be accepted from prospective bidders or offerors whose direct economic interest would be affected by the award of a contract or by failure to award a contract. The RFP Administrators will consider all protests or objections filed in a timely manner regarding the award of a contract, whether submitted before or after award. All protests shall be in writing and shall be supported by sufficient information to enable the protest to be considered. A protest will not be considered if it is insufficiently supported or it is not received within the time limits specified herein. Protest submissions should be concise, logically arranged, and clearly state the ground for the protest. Protests must include at least the following information:
 - i. Name, address, and telephone number of protestor.
 - ii. Identification of the solicitation or bid.
 - iii. A detailed statement of the legal and factual grounds of the protest, including copies of relevant documents.
 - iv. A statement as to what relief is requested.
 - v. Protests should be sent electronically to proposals@matbus.com.
- b. Protests must be filed with the Cities of Fargo and/or Moorhead in accordance with our procedures and time requirements. The protest to the Cities of Fargo and/or Moorhead must be complete and contain all the issues that the protestor believes relevant. Cities of Fargo and Moorhead will respond to each substantive issue raised in the protest. Failure to include an issue in the protest to Cities of Fargo and Moorhead will preclude raising the issue to FTA, if the protest is appealed to that agency. Following an adverse decision by Cities of Fargo and Moorhead, protestor may file a protest with FTA under certain limited circumstances listed in paragraph 13.
- c. On occasion, when considered appropriate by the RFP Administrators an informal conference on the merits of the protest with all interested parties may be held.

9. Protests Before Award

- a. Solicitation Phase: Protests concerning the solicitation must be submitted in writing by COB September 16, 2020. If the written protest is not received by the time specified, award may be made in the normal manner unless the RFP Administrators, upon investigation, find that remedial action is required. Oral protests not followed up by a written protest will be disregarded.
- b. Notice of a protest and the basis therefore will be given to all potential bidders or offerors.
- c. Pre-Award Phase: When a protest against the making of an award is received after receipt of bids or proposals but prior to award, COB October 14, 2020, the RFP Administrators may determine to withhold the award pending disposition of the protest. Cities of Fargo and Moorhead will provide a written response to each material issue raised in the written protest. Notice of a protest as well as Cities of Fargo and Moorhead's response will be provided to bidders/proposers who responded to the solicitation and are in line for the award of a contract.



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- d. Where a written protest against the making of an award is received by the time specified (COB October 14, 2020), an award will not be made unless Cities of Fargo and Moorhead determines that:
 - i. The items to be procured are urgently required;
 - ii. Delivery or performance will be unduly delayed by failure to make award promptly; or,
 - iii. Failure to make award will otherwise cause undue harm to Cities of Fargo and Moorhead or the Federal Government.
- e. If award is made, the RFP Administrators will document the file to explain the need for an award and will give written notice of the decision to proceed with the award to the protestor and, as appropriate, to others concerned by COB October 31, 2020.

10. Protests After Award

- a. A protest received by COB October 31, 2020, shall be reviewed by the RFP Administrators, and the Legal Department. The selected contractor will, in any event, be furnished with the notice of protest and the basis therefore. When it appears likely that an award may be invalidated and a delay in receiving the supplies or services is not prejudicial to Cities of Fargo and Moorhead's interest, the RFP Administrators may consider a mutual agreement with the contractor to suspend performance on a no-cost basis. A written response by the RFP Administrators will be issued by COB November 7, 2020.

11. Post-Award Appeals

- a. Appeals must be sent in writing to the Fargo City Commission and/or the Moorhead City Council by COB November 13, 2020. The Fargo City Commission and/or the Moorhead City Council will schedule a hearing between November 13, 2020 and November 23, 2020, where the appellant may be heard. The Fargo City Commission and/or the Moorhead City Council will issue Cities of Fargo and Moorhead a final written determination by November 25, 2020.
- b. The decision of the Commission and/or Council is final and no further appeals may be made.

12. Determination of Interested Party

- a. An interested party is an actual prospective bidder or offeror whose direct economic interest would be affected by award of a contract or failure to award a contract. This definition specifically excludes subcontractors and suppliers.
 - i. The ability to qualify as an actual or prospective bidder/proposer ends when the bid/proposal period ends.
 - ii. The offer received from the protestor must be technically responsive.
 - iii. The protestor must be the next in line to receive the award if the protested issues prevail.
 - iv. If not next in line, the protestor must successfully challenge all intervening offers to establish next in line status.

13. Protests to FTA



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- a. Under certain limited circumstances, an interested party may protest to FTA the award of a contract pursuant to an FTA grant. FTA's review of any protest will be limited to alleged failure of Cities of Fargo and Moorhead to have or follow its written protest procedures or alleged failure to review a complaint or protest.
 - i. Time for Filing
 1. An appeal to FTA must be received by FTA Region VIII within five (5) working days of the date the protester learned or should have learned of an adverse decision by the grantee or other basis of appeal to FTA. Protests should be addressed to:

U.S. Department of Transportation
Federal Transit Administration, Region VIII
12300 W Dakota Ave, Suite 310
Lakewood, CO 80228
 2. Violations of Federal law or regulation will be handled by the complaint process stated within the law or regulation.
 - ii. Submission of Protest to FTA
 1. A protestor must exhaust all administrative remedies with Cities of Fargo and Moorhead before pursuing a protest to FTA.
 2. Protests to FTA should be sent to the FTA Regional or Headquarters Office. A concurrent copy of the protest must be sent to Cities of Fargo and Moorhead.
 3. The protest filed with FTA shall:
 - a. Include the name and address of the protestor.
 - b. Identify Cities of Fargo and Moorhead and the number/title of the contract solicitation.
 - c. Contain a statement of the grounds for the protest and any supporting documentation. This should detail the alleged failure of Cities of Fargo and Moorhead to have or follow its protest procedures or the alleged failure to review a complaint or protest.
 - d. Include a copy of the local protest filed with Cities of Fargo and Moorhead and a copy of Cities of Fargo and Moorhead's decision, if any.
 - iii. Other Remedies
 1. Contractors may seek remedy in the North Dakota/Minnesota state courts, as applicable, if they desire to do so.
14. Submission of Proposal
 - a. The proposals will be clearly marked as Request for Proposal for Driver Services for Public Transportation in the Cities of Fargo and Moorhead.



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- b. Proposals must be submitted no later than 2:00 p.m. Central Daylight Time on September 23, 2020, to the Metro Transit Garage, 650 23rd Street North, Fargo, ND 58102.
- c. Proposals received after this deadline shall not be considered and shall be returned unopened. Proposals may be withdrawn or modified prior to the proposal opening. All such transactions must be submitted and received prior to the proposal opening.

15. Selection Criteria

- a. No proposals will be considered that do not meet mandatory elements.
- b. EVALUATION PROCESS
 - i. The Cities of Fargo and Moorhead shall employ the competitive procurement purchase method in making this award. Price evaluation shall not begin until the technical evaluation is completed. The Evaluation Team consisting of representatives from of the City of Fargo, North Dakota, and the City of Moorhead, Minnesota, Metro COG, and MAT Coordinating Board will meet to review and analyze each response. At the conclusion of the meeting, the Evaluation Team members will independently rate the proposal (see evaluation form in Appendix 8) and list them in descending order. The Evaluation Team will then meet and average the ranking of the proposals.
 - ii. Required cost information to be submitted in the offer must be correct, complete and verifiable. Please complete the forms and Excel spreadsheet attached herein. Please do not protect or lock the cells in the spreadsheet. The Cities reserve the right to require detailed cost information and verification of cost information submitted in the offer and to conduct complete cost and price analysis of the submitted offer. The vendor shall submit any and all documents as may be required to support the proposed cost information and fully cooperate with the Cities in their evaluation.
 - iii. Upon review of the consolidated ranking, the committee will determine the number of the firms, in their opinion, that warrant interviews. The committee will interview the selected firm or firms. They will then determine if they feel additional firms merit interviews.
 - iv. Prohibited Contact with Proposers: Except as otherwise provided, oral communications between Evaluators and Proposers regarding procurement in progress is prohibited. Each Evaluation Team member shall report any such communication, in writing to the RFP Administrators, who shall determine, in consultation with the Fargo City Administrator/Assistant Fargo City Administrator and the Moorhead City Manager, any appropriate remedial action.
 - v. Permitted Contact with Proposers: The Evaluation Team may conduct written communications, directly or indirectly, with the Proposers. In addition, the role of the Evaluation Team may include formal interviews



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with the top choice(s). Evaluation Team members may have contact with proposers only in the Pre-Bid Conference scheduled for September 09, 2020. The purpose of the conference is to permit the Proposers an opportunity for questions or request clarifications. The proceedings will be formal and structured, consisting of a timed presentation by the Proposer followed by a question and answer section. In the event a proposer is unable to attend the scheduled Pre-Bid Conference, they are encouraged to make alternate arrangements for an on-site visit with the RFP Administrators, however, no formal presentations will be accepted at any time other than the scheduled Pre-Bid Conference.

c. NEGOTIATIONS

- i. The Cities may undertake concurrent negotiations with all Proposers whose offers are within the competitive range after the detailed evaluation. The Cities do, however, reserve the right to award a contract based on an original offer without any negotiations. The decision to award without negotiation may be made by the Cities if, in their opinion, preliminary evaluation of the offers indicates that the best achievable and technically acceptable offer has been received.
- ii. Concurrent negotiations with all Proposers whose offers are within the competitive range may be conducted by the Evaluation Team.
- iii. The Cities may request a Best and Final Offer (BAFO) from proposers during negotiations.
- iv. Upon completion of negotiations with all Proposers within the competitive range, the offer that best meets the requirements of the specifications and ranks the highest evaluation score, earned by its offer based on evaluation criteria stated in Appendix 8 Evaluation Criteria, will be recommended to the Fargo City Commission and the Moorhead City Council for award as the successful vendor. **The Cities will make the award to the responsible Proposer whose proposal is most advantageous to the Cities. Accordingly, the Cities may not necessarily make an award to the Proposer with the highest technical (qualifications based) ranking nor award to the Proposer with the lowest price proposal if doing so would not be in the overall best interest of the Cities.**

Section 2 - Qualifications of Contractor

1. Experience

- a. Any Proposer (firm/company) must demonstrate at least three (3) years within the past five (5) years of extensive hands-on experience involving all aspects of bus operations, which will include municipal mass transit and complimentary paratransit service. The Proposer must have a satisfactory record of performance demonstrated by providing references from clients for which Proposer has provided service. A



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reference list of clients will be supplied to the Cities. Additional client references may be requested by the City and will be provided by the Contractor.

- b. **Note:** Proposers will be required to sign the attached release for the Cities to obtain information from client references (Appendix 17). The Cities reserve the right to request additional information to determine the Proposers' qualifications to provide service.

2. Financial Stability

- a. The Proposer will demonstrate they have the necessary financial resources to perform as required to satisfy the contract. The Proposer will provide three years of the most recent published audited financial statements, which include a balance sheet, income statement, cash flow statement and footnotes supporting the related financial statements. If audited financials are not available, the Cities may request additional financial information including income tax returns for the past three years. If the company is a subsidiary or division of another company, Proposer will provide financial information for the past three years to present indicating their financial position and performance as a subsidiary. The Proposer will clearly communicate in its proposal any financial information which might be critical in assisting the Cities in the review process. Cost/price proposals and other financial data, such as overhead rates, etc. shall be handled as confidential data to the extent allowed under applicable law, including Minnesota Government Data Practices Act, M. S. Chapter 13, and utilized on a "need-to-know" basis for proposal evaluation. The Cities will also require the Proposer to provide its Dunn & Bradstreet number (DUNS).
- b. **Note:** Proposers will be required to sign the attached release for the Cities to obtain information from financial institution references (Appendix 17). The Cities reserve the right to request additional information to determine the Proposers' qualifications to provide service.

Section 3 - Scope of Work and Work Areas

It shall be the responsibility of the Contractor to thoroughly investigate and understand the Fargo/Moorhead MATBUS fixed route transit system and organizational structure prior to call for proposals date.

1. Fixed Route

- a. Service Hours
 - i. Monday – Friday 6:15am to 11:15pm
 - ii. Saturday - 7:15am to 11:15pm
- b. Fargo Fixed Route Hours – Appendix 13
- c. Moorhead Fixed Route Hours – Appendix 13
- d. Holiday Service Hours
 - i. There is no service on the following holidays: New Year's Day, Memorial Day (observed), Independence Day, Labor Day, Thanksgiving Day, Christmas Day and Easter Sunday (Paratransit). In addition, bus service on Christmas Eve ends at 5:15pm.
- e. Fares



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- i. Passengers are required to pay fares in one of the following manners:
 - 1. Cash
 - a. Current Fares, \$1.50 Adult / \$0.75 Discount
 - b. Current Fare Media
 - c. U-Pass College ID
 - d. Other as directed by Client
 - ii. Transfers between routes within the Fargo and Moorhead transit systems are free and accepted at any location along the route and at major transfer hubs. Transfers between Fargo and Moorhead transit systems are also free and accepted at the Ground Transportation Center. The driver issues a transfer ticket to a passenger upon request at time of boarding.
 - iii. Contractor and its employees are prohibited from soliciting or accepting any tips or gifts of any kind.
- f. Auto Vehicle Location (AVL) and Auto Voice Announcement (AVA) System
 - i. The Contractor will be required to utilize the Cities' AVL/AVA system provided for daily operations for both fixed route and Paratransit operations. The Contractor will be required to work with the Cities in all aspects of programming, operating, training and troubleshooting of our AVA/AVL system. In the event the Cities elect to implement further technologies on-board its vehicles, the Contractor will be expected to support and utilize such innovations.

2. MAT Paratransit

- a. Overview
 - i. MAT Paratransit service is demand-response door through first door service for persons with disabilities who are ADA Paratransit eligible. Service is provided within the city limits of Fargo and West Fargo, North Dakota, and Moorhead and Dilworth, Minnesota, utilizing vehicles provided by the Cities of Fargo and Moorhead. The estimated number of revenue hours to meet demand is provided in Appendix 13.
 - ii. Each paratransit vehicle is equipped with a tablet, which interfaces directly with our software. Tablets will be utilized in the daily operation of Paratransit. The City of Fargo provides staff to create driver manifests. The contractor is required to follow, and ensure bus operators adhere to, the schedule produced. The contractor is to schedule bus operators to each run daily.
- b. Service Hours
 - i. Monday – Friday 6:15am to 11:15pm
 - ii. Saturday - 7:15am to 11:15pm
 - iii. Sunday – 7:00am to 5:00pm
- c. Holiday Service Hours
 - i. There is no service on the following holidays: New Year's Day, Memorial Day (observed), Independence Day, Labor Day, Thanksgiving Day, Christmas Day and Easter Sunday (Paratransit).
 - ii. Christmas Eve service ends at 5:15pm.



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3. Ground Transportation Center (GTC)

a. Overview

- i. The City of Fargo owns and operates the Ground Transportation Center (GTC) transfer terminal located at 502 NP Avenue, Fargo, North Dakota. GTC Procedures and Policies have been developed by the Cities.
- ii. Smoking is not allowed inside or outside the GTC facility, all GTC grounds are smoke free.
 1. This policy is strictly enforced.
- iii. The City of Fargo supplies the Contractor with 1 office space and up to 2 cubicles for their staff. The city also provides necessary computer equipment, phones, software and email access to our matbus.com domain.
- iv. The Cities contract with a security firm to provide patrols at the GTC, in addition, security personnel exchange large bills and transport deposits. The Fargo Police Department has assigned personnel to downtown Fargo available for supplementary security purposes.

4. Metro Transit Garage (MTG)

a. Overview

- i. The Cities of Fargo and Moorhead jointly own a combined storage and maintenance facility called the Metro Transit Garage (MTG) located at 650 23rd St N, Fargo, North Dakota. This facility houses the fleet of vehicles, the administrative staff, driver break and locker rooms, furnished offices for the Contractor, and City staff.
- ii. The MTG facility has both a break and locker room shared with City staff. Smoking is not allowed inside or outside the MTG building.
- iii. The Contractor's management/supervisory personnel shall be located at the MTG and/or GTC. The Cities supply furnished offices for the Contractor at the MTG. The Contractor must supply any other furniture or equipment necessary for the management/supervisory use, including computer equipment, phones, software, and email access to our matbus.com domain. Contractor's management/supervisory staff is required to have access to a cellular phone with texting capabilities and email for communication with the Cities.

5. Increase or Reduction in Service Hours

- a. The Cities of Fargo and Moorhead may, for any reason, request an increase or reduction in route hours to be provided by the Contractor for fixed route, MAT Paratransit, or other required service hours. Said increases or decreases shall not result in renegotiation of the cost per revenue hour for driver services.
- b. Management fees will be a separate line item in this proposal and the resulting contract. With the exception of a change in the number of Contractor's management staff as pre-approved by the Cities, there will not be renegotiation of the management fees in the increase or reduction of service hours.
- c. When there is a change of more than $\pm 15\%$ of revenue hours annually, there will be redistribution between the Cities of Fargo and Moorhead of the set management fee based upon percentage of total revenue hours.



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6. Contract Hours

- a. Projected annual revenue hours for each year of the two-year contract period are shown in Appendix 13.

7. Fare/Revenue Collection

- a. The Cities shall collect and retain all revenues generated by the fixed route, deviated fixed route, and paratransit transit systems. Bus operators will properly operate the existing, and any subsequent, fareboxes and ensure that the fare policies are followed. All fares collected for the system are to be retained by the Cities.

Section 4 - Personnel

1. Overview

- a. The Contractor shall be solely responsible for the provision of and satisfactory work performance of all employees as described by this Request for Proposal or any reasonable performance standard established by the Cities of Fargo and Moorhead, and shall be solely responsible for payment of all employees' wages and benefits. Without any additional expense to the Cities of Fargo and Moorhead, the Contractor shall comply with the requirements of employee liability, worker's compensation, employment insurance and social security. The Cities of Fargo and Moorhead shall have the right to demand removal of any personnel from the Contractor's local team for just cause (as determined by the Cities). The Contractor shall not, absent prior written notice of 60 days to, and consent by the Cities, remove or re-assign any key management personnel identified in its proposal (e.g. Project Manager) at any time prior to or after execution of the contract.
- b. The City requires the current Contractor to provide the following positions:
 - i. 1-Project/General Manager
 - ii. 1- Operations Manager
 - iii. 1- Safety Manager/Classroom Trainer
 - iv. 1- Office Clerk
 - v. 2 - Road Supervisors
- c. Sufficient bus operators for fixed route, deviated fixed route, and Paratransit services (the Contractor's current seniority list is shown in Appendix 18).
- d. For purposes of this RFP and the resulting contract, full-time work for managers/supervisors equates to a minimum of forty (40) hours per week.

2. Organizational Structure

- a. Proposer must outline in the proposal the organizational structure of the company and personnel resources that are available to accommodate employee turnover, vacations and other absences without disrupting MATBUS operations, as well as demonstrate that a sufficient number of qualified personnel will be dedicated to properly operate and maintain the transit system.
- b. Company personnel are subject to any and all rules and regulations, including the most current Drug & Alcohol regulations that are placed on the Cities of Fargo/Moorhead as a condition of receiving necessary local, state or federal funding.

3. Project/General Manager



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- a. The Contractor shall designate a Project/General Manager who shall oversee successful operation of the services. Due to the critical role occupied by the position of Project/General Manager, it is required that this person be identified, a detailed resume be furnished in the Proposer's response to this RFP and that this person be available to be interviewed in person by the Cities of Fargo/Moorhead evaluation team.
- b. At a minimum, the Project/General Manager must have three (3) or more years' experience managing all aspects of a municipal mass transit and complimentary paratransit operations, or a combination of higher education and transportation experience in a management/supervisory position totaling five or more years.
- c. The Project/General Manager must be computer-proficient and have a working knowledge of the Microsoft Office Suite. The Cities operate in a Windows-based operating system environment. The Project/General Manager will be required to become proficient with software programs required by the Cities (ex. AVL/AVA System, Farebox System, Video Software, Sharepoint, and etc.).
- d. The Project/General Manager must have, by the start of the contract period, medical and operator certificates & appropriate vehicle class license(s).
- e. The Project/General Manager must be able to perform his or her tasks within the working environments of an office, transit facility, maintenance facility, transit vehicles and bus stops.
- f. The following is not intended to be an all-inclusive list of the essential functions of the Project/General Manager position, but rather a general description of some of the requirements necessary to carry out the duties and responsibilities of this position.
- g. Communicate clearly and effectively, both orally and in writing, using the English language.
- h. Meet with the Cities, vendors or others on a regular basis.
- i. Work extended hours, including weekends, when necessary.
- j. Demonstrate regular and consistent attendance and punctuality.
- k. Assimilate information quickly and accurately in order to make effective day-to-day operational decisions. Additionally, provide operational reports as requested by the Cities in the timeframe denoted and to provide recommendations to improve service delivery.
- l. Prioritize tasks and manage time effectively.
- m. Ensure contract compliance.
- n. Supervisory experience with hourly employees and knowledge of Human Resources regulations is required.
- o. Create a positive work environment by providing all employees with fair and equitable supervision and encouraging professional and personal growth.
- p. Recruit, screen, and hire quality employees to ensure full effective staffing of the operation.
- q. Document employee performance, provide necessary training, and apply appropriate discipline.



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- r. Ensure the safety of the operations as it relates to the service delivered, the passengers utilizing the service, and the employees providing the service.
 - s. Address groups periodically to present information (City Commission/Council, civic groups, driver meetings).
 - t. This position will require an individual who can effectively interact with all levels of employees, from bus drivers to senior management, and with the general public.
 - u. Must be available to confer with the Cities' regarding weather-related cancellations or closures.
 - v. Additional duties as assigned.
4. Additional Management Team Duties
- a. The Contractor shall provide sufficient personnel to monitor drivers on the road to ensure compliance with policies and procedures. The Cities require a supervisor to be on-site during morning "roll-out" Monday through Saturday.
 - b. The following is not intended to be an all-inclusive list of the essential functions of the additional management team, but rather a general description of some of the requirements necessary to carry out the duties and responsibilities of these positions.
 - c. Monitoring of pre- and post-trip vehicle inspections.
 - d. Driver retraining after accidents, incidents, complaints, as applicable.
 - e. Video surveillance review in response to accidents, complaints, incidents or requests from the Cities, insurance companies or emergency personnel.
 - f. Training of bus operators of on-board promotions and changes in the system, or any other pertinent information the bus operators are required to know.
 - g. Regular on-site monitoring of operations at remote transfer hubs.
 - h. Written evaluation of bus operators annually.
 - i. Each and every fixed route bus operator will be observed via a ride-along at least once per quarter during all hours of operation, including early mornings, evenings and weekends. Ride-along observations can include video surveillance.
 - j. Each and every Paratransit driver shall be monitored with unannounced random spot checks at least once per month.
 - k. Consultations with newly-hired drivers must be completed within 90 days of hire, in addition to the annual evaluation (including practical demonstrations and on-site visits or ride-alongs).
 - l. Coordinate compliance with Federal, State, and local laws and assist with safety inspections and periodic audits by state or federal agencies.
 - m. Maintain or coordinate complete personnel recordkeeping (including license status, arrests, citations, traffic violations). Maintain substance abuse files.
 - n. Respond to emergencies and utilize the Vehicle Collision Procedures established by the Cities. This will also include the notification of police.
 - o. Ensures all safety regulations are being observed and all training methods are adequate and effective.
 - p. Conduct safety training and meetings. Review collision reports to reduce number and severity of collisions; maintain complete safety files, e.g., collision reports,



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pre/post trips paperwork, worker's compensation injuries, off-job injuries and document occurrences. Investigates complaints, collisions, and incidents.

q. Additional duties as assigned.

5. Any bus operators proposed for Paratransit must be interviewed/screened by the City prior to being placed in service to ensure compatibility and correct fit.
6. On-Call & Organizational Structure
 - a. In addition to the Project/General Manager being on-call and reachable by a fully-functional cell phone or 2-way radio during all service hours, one additional member of the Contractor's Management Team will also always be required to be on-call during all operating hours (this second on-call duty may be rotated among the various members of the Team). In the absence of the Project/General Manager, he or she may elect to designate a member of the Management Team to function as the first point of contact for the Cities. To summarize, a total of two members of the Management Team are always expected to be on-call during operating hours.
 - b. **NOTE:** Proposers are requested to propose an organizational structure with denoted duty assignments.
7. Drivers and Training
 - a. The Contractor shall supply a sufficient number of properly qualified personnel to operate the equipment and to provide the services required. The City of Fargo/City of Moorhead reserves the right to approve all personnel positions and require the removal of any personnel from operations of the City transit system.
 - b. Training shall be the responsibility of the Contractor. All training programs must be pre-approved by the Cities and upon completion, certification maintained in the employee's qualification files. All records shall be made available to the Cities upon request. Specific hours of training and areas of coverage shall be indicated in the proposal submitted by the Contractor with this RFP. There will be a conference room available at the MTG facility, which may be scheduled in advance for training.
 - i. Recommended Training Hours:
 1. Classroom – 40 hours
 2. Behind the Wheel – 40 hours for pre-licensed operators, 80 hours for any new operators who are newly licensed.
 3. Cadet (in-service with trainer) – 40 hours
 - ii. Proposers must supply detailed training hours for Cities to review.
 - c. The Contractor's safety program must be detailed in the proposal. Additionally, the Contractor must provide its safety record for the past three years, including information such as the number and type of preventable vehicle collisions, as well as incidents resulting in potential injury or medical attention to passengers which have occurred within transit operations managed by the Contractor during the timeframe denoted above.
 - d. Meetings shall be held no less than once monthly with mandatory attendance by the Contractor's bus operators. The meeting(s) are required to be video/audio recorded and any staff member absent from the meeting must watch/listen to the recording prior to the next meeting. Staff from the Cities may request items be added to the



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agenda and may also attend these meetings. Pre- and post-meeting handouts shall be prepared by the Contractor and provided to the City.

- e. The driving records of bus drivers are subject to review at any time deemed necessary by the Cities or Contractor. The Cities of Fargo and Moorhead will require the Contractor to provide a current, written record on drivers from the State Motor Vehicles Department prior to employment and once annually thereafter. The Contractor is also responsible for obtaining and paying for criminal record checks on all drivers through the Bureau of Criminal Apprehension as a pre-employment step, and on an annual basis thereafter. The Cities reserve the right to approve all personnel positions and review any and all Contractor employee files. The Contractor shall include within the personnel file a signed check list indicating that the new employee has received proper training prior to entering revenue service.

8. Marketing / Promotions

- a. Marketing promotions are an important element for increasing patronage. Failure of Contractor to participate in marketing promotions will constitute non-performance. (Measure: Lack of cooperation or bus operators lack of involvement in or resistance to, promoting a marketing campaign.)

9. Payment of Taxi Rides

- a. The Contractor is responsible for payment of taxi rides under the “Guidelines for Taxi Ride Authorization Fargo-Moorhead MATBUS”; shown in Appendix 14.

10. Policies / Procedures

- a. The Contractor will accept and incorporate all local system policies and procedures for their bus operators and staff. All policies and procedures will be provided to the contractor by the Cities.
- b. This will include the Contractor to participate in our local safety plan, which currently is in draft format, but is expected to be finalized by the start of this contract.

Section 5 - Equipment

1. Vehicles

- a. Transit vehicles to be used for this contract are 35-foot and 40-foot motor buses, 25-foot cut-away buses and Ford Transit vehicle(s), and include the fareboxes, radios, security cameras, Auto Voice Announcement, and Auto Vehicle Location, etc. The City of Fargo provides all vehicle maintenance and facilities necessary to the performance of the project, including all parts, mechanic labor, equipment, service and cleaning, labor, maintenance supplies and supervision. The Cities will supply all consumables necessary to the performance of the project, including diesel fuel, gasoline, motor oil and other lubricants, anti-freeze, solvents, and cleaning. The buses are housed inside a climate-controlled area.

2. Radios

- a. All City-owned vehicles are equipped with two-way radios. Any air-time charges for the two-way radios will be paid by the applicable city. Handheld two-way radios may also be provided for the Contractor’s use as needed.

3. Security Cameras



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- a. Cameras are provided by the Cities in transit vehicles. The Cities also provide software for the Contractor's management team to view digital video recordings (DVR's). DVR's may be requested by the Contractor for use in monitoring/reviewing operator performance or investigating complaints, incidents and accidents.
- b. All vehicles contain a wireless download system, and Contractor's management staff can, through software, request the download of video for monitoring/reviewing operator performance or investigating complaints, incidents and accidents.

Section 6 - Record Keeping & Reporting

1. Overview

- a. The City of Fargo, City of Moorhead, North Dakota and Minnesota Departments of Transportation, and Federal Transit Administration or their designee(s) may perform audits at any time of the books, records and accounts of the Contractor. Contractor agrees to preserve, and to cause any subcontractor to preserve and make available for a period of six years after the completion of a contract, any and all financial, operations, and administrative records pertaining to this contract.
- b. The Contractor shall provide any and all reports required by the Cities.

2. Accounting / Record Keeping

- a. Accounting procedures utilized by the Contractor relative to said transit system shall be consistent with FTA National Transit Database requirements and regulations of the States of North Dakota and Minnesota Departments of Transportation.

3. Reports / National Transit Database (NTD) Sampling

- a. The Contractor shall submit required reports for all services, routes or special arrangements in a manner approved by and on forms supplied by the City.
- b. The Contractor will ensure bus operators are using the fareboxes properly to record accurate ridership data, which is used by the City.
- c. The Contractor will ensure bus operators or Contractor staff complete required forms during an NTD sampling year.
- d. The Contractor will provide any additional reports the City requires.

4. Vehicle Collision Reports

- a. The Contractor shall notify the Cities **immediately** of any vehicle collision involving a Fargo or Moorhead MATBUS vehicle or any incident which may potentially result in injury to a passenger, driver or others. The Contractor will provide further clarification or details to the Cities in writing within twenty-four (24) hours of the specifics of all vehicle collision using the forms provided by the Cities.

5. Feedback

- a. Upon receipt of any complaints, incidents, or compliments from passengers, citizens, or transit personnel, the Contractor or City staff shall enter the complaint into the Feedback system within one business day. The Feedback system will email specified staff a copy of the complaint, incident, or compliment, notifying staff to request the video download, if required, and also emails out the final complaint resolution to staff upon completion.



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- b. The Contractor shall investigate, and respond in writing through Feedback, all complaints, incidents, or compliments involving bus operators. Investigation shall include meeting with any employee included in the feedback report, and watching relevant video. The final resolution to the complaint must be given to the Cities within ten business days of the complaint. Contractor Project Manager and/or Operations Manager will be required to answer to citizens or passengers regarding complaints.
- c. In the event of a discrimination complaint, the complaint must be marked as a discrimination complaint, the City provided discrimination complaint form completed and forwarded to the Mobility Manager for review and investigation.
 - i. Discrimination complaints include ADA or Title VI.

6. Meetings

- a. The Cities hold staff meetings weekly, either in person or virtually, for purposes of discussing problems and solutions and maintaining open and frequent communications with the Contractor. Occasionally additional meetings may be required, especially at the beginning of the contract. Unless otherwise notified, Contractor's Project/General Manager or other employee with decision making authority will be required to attend all meetings.

Section 7 - Compliance

1. Penalties for Non-compliance

- a. Service requirements outlined in this section will be closely monitored and enforced by the Cities. All penalties will be assessed in writing to the Contractor within fifteen (15) working days of awareness of the violation. The written notice will include recommendations and specific time constraints for the Contractor to remedy the situation.
- b. Qualified Bus Operators / Sufficient Personnel
 - i. The Cities will not pay for any hours of service provided by personnel who do not meet the minimum qualifications for bus operators
 - ii. The Cities will not pay for Contractor staff hours while the position is not filled or being provided.
 - 1. Example 1: If the Operations Manager leaves employment and no one has filled the vacancy, the City will have their management fees reduced by the employee's hourly/salary wage for all hours not worked.
 - 2. Example 2: If the Safety Manager has to drive a route as the Contractor does not have enough bus operators, the City will have their management fees reduced by the employees hourly/salary wage for all hours not worked.
 - iii. The Contractor is required to provide sufficient personnel to meet the required service hours.

2. On-Time Performance

- a. Fixed Route



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- i. The Contractor is required to maintain a daily 90% on-time performance measure for each route. In the event the Contractor does not meet an on-time performance measure of the 90% for each route, the City will deduct \$250.00 per route that does not meet the performance measure for that day.
 - 1. A route is defined by all trips for a specific route on that day.
 - ii. If the Contractor can provide a reasonable reason (ex. Weather, Construction/Detours, etc.) the route(s) failed to meet the on-time performance measure, the City will not hold the Contractor liable.
- b. Paratransit
 - i. The Contractor is required to maintain a daily 95% on-time performance measure for each run. The City will deduct \$250.00 per run that does not meet the on-time performance measure.
 - 1. A run is defined by all trips within a bus operator's daily schedule.
 - ii. If the Contractor can provide a reasonable reason (ex. Weather, Construction/Detours, etc.) the route(s) failed to meet the on-time performance measure, the City will not hold the Contractor liable.
- c. Missed Trips
 - i. A missed trip is defined as "a trip missed due to bus operator's error or deliberate delay by a bus operator". Missed trips are documented in our software. For every scheduled trip of a bus route that is a "missed trip", the Cities will deduct \$250 per trip from the payment to the Contractor for that month.
 - ii. Exceptions to a "missed trip" are: delays due to mechanical problems, inclement weather, construction, trains, loading persons with mobility devices, incidents, or accidents.
 - iii. The Cities will not pay for service which has been cancelled due to inclement weather - this includes driver's wages.
- d. Traffic Violations
 - i. Bus operators who ignore safety and choose to violate traffic rules (speed, run a red light, pass in a no-passing zone, etc.) will not be tolerated. A fine of \$500.00 will be assessed to the Contractor for each citation or infraction a bus operator receives while driving a City vehicle. Bus operators are financially liable for each citation or infraction they receive.
- e. Vehicle Collisions / Passengers/Others Injuries
 - i. In the event of a transit vehicle collision, the Contractor's representative shall immediately contact the Cities' representative. The mechanic on duty will determine if a replacement vehicle will be needed.
 - ii. In the event of a vehicle collision that will interrupt service for more than one run, the Contractor is required to immediately put a replacement bus operator on the affected route.
 - iii. In the event of a vehicle collision where a bus operator is involved in a chargeable/preventable collision or an incident with injuries or potential injuries that were caused by the actions of the bus operator, a Collision/Injury



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Review Committee consisting of City representatives (Fargo Transit Director, Fargo Fleet Services Manager and Moorhead Transit Manager or their designees), the Contractor's Project/General Manager, and one other Contractor Management Team Member, will determine if said vehicle collision or incident is deemed chargeable/preventable.

- iv. A chargeable/preventable collision is defined as: "A motor vehicle collision in which a bus operator fails to do everything reasonably possible to prevent the collision from occurring." Factors taken into consideration when determining preventability are: (1) the type of collision, (2) the degree of injury and/or how many injuries, (3) the degree of damages, (4) the pre-collision actions of the parties involved, and (5) incidents reviewed on video cameras. The contractor will adhere to the decisions(s) determined by the committee.
 - v. The penalty fee for all (including the first collision or incident by a bus operator) chargeable/preventable collision and/or incidents ranges from a minimum of \$500 to a maximum of \$10,000. Penalties imposed will be based on the severity of the collision and will be determined by the Collision Review Committee. The fee is to be credited on the respective City's invoice based on the service (Paratransit or Fixed Route).
 - vi. In the event the Collision Review Committee determines that the occurrence is a second, third or greater chargeable/preventable collision, caused by the action(s) of the same bus operator, that has occurred during the term of the contract or during the prior three (3) year period, whichever period is shorter, then the committee may determine that the Contractor should pay a higher penalty for the occurrence. The committee, in its sole discretion, shall determine the penalty payable for such occurrence, provided, however, that the penalty shall be a minimum of \$500 and a maximum of \$10,000. The committee, in establishing the penalty payable for such occurrence, may consider the extent of damage occurring, the extent to which the occurrence could have readily been prevented, the exposure to the City of liability caused by such occurrence, the harm to the reputation of the City and its transit system.
- f. Collision/Injury Review Committee
- i. The Vehicle Collision/Injury Review Committee will meet monthly.
 - ii. The Vehicle Collision/Injury Review Committee will by majority vote agree on whether the collision is insignificant, preventable or unpreventable.
 - iii. Insignificant collisions will be determined by the committee. However, the following guidelines apply:
 - 1. Damage is limited to a scratch or scuff to wheel flares
 - 2. Damage is limited to a scratch or scuff to tires
 - 3. Damage limited to a scratch or scuff to bumper
 - 4. Damage is limited to a tap, scratch or scuff to the mirror, including the mirror folding in, with no damage to the mirror



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5. Damage is limited to yellow paint transfer from rubbing against a stanchion or bollard at the GTC or MTG.
6. There was no damage to other property,
- iv. The Collision/Injury Review Committee can table the review on a specific collision to the next scheduled monthly meeting if sufficient information is not yet available, such as a repair estimate or police report.
- v. The 15-day notification period for assessing a penalty will not apply to this section. Rather, the collision/injury will be reviewed at the monthly Vehicle Collision/Injury Review Committee meeting when all information needed to make a decision is available. Following the review and decision by the committee, the Project/General Manager will provide the Cities a credit on their monthly billing for any penalties imposed by the Committee.
- vi. All preventable collisions/injury will be charged a penalty minimum of \$500 and maximum of \$10,000. The majority decision of the Committee will be used to determine approval of the penalty. The contractor will adhere to the decisions(s) determined by the committee. There will be no fine assessed for a collision determined by the Committee to be insignificant.
- vii. A form shall be completed for each collision/injury outlining the review meeting and results for each collision/injury.
- g. Uniforms
 - i. In the event a Contractor employee is in non-compliance with set uniform dress code, a penalty of one hundred (\$100) will be assessed per infraction.
 - ii. The City will provide uniforms for all bus operators and road supervisors.
 1. Refer to written uniform policy.
- h. Documentation
 - i. In the event the Contractor fails to provide the Cities with requested documentation as per contract will constitute non-performance and there is a penalty of one thousand dollars (\$1000) per infraction. This includes documentation on road supervision and spot checks to monitor bus operator performance – detailed documentation must be maintained and submitted to the Cities as requested within 10 business days of request.
 - ii. Contractor will maintain a master file with all bus operator memos and safety meeting content.
- i. Use of City Owned Equipment/Vehicles
 - i. City owned equipment, including vehicles, is strictly for City business. In the event a Contractors' employee uses a City owned vehicle for any personal use, including taking the vehicle to their personal residence, there is a penalty of five hundred dollars (\$500) per infraction.
- j. Public Address System
 - i. Use of the Public Address System along fixed routes is required under federal law, specifically The Americans with Disabilities Act (ADA). If the Auto Voice Announcement system is not operating, the bus operator must make manual announcements for compliance with the ADA. For every infraction by a bus



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operator per route, where the Public Address System is not being utilized for major point announcements, there is a penalty of five hundred dollars (\$500).

Section 8 - Insurance

1. The City shall provide casualty insurance on the buses and equipment it deems necessary and Contractor shall have no responsibility to provide such coverage. City shall provide self-insurance or otherwise, liability insurance coverage, limited, however, to the minimum amount of \$2 Million per claim or the statutory amount or amounts established by the State of North Dakota/State of Minnesota laws governing municipal liability, **whichever is greater.** Any applicable insurance deductibles for City-provided insurance shall also be paid by the respective city. The City insurance shall be primary. The Contractor shall be listed as an insured on the City's casualty insurance for the buses and equipment. Coverage by the North Dakota Insurance Reserve Fund or Minnesota League of Cities Insurance Trust is deemed to satisfy this provision.
2. The Contractor shall be required to obtain and keep in force during the terms of operation covered by this proposal Employment Practices Liability Insurance, North Dakota and/or Minnesota Worker's Compensation and Employer Liability Insurance, applicable Unemployment Insurance, and the Performance Bond, all as provided more fully below. Certificates evidencing the required insurance will be furnished to the Cities prior to commencing any work under this contract. If the Contractor does not currently meet the requirements listed below, the Contractor shall submit a letter from a reputable insurance agent stating intent to provide insurance for the prescribed coverage.
3. The Contractor shall be required to obtain and keep in force during the terms of operation covered by this contract an Employment Practices Liability Insurance (EPLI) policy in the minimum amount of \$2 Million per person and in the aggregate. EPLI is intended to cover liability for actions of the driver other than operating the vehicle, such as sexual harassment, discrimination, or other non-driving risks associated with employment. The Cities must be listed as additional insureds on the Contractor's EPLI policy. Contractor maintains a self-insurance program that includes coverage for such EPLI risks, which self-insurance program and the funding for such program, is hereby deemed to satisfy this coverage requirement.
4. North Dakota and/or Minnesota Worker's Compensation and Employer Liability Insurance shall be set at the limits established by the States of North Dakota and Minnesota.
5. Insurance deductibles are the responsibility of the party providing the insurance policy.
6. Each policy of insurance shall contain the following clauses: "It is agreed that these policies shall not be canceled, nor the coverage reduced until thirty (30) days after the City has received written notice of such cancellation or reduction by certified mail."
7. Contractor will provide the City documentation proving insurance coverage, in the form of a Certificate of Insurance, within 30 days of notice of contract award or 10 days before commencing transportation service, whichever occurs first.
8. Contractor shall provide a bond for 100% of the annual contract cost for the City, payable to the City. The bond will be renewed on an annual basis for the term of the contract. The



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cost for the bond amount will be reimbursed by the City annually upon receipt of the bond and copy of payment receipt.

9. The Cities of Fargo and Moorhead shall be named as additional insured on all liability policies of Contractor.

Section 9 - Drug and Alcohol Testing Program

1. The Contractor is responsible for compliance with all approved or pending Federal Transit Administration regulations with regard to drug and alcohol testing – 49 CFR Parts 40 and 655. The Contractor shall submit with the proposal any current drug/alcohol testing programs in place. Contractor shall also submit a list of proposed test sites, Medical Review Officer, and Substance Abuse Professionals with the proposal (refer to Appendix 1, Section 3) and annually thereafter along with the federally-required annual MIS report.

Section 10 - Contract Term

1. The term of any agreement arising from this RFP shall be for the two-year period January 1, 2021, through December 31, 2022. The base contract may be renewed for three additional one-year periods at a rate mutually agreed upon between the Cities of Fargo and Moorhead, and the Contractor. The negotiated rate for each additional extension period cannot exceed increases demonstrated by the Consumer Price Index (CPI) for All Urban Consumers for Midwest Region Size Class B/C Services for the percent change for the previous twelve months.
2. In the event the Contractor or City feels there are circumstances requiring a wage increase above the CPI, the Contractor or City may negotiate the rate.

Section 11 - Transfer / Supervisor Vehicles

1. The Cities will provide up to 7 vehicles to transport Fargo and Moorhead bus operators to their respective routes or for road supervisor duties. The vehicles are owned by Fargo and Moorhead, leased to and insured by Fargo. Any transfers necessary beyond that will be the sole responsibility of the Contractor. The transfer vehicles are not to be utilized in any other manner - i.e. personal use (see Non-Performance Penalties).

Section 12 - Compensation

1. The Cities will reimburse the Contractor for services provided under contract based upon the agreed upon hourly rate per bus revenue hour for fixed route and agreed upon rate per revenue hour for Paratransit, and a monthly fee for management. Bus revenue hours shall mean the hour's service is available to passengers as set forth in the schedules included in the Appendices. In all cases, bus revenue hours exclude the time in which the buses travel to/from the storage facility to the beginning/ending point of the fixed route service and exclude time traveled to the first pick-up and from the last drop-off for Paratransit service.
2. All payments made to the Contractor shall be made subsequent to the end of each month service is actually rendered and in accordance with Cities billing procedures. Payment in full shall be made within thirty (30) days upon submission by the Contractor to the Cities of an itemized per day accounting of revenue hours by service type for the reporting period.



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3. Contractor should specify in the proposal the price per hour that is proposed for special bus arrangements requested by the Cities beyond those regularly scheduled hours of operation, including emergencies such as shuttles, floods, tornados, etc. This proposed rate will be all inclusive. The Special Rate will be all inclusive except for travel and lodging cost to bring in additional buses and personnel from other cities when necessary - such expenses would be negotiated based on event. The Special Rate specifically excludes the Project/General Manager or Management Team members driving for route timings, bus stop locations, route detour assistance, and other necessary operational functions, including promotional/marketing functions. With respect to marketing/promotional functions, Cities will pay the Special Rate, but has the exclusive right to choose whether a manager, supervisor, or driver will complete the service. Cities shall coordinate with Contractor with respect to selection of Contractor employee.
4. All billings submitted will be separated by the City of Fargo and the City of Moorhead in a prescribed format. In addition, only the City of Fargo will be billed for all Paratransit services.

Section 13 - Applicable State and Local Clauses

1. Disclaimer of Liability/Hold Harmless
 - a. Contractor shall defend, indemnify and save harmless the City, its officers, agents and employees, from any and all claims, demands, damages, costs, expenses, judgments, or liability arising out of Contractor's performance under this contract or attempted performance of the provisions hereof, excepting any and all claims demands, damages, costs, expenses, judgments, or liability arising out of Contractor's operation of motor vehicles owned by City and excepting any and all claims, demands, costs, expenses, judgments, or liability arising out of Contractor's operation and occupation of the Ground Transportation Center and/or the Metro Transit Garage owned by Cities. Nothing contained in the foregoing indemnity provision shall be construed to require indemnification for claims demands damages costs, expenses or judgments resulting from the gross negligence or willful misconduct of City.
2. City shall defend, indemnify and save harmless the Contractor, its officers, agents and employees, from any and all claims, demands, damages, costs, expenses, judgments, or liability, up to a maximum amount, including attorney fees and other costs of defense, of \$2 Million per claim, arising out of Contractor's operation of motor vehicles owned by City and from any and all claims, demands, costs, expenses, judgments, or liability arising out of Contractor's operation and occupation of the Ground Transportation Center and/or the Metro Transit Garage owned by Cities, up to a maximum amount, including attorney fees and other costs of defense, of \$2 Million per claim. Nothing contained in the foregoing indemnity provision shall be construed to require indemnification for claims demands damages costs, expenses or judgments resulting from the gross negligence or willful misconduct of Contractor and from acts or failures to act of Contractor relating to things other than the Contractor's operating of motor vehicles owned by City.
3. Law Governing



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- a. All contractual agreements shall be subject to, governed by, and construed according to the laws of the States of North Dakota and Minnesota, as applicable.
4. Subletting of Contract
 - a. The contract shall not be sublet except with the written consent of the City. No such consent shall be construed as making the City a party to such subcontract, or subjecting the City to liability of any kind to any subcontractor. No subcontract shall, under any circumstances, relieve the Contractor of his liability and obligation under his contract, and all transactions with the City must be through the General Contractor.
5. Assignment/Transfer of Interests
 - a. There shall be no assignment/transfer of interests or delegation of Contractor's rights, duties or responsibilities of Contractor under the contract without the prior written approval of the City.
6. Severability
 - a. In the event any provision of the contract is declared or determined to be unlawful, invalid or unconstitutional, such declaration shall not affect, in any manner, the legality of the remaining provisions of the contract and each provision of the contract will be and is deemed to be separate and severable from each other provision.
7. Regulatory Requirements
 - a. The Contractor shall comply with all Federal, State, and local licensing, training, testing and/or regulatory requirements (including permits) for the provision of the transit services.
8. The Contractor shall be appropriately licensed for the work required. The cost for any required licenses or permits shall be the responsibility of the Contractor. Contractor is liable for any and all taxes due as a result of the contract.
9. Responsible Firms
 - a. Nothing herein is intended to exclude any responsible firm or in any way restrain or restrict competition. On the contrary, all responsible firms are encouraged to submit proposals.
10. Publication, Reproduction and Use of Material
 - a. No custom material produced in whole or in part under the Contract shall be subject to copyright in the United States or in any country. The and Federal Transit Administration shall have authority to publish, disclose, distribute and otherwise use, in whole or in part, any custom material prepared under any contract.

Section 14 - Federal Clauses

Fly America Requirements: *Applies to all contracts involving transportation of persons or property, by air between the U.S. and/or places outside the U.S.*

Contractor shall comply with 49 USC 40118 (the "Fly America" Act) in accordance with General Services Administration regulations 41 CFR 301-10, stating that recipients and subrecipients of Federal funds and their contractors are required to use US Flag air carriers for US Government financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter



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of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a US flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor shall include the requirements of this section in all subcontracts that may involve international air transportation.

Charter Bus Requirements: *Applies to all Operational Service Contracts.*

Contractor shall comply with 49 USC 5323(d) and (g) and 49 CFR 604, which state that recipients and subrecipients of FTA assistance may provide charter service for transportation projects that uses equipment or facilities acquired with Federal assistance authorized under the Federal transit laws (except as permitted by 49 CFR 604.2), or under 23 U.S.C. 133 or 142, only in compliance with those laws and FTA regulations, "Charter Service," 49 CFR part 604, the terms and conditions of which are incorporated herein by reference.

School Bus Requirements: *Applies to all Operational Service Contracts.*

Pursuant to 49 USC 5323(f) or (g) as amended by MAP-21, 23 USC 133, 23 USC 142, and 49 CFR 605, recipients and subrecipients of FTA assistance shall not engage in school bus operations exclusively for transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients shall not use federally funded equipment, vehicles, or facilities. Violations. If a Recipient or any Third Party Participant that has operated school bus service in violation of FTA's School Bus laws and regulations, FTA may: (1) Require the Recipient or Third Party Participant to take such remedial measures as FTA considers appropriate, or (2) Bar the Recipient or Third Party Participant from receiving Federal transit funds.

Energy Conservation: *Applies to all contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).*

Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

Clean Water: *Applies to all Contracts and Subcontracts over \$150,000.*

Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Contractor shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with FTA assistance.

Lobbying: *Applies to all Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts over \$100,000 Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.]*

Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier



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above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

No Government Obligation to Third Parties: *Applies to all third party contracts that are federally funded.*

- a) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- b) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Program Fraud & False or Fraudulent Statements & Related Acts: *Applies to all third party contracts that are federally funded.*

- a) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- b) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(1) on the Contractor, to the extent the Federal Government deems appropriate.



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- c) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Access to Records and Reports: *Applies to all contracts funded in whole or in part with FTA funds.*

- a) Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
- b) Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- c) Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.
- d) Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

Federal Changes: *Applies to all contracts.*

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, and they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Civil Rights and Equal Opportunity: *Applies to all contracts.*

The AGENCY is an Equal Opportunity Employer. As such, the AGENCY agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the AGENCY agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.



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- a) Nondiscrimination. In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- b) Race, Color, Religion, National Origin, Sex. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- c) Age. In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- d) Disabilities. In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.



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Termination Provisions: *Applies to all contracts in excess of \$10,000. Those contracts must address termination for cause and for convenience, including the manner by which it will be effected and the basis for settlement.*

- a) The CITY reserves the right to cancel any contract for cause upon written notice to the Contractor. Cause for cancellation will be documented failure(s) of the contractor to provide services in the quantity and/or quality required. Notice of such cancellation will be given with sufficient time to allow for the orderly withdrawal of the Contractor without additional harm to the participants or the CITY.
- b) The CITY may cancel or reduce the amount of service to be rendered if there is, in the opinion of the City Council, a significant increase in local costs; or, in the opinion of the City Council, insufficient state or federal funding available for the service, thereby terminating the contract or reducing the compensation to be paid under the contract. In such event, the CITY will notify Contractor in writing ninety (90) days in advance of the date such actions are to be implemented.

CONTRACTOR is hereby notified that the CITY Transit system pursuant to this agreement is dependent upon the necessary receipt of local, state and federal funding.

In the event of any termination, the CITY shall pay the agreed rate only for services delivered up to the date of termination. The CITY has no obligation to Contractor, of any kind, after the date of termination. Contractor shall deliver all records, equipment and materials to the CITY within 24 hours of the date of termination.

Disadvantaged and Small Business Enterprise: *Applies to FTA recipients receiving planning, capital and/or operating assistance that will award prime contracts (excluding transit vehicle purchases) exceeding \$250,000 in FTA funds in a Federal fiscal year.*

For all DOT-assisted contracts, each FTA recipient must include assurances that third party contractors will comply with the DBE program requirements of 49 C.F.R. part 26, when applicable. The following contract clause is required in all DOT-assisted prime and subcontracts:

The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- a) Withholding monthly progress payments;
- b) Assessing sanctions;
- c) Liquidated damages; and/or
- d) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Further, recipients must establish a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days (payment



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required within 10 days or paying interest at 1 ½ percent per Minnesota State Statute 471.425 subd. 4a) from receipt of each payment the recipient makes to the prime contractor. 49 C.F.R. § 26.29(a). Finally, for contracts with defined DBE contract goals, each FTA recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the recipient's written consent; and that, unless the recipient's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

In connection with the performance of this service, the Contractor will cooperate with the CITY in the utilization of disadvantaged business enterprises including women-owned business enterprises for the duration of the contract and will use its best efforts to insure that disadvantaged business enterprises have the maximum practicable opportunity to compete for subcontract work. In order to insure that a fair proportion of the purchases of supplies and services is placed with disadvantaged business enterprises, the Contractor agrees to take affirmative action to identify disadvantaged business firms, solicit bids or quotations from them for supplies and services related to this proposal.

The Contractor agrees to meet any goals established by CITY for purchases pertaining to this Contract to the best of the Contractor's ability and will provide the CITY with the necessary certification and records for reporting purposes. When the majority of the contract is labor, which is not a contracting opportunity, DBE goals will not be set but Contractors are encouraged to use DBE businesses.

The CONTRACTOR will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

The contractor must promptly notify the CITY whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the CITY.

Fostering Small Business Participation

The CITY has established a small business element to its DBE program, pursuant to 49 CFR 26.39. This program aims to provide opportunities and foster small business enterprises (SBE)/participation in contracting with the CITY. This program is race- and gender- neutral, however SBEs can also count towards DBE goals.

Incorporation of FTA Terms: *Applies to all contracts.*

The preceding provision includes, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1 as amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any CITY requests which would cause the CITY to be in violation of the FTA terms and conditions.



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Debarment, Suspension, Ineligibility and Voluntary Exclusion: *Applies to contracts in an amount expected to equal or exceed \$25,000 or a contract award at any tier for a federally required audit (irrespective of the contract amount) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. part 180. Recipients, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) with which they propose to contract or subcontract is not excluded or disqualified. This is done by: (a) checking the SAM exclusions; (b) collecting a certification from that person; or (c) adding a clause or condition to the contract or subcontract.*

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a. Debarred from participation in any federally assisted Award;
- b. Suspended from participation in any federally assisted Award;
- c. Proposed for debarment from participation in any federally assisted Award;
- d. Declared ineligible to participate in any federally assisted Award;
- e. Voluntarily excluded from participation in any federally assisted Award; or
- f. Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the AGENCY. If it is later determined by the AGENCY that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the AGENCY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Breach of Contract and Dispute Resolution: *Applies to all contracts in excess of the Simplified Acquisition Threshold (currently set at \$150,000) and those contracts shall contain administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.*



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- a) Disputes will be presented in writing to the appropriate City personnel – in Fargo, the Fargo Transit Director, in Moorhead, the Moorhead Transit Manager. City personnel and the Contractor will attempt to resolve any dispute arising in the performance of the Contract.

Fargo: If the Transit Director and Contractor cannot resolve the dispute, the issue will be presented in writing to the Fargo City Administrator within ten [10] working days of dispute. If the dispute cannot be resolved by the City Administrator, it will be submitted in writing within ten [10] working days of the Fargo City Administrator's decision to the Fargo City Commission – it is the sole responsibility of the Contractor to schedule a hearing with the Fargo City Commission. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position at the hearing.

Moorhead: If the Transit Manager and Contractor cannot resolve the dispute, the issue will be presented in writing to the Moorhead City Manager within ten [10] working days of the dispute. If the dispute cannot be resolved by the City Manager, it will be submitted in writing within ten [10] working days of the Moorhead City Manager's decision to the Moorhead City Council – it is the sole responsibility of the Contractor to schedule a hearing with the Moorhead City Council. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position at the hearing.

The decision of the Fargo City Commission or Moorhead City Council shall be binding upon the Contractor and the Contractor shall abide by the decision.

- b) Unless otherwise directed by the Cities of Fargo/Moorhead, Contractor shall continue performance under this Contract while matters in dispute are being resolved.
- c) Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.
- d) Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Cities of Fargo and/or Moorhead and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the applicable state.

Lobbying Restrictions: *Applies to all contracts and subcontracts of \$100,000 or more at any tier under a Federal grant. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this agreement, the payor must complete and submit the Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.*



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49 C.F.R. part 20, Appendices A and B provide specific language for inclusion in FTA funded third party contracts as follows:

The undersigned certifies (*Note: A separate certification will be required to be signed if the contract meets this criteria*), to the best of his or her knowledge and belief, that:

- a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Clean Air and Federal Water Pollution Control Act: *Applies to each contract and subcontract exceeding \$150,000. The Clean Air Act and Federal Water Pollution Control Act requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.*

The Contractor agrees:

- a) It will not use any violating facilities;
- b) It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities;"
- c) It will report violations of use of prohibited facilities to FTA; and
- d) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).



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Contract Work Hours & Safety Standards Act: *Applies to all FTA funded contracts in excess of \$100,000 that involve the employment of mechanics or laborers.*

Certain employee protections apply to all FTA funded contracts with particular emphasis on construction related projects. The recipient will ensure that each third party contractor complies with all federal laws, regulations, and requirements, including:

a) *Contract Work Hours and Safety Standards*

- i. *Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701-3708; and supplemented by Department of Labor (DOL) regulations, 29 C.F.R. part 5; and A-38*
- ii. *U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 C.F.R. part 1926.*

The Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.

The Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

Such records maintained under this paragraph shall be made available by the Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and the Contractor will permit such representatives to interview employees during working hours on the job.

The contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

Transit Employee Protective Arrangements: *Applies to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator.*

The Contractor agrees to comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

- a) U.S. DOL Certification. Under this Contract or any Amendments thereto that involve public transportation operations that are supported with federal assistance, a certification issued by U.S. DOL is a condition of the Contract.
- b) Special Warranty. When the Contract involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal



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assistance under the Tribal Transit Program. The U.S. DOL Special Warranty is a condition of the Contract.

- c) Special Arrangements. The conditions of 49 U.S.C. § 5333(b) do not apply to Contractors providing public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated herein as required.

Charter Service: *Applies to contracts for operating public transportation service.*

The contractor agrees to comply with 49 U.S.C. 5323(d), 5323(r), and 49 C.F.R. part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under:

- a) Federal transit laws, specifically 49 U.S.C. § 5323(d);
- b) FTA regulations, "Charter Service," 49 C.F.R. part 604;
- c) Any other federal Charter Service regulations; or
- d) Federal guidance, except as FTA determines otherwise in writing.

The contractor agrees that if it engages in a pattern of violations of FTA's Charter Service regulations, FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include:

- a) Barring it or any subcontractor operating public transportation under its Award that has provided prohibited charter service from receiving federal assistance from FTA;
- b) Withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA's Charter Service regulations; or
- c) Any other appropriate remedy that may apply.

The contractor should also include the substance of this clause in each subcontract that may involve operating public transit services.

School Bus Service Operations: *Applies to contracts for operating public transportation service.*

The contractor agrees to comply with 49 U.S.C. 5323(f), and 49 C.F.R. part 604, and not engage in school bus operations using federally funded equipment or facilities in competition with private operators of school buses, except as permitted under:

- a) Federal transit laws, specifically 49 U.S.C. § 5323(f);
- b) FTA regulations, "School Bus Operations," 49 C.F.R. part 605;
- c) Any other Federal School Bus regulations; or
- d) Federal guidance, except as FTA determines otherwise in writing.



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If Contractor violates this School Bus Agreement, FTA may:

- a) Bar the Contractor from receiving Federal assistance for public transportation; or
- b) Require the contractor to take such remedial measures as FTA considers appropriate.

When operating exclusive school bus service under an allowable exemption, the contractor may not use federally funded equipment, vehicles, or facilities.

The Contractor should include the substance of this clause in each subcontract or purchase under this contract that may operate public transportation services.

Substance Abuse Requirements: Drug & Alcohol Testing: *Applies to third party contractors who perform safety-sensitive functions. Contractors must comply with FTA's substance abuse management program under 49 C.F.R. part 655, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations." Under 49 C.F.R. § 655.4, Safety-sensitive function means any of the following duties, when performed by employees of recipients, subrecipients, operators, or contractors:*

- a) *Operating a revenue service vehicle, including when not in revenue service;*
- b) *Operating a nonrevenue service vehicle, when required to be operated by a holder of a Commercial Driver's License;*
- c) *Controlling dispatch or movement of a revenue service vehicle;*
- d) *Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service. This section does not apply to the following: an employer who receives funding under 49 U.S.C. § 5307 or § 5309, is in an area less than 200,000 in population, and contracts out such services; or an employer who receives funding under 49 U.S.C. § 5311 and contracts out such services;*
- e) *Carrying a firearm for security purposes.*

Additionally, third party contractors providing testing services involving the performance of safety sensitive activities must also comply with 49 C.F.R. part 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs."

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. part 655, produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of North Dakota and/or Minnesota, or the Cities of Fargo/Moorhead, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with part 655 before February 1 and to submit the Management Information System (MIS) reports before February 1 to the City of Moorhead Transit Manager and City of Fargo Transit Director. To certify compliance, the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the *Federal Register*.



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Cargo Preference: *Applies to all contracts involving equipment, materials, or commodities that may be transported by ocean vessels.*

The contractor agrees:

- a) to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
- b) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.); and
- c) to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

Energy Conservation: *Applies to all contracts. The Recipient agrees to, and assures that its subrecipients, if any, will comply with the mandatory energy standards and policies of its state energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6201 et seq., and perform an energy assessment for any building constructed, reconstructed, or modified with federal assistance as required under FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. part 622, subpart C.*

Contractor shall recognize mandatory standards and policies relating to energy efficiency, which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC Section 6321 et seq).

Fly America: *Applies to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation.*

a) *Definitions.* As used in this clause--

"International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

"United States" means the 50 States, the District of Columbia, and outlying areas.



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“U.S.-flag air carrier” means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, recipients, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. *[State reasons]:*

(End of statement)

e) The Contractor shall include the substance of this clause, including this paragraph, in each subcontract or purchase under this contract that may involve international air transportation.

Patent Rights and Rights in Data: *Applies when entering into a contract (or subcontract) with a small business firm or nonprofit organization for the performance of experimental, developmental, or research work under the FTA award. The recipient or subrecipient must comply with the requirements of 37 C.F.R. part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency. Except in the case of an “other agreement” in which the Federal Government has agreed to take more limited rights, the Federal Government is entitled to a non-exclusive, royalty free license to use the resulting invention, or patent the invention for Federal Government purposes. The FTA has the right to:*

- a) Obtain, reproduce, publish, or otherwise use the data produced under a Federal award; and*



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- b) *Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.*

Intellectual Property Rights: This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. The Contractor shall grant the AGENCY intellectual property access and licenses deemed necessary for the work performed under this Agreement and in accordance with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FTA or U.S. DOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Agreement and shall, at a minimum, include the following restrictions: Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution. For purposes of this agreement, the term "subject data" means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of "subject data" include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.

- a) The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Federal Government Purposes," any subject data or copyright described below. For "Federal Government Purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
 - i. Any subject data developed under the Contract, whether or not a copyright has been obtained; and
 - ii. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.
- b) Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.
- c) Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government,



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its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

- d) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
- e) Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the Contract work.
- f) The Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

Recycled Products: *Applies to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier where the value of an EPA designated item exceeds \$10,000. Applies to States and local governmental authorities to provide a competitive preference to products and services that conserve natural resources, protect the environment, and are energy efficient. Recipients are required to procure only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000.*

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

Safe Operation of Motor Vehicles: *Applies to all federally funded third party contracts.*

Seat Belt Use

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or AGENCY.



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Distracted Driving

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

Contracts Involving Federal Privacy Act Requirements – *Applicability – When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).*

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

- (1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
- (2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

Drug-Free Workplace: *Applies to operational services contracts.*

The Contractor agrees to comply with the following Federal substance abuse regulations: a. Drug-Free Workplace. U.S. DOT regulations, "Drug-Free Workplace Requirements (Grants)," 49 C.F.R. Part 32, that implements the Drug-Free Workplace Act of 1988 as amended, 41 U.S.C. §§ 8103 et seq., and 2 CFR part 182, b. Alcohol Misuse and Prohibited Drug Use. FTA Regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 USC 5331, as amended by Map-21, 49 CFR part 40, 49 USC chapter 53, 49 CFR Part 655, to the extent applicable.

Other Federal Requirements:

Full and Open Competition - In accordance with 49 U.S.C. § 5325(h) all procurement transactions shall be conducted in a manner that provides full and open competition.

Prohibition Against Exclusionary or Discriminatory Specifications - Apart from



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inconsistent requirements imposed by Federal statute or regulations, the contractor shall comply with the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.

Conformance with ITS National Architecture - Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 U.S.C. Section 512 note and follow the provisions of FTA Notice, "FTA National Architecture Policy on Transit Projects," 66 Fed. Reg. 1455 et seq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

Access Requirements for Persons with Disabilities - Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

Other Contract Requirements - To the extent not inconsistent with the foregoing Federal requirements, this contract shall also include those standard clauses attached hereto, and shall comply with the recipient's Procurement Guidelines, available upon request from the recipient.

Access to Services for Persons with Limited English Proficiency - To the extent applicable and except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d 1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 70 Fed. Reg. 74087, December 14, 2005.

Geographic Information and Related Spatial Data - (NOT APPLICABLE TO THE TRIBAL TRANSIT PROGRAM) Any project activities involving spatial data or geographic information systems activities financed with Federal assistance are required to be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

Geographic Preference - All project activities must be advertised without geographic preference, (except in A/E under certain circumstances, preference for hiring veterans on transit construction projects and geographic-based hiring preferences as proposed to be amended in 2 CFR Part 1201).



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Veterans Preference - As provided by 49 U.S.C. 5325(k), to the extent practicable, the Recipient agrees and assures that each of its Subrecipients: (1) Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53, and (2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

Organizational Conflicts of Interest - The Recipient agrees that it will not enter into a procurement that involves a real or apparent organizational conflict of interest described as follows: (1) When It Occurs. An organizational conflict of interest occurs when the Project work, without appropriate restrictions on certain future activities, results in an unfair competitive advantage: (a) To that Third Party Participant or another Third Party Participant performing the Project work, and (b) That impairs that Third Party Participant's objectivity in performing the Project work, or (2) Other. An organizational conflict of interest may involve other situations resulting in fundamentally unfair competitive conditions, (3) Disclosure Requirements. Consistent with FTA policies, the Recipient must disclose to FTA, and each of its Subrecipients must disclose to the Recipient: (a) Any instances of organizational conflict of interest, or (b) Violations of federal criminal law, involving fraud, bribery, or gratuity violations potentially affecting the federal award, and (4) Failure to Disclose. Failure to make required disclosures can result in remedies for noncompliance, including debarment or suspension.