

November 29, 2022

# Request for Qualifications (RFQ) Dilworth Walmart Transit Hub Design-Bid-Build



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City of Moorhead (MATBUS)

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## **I. Agency Overview**

The City of Moorhead, Mass Transit Division, operates fixed route transit service in the cities of Dilworth and Moorhead, Minnesota, in partnership with the City of Fargo doing business as Fargo-Moorhead Metropolitan Area Transit or MATBUS. Moorhead currently operates a minor transfer hub located at the Walmart Supercenter, 415 34<sup>th</sup> St. N. in Dilworth, Minnesota. This location is a minor transfer hub for two buses serving three bus routes (Routes 4, 6 and 9) which connects passengers from Dilworth to Moorhead with access to the full MATBUS system.

## **II. Purpose of Request**

The intent of this RFQ is to receive proposals from qualified firms to provide architectural and engineering services to complete a design-bid-build for improvements to the transit hub.

Requested services include: design services, environmental reports, bidding and contracting services, construction management, and other associated services.

The project includes the removal and disposal of an existing 5'x10' shelter purchased in 1982 located in the parking lot on the north side of the Walmart Supercenter in Dilworth and replacement with a new larger shelter with amenities. It also includes reconfiguring the driving lanes, adding cut-outs for parking up to four buses, providing crosswalks and accessibility. The new shelter will have indoor and outdoor seating, garbage receptacles, bike racks, lighting to improve safety, and options for a secure entrance and heat source. The reconfiguration would change the direction of bus travel to reduce interaction between the buses and the Walmart grocery delivery area and improve safety for Walmart associates and customers. The improvements described above are, collectively, the "Project".

## **III. Background Information**

In December 2018, the MATBUS Transit Facility Study was completed and included recommendations to improve the transit hub at the Walmart in Dilworth. An excerpt from the Facility Study, including a conceptual design, is included as Exhibit D. Project goals are to protect passengers from the weather, increase seating capacity, improve accessibility, provide amenities to improve comfort, safety and security, and change bus travel direction to avoid the grocery pick up or delivery area.

## **IV. Project Objective**

The objective is to hire one firm (the "Firm") to engineer and design the improvements, assist with the Federal Transit Administration (FTA) environmental review documentation, prepare the bid specifications for construction, prepare the independent cost estimate for construction, and manage the construction of the Project while adhering to Federal and State regulations. Transit service will continue at or near this location during construction. The transit hub may be temporarily relocated in close proximity during construction. If requesting use of the Walmart parking lot to relocate the bus stop during construction, contractor will need permission from the Walmart management.



## **V. Project Budget**

Funding identified for this Project consists of up to 80% Federal Transit Administration (FTA) Section 5339 Grant funds (CFD or assistance listing #20.526) for the design, up to 80% FTA Section 5307 Urbanized Area funds (CFD or assistance listing #20.507) and possibly Federal Carbon Reduction Program grant funds for construction, and 20% local funds provided by the City of Moorhead through agreements with the City of Dilworth.

### **Design Within Funding Limitations**

1. The Firm shall accomplish the design services required under this contract so as to permit the award for the construction of the Project at a price that does not exceed the estimated construction contract price set forth in paragraph (3) below. If bids or proposals for the construction contract are received that exceed the estimated price, the City of Moorhead, the City of Dilworth and the Firm shall analyze the reasons for the excessive prices and, if appropriate, direct the Firm to perform such redesign and other services as are necessary to permit contract award within the funding limitation. These additional services shall be performed at no increase in the price of this contract.
2. The Firm will promptly advise the Transit Manager if it finds that the Project will exceed or is likely to exceed the funding limitations and it is unable to design a usable facility within these limitations. Upon receipt of such information, the Transit Manager will review the revised estimate of construction cost. The Firm may, if it determines that the estimated construction cost contract price set forth in this contract is so low that award of a construction contract not in excess of such estimate is improbable, authorize a change in scope or materials as required to reduce the estimated construction cost to an amount within the estimated construction contract price set forth in paragraph (3) below.
3. The estimated construction contract price for the project described in this contract is \$300,000.

### **Design Errors or Deficiencies**

If the Firm's designs, drawings or specifications contain errors or deficiencies, the Firm will be required to correct them at no increase in price. If errors are discovered during construction, the Firm will be liable for correction of the drawings at its own cost, and for the difference between what the "correct" construction will cost (as a change order issued to the construction contractor) and what it would have cost in the original contract had the drawings been correct. This includes any tear-out that needs to be done, etc.

## **VI. Proposal Security**

No proposal will be considered by the City of Moorhead 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 five percent (5%) of the contract amount; or, a bond executed by a surety company authorized to transact business in the State of Minnesota in an amount equal to five percent (5%) of the contract amount. Such surety will be retained by the City of 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 the execution of the contract. 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.

## **VII. Bid Protest**

Protests related to this solicitation must be submitted in writing and will only be accepted from prospective Bidder or Offerors whose direct economic interest would be affected by the award of a Contract or failure to award a Contract.

Copies of protest procedure are available on request. Contact Lori Van Beek, 650 23rd Street N, Fargo, ND 58102, for a copy, if desired.

As this procurement is Federally funded, the provisions of FTA Circular 4220.1 (as amended) apply. An appeal to FTA must be received by the cognizant FTA Regional or Headquarters Office with five (5) working days of the date the protestor knew or should have known of the violation.

FTA will review bid protests only in the following circumstances:

- a. A protestor has exhausted all administrative remedies with the City of Moorhead – Transit.
- b. FTA will only review protests regarding the alleged failure of the grantee to have or follow its written protest procedures or its failure to review a complaint or protest.

Alleged violations on other grounds are under the jurisdiction of the appropriate State or local authorities. Alleged violations of Federal law or regulation that provide an applicable complaint procedure shall be submitted and processed in accordance with the Federal law or regulation.

Contractors who have exhausted all administrative remedies with the City of Moorhead Transit and FTA can pursue the matter further in the Minnesota state courts.

## **VIII. Scope of Work and Performance Tasks**

At minimum, this Project will include environmental, design, plan & specification preparation, bidding/contracting, and construction management services. Note that this Project may require staging plan(s) to accommodate transit operations during construction.

Task 1 must be completed first to ensure that the Project is approved to move forward to construction by the Federal Transit Administration. All other tasks do not need to be completed consecutively. The proposer must provide a written timeline for each task start and end date.

**Task 1 – 30% Design for Environmental Review, Categorical Exclusion Worksheet and Preliminary Cost Estimate for Construction**

This task will include the completion of 30% of the design and a preliminary cost estimate of construction to be submitted to FTA for their environmental review. An environmental categorical exclusion worksheet was previously submitted by the Transit Manager, but additional information may be required and provided under this task. Refer to Exhibit E.

**This task must be completed by March 9, 2023,** to allow for the review and amendment of the FTA grant to add the construction. The 30% design must include diagram of roadway, curb and gutter, green space, and accessibility, impervious surface area and shelter dimension. The City of Moorhead's buses have a front door ramp that can be set on a curb for easy loading of wheelchairs. The loading area must be wheelchair accessible from the Walmart to the shelter and from the shelter to where the buses load passengers.

**Task 2 – 100% Design Complete**

This task includes 100% design, including placement and recommendation of amenities and specifications for shelter design. The design must be approved by Walmart officials and City of Dilworth officials prior to proceeding to the next task.

**This task must be completed by March 23, 2023.**

**Task 3 – Draft Easement Agreement with Walmart**

This task is the drafting of an easement or lease agreement with Walmart Inc., including the legal description of the property on which the improvements will be made and identification of the pathway the bus will be taking in and out of the property. The draft agreement shall meet the FTA requirements for improvements to real property. Contractor shall draft an agreement, which will be reviewed by the Moorhead City Attorney prior to finalization.

**Task 4 – Order Shelter and Amenities**

Prefabricated shelter and selected amenities may take up to six months for delivery and should be selected and ordered early in the process, if proposed by the Firm. The cost for the shelter and amenities is included in the Project budget in Section V. The shelter size should accommodate approximately 10-15 people, include indoor seating, exterior seating, a display case for route information, a heat source that can be activated for short periods of time by the passengers at the touch of a button, include electricity for interior lighting, electric locking system that can be remotely set. Security cameras are also desired, if funding allows. Colors or striping and logos must be approved MATBUS colors. Glass should be tinted to reduce glare and heat,

shatter proof, easy to order and replace through local sources and no walls should restrict visibility from inside or outside the facility or allow people to hide.

**Task 5 – Complete Bid Specification and Advertise**

Bid specifications to include disposal of existing shelter, return of existing bench to the Metro Transit Garage, demolition of curb and gutter, installation of all improvements and installation of the shelter and amenities, including electrical work, and landscaping. Bid specifications must follow federal regulations, including current Davis Bacon Wage Rates, all Federal Certifications, and Bid security or bond, etc. The advertisement for bids must meet FTA requirements and all known vendors, including any identified DBE's, must be notified that the Invitation for Bids (IFB) is available. DBE's should be solicited and good faith effort documented per FTA requirements.

**Task 6 – Receipt of bids, review of bids and recommendation of contractor, and draft contract**

The Firm will open and tabulate bids, review bids and recommend a contractor based on the most responsive and responsible bidder. The Firm shall draft an agreement, which will be reviewed by the Moorhead City Attorney prior to finalization.

**Task 7 – Draft City Council communication and resolution for award of contract and approval of easement or lease agreement**

The Firm shall provide draft written communication and resolution to the Moorhead City Council providing background, key points and financial information to support the recommended contract.

**Task 8 – Construction Management**

Under this task, the Firm will manage the construction project to ensure adherence to the specifications and timetable, including cost control, Davis Bacon Wage Rates and Payroll Reports, Buy America documentation for certification and any pertinent Federal and State of Minnesota requirements. The Firm will review and approve all change orders and payments requests and submit to City for approval and payment, including price justification.

**IX. Implementation Schedule**

**1) Timeline/Schedule**

November 28, 2022	City releases RFQ document; notifies private sector.
December 12, 2022	Deadline for proposer's submittal of written request for clarification or modification of the RFQ.
December 19, 2022	Cities' response to written request for clarification or modification of the RFQ and pre-bid conference.
December 19, 2022	Pre-proposal conference to be held at MTG 10:00 AM
December 26, 2022	Deadline for proposer's submittal of written bid protests regarding the solicitation (RFQ).
January 2, 2023	Deadline for receipt of sealed qualifications by 2:00 p.m. CDT in the Metro Transit Garage, 650 23 <sup>rd</sup> Street North, Fargo, North Dakota 58102.
January 12, 2023	City reviews and evaluates proposals, interview finalists.
January 19, 2023	Deadline for proposer's submittal of written pre-award bid protests.
January 26, 2023	Moorhead City Council award of contract and notice to proceed issued.
February 2, 2023	Deadline for proposer's submittal of written post-award protests.
February 9, 2023	Cities' response to post-award protests.
February 16, 2023	Deadline for proposer's submittal of written appeal of post-award decision to appropriate City governing board.
February 27, 2023	Hold hearing of appeal of post-award decision with Moorhead City Council.
February 28, 2023	Cities' final written determination on appeal issued. All decisions regarding protests shall be considered final.

Completion dates for timeline/schedule in this section are tentative only and are subject to modification by the City.

## 2) Project Development (Major Milestones).

January 26, 2023	Notice to Proceed
Upon Contract Execution	Project Start-Up/Mobilization
March 9, 2023	30% Design, Environmental document, Projected Construction Cost Estimate for Grant Funding, Draft Easement for Walmart
March 23, 2023	Order Shelter and Amenities to be included with shelter
March 23, 2023	100% Design Completed and Approved, Final ICE
March 27, 2023	Council Approval of Walmart Easement
April 10, 2023	Council Approval to Bid Project
April 11, 2023	Release IFB on Construction
May 31, 2023	Award Construction Contract (must have approved Env. Review Cat.Ex for grant pre-award authority)
June-October, 2023	Construction Completed
December 31, 2023	All tasks Completed and Approved

Completion dates for project milestones in this section are tentative only and are subject to modification by the City in consultation with the selected Contractor. The project completion, including construction, of December 31, 2023, remains the goal.

## X. Evaluation and Selection Process

**Selection Committee.** The City of Moorhead will establish a selection committee to determine which firm, by its determination, has the best skills and approach to complete the project. The City of Moorhead will not disclose the membership of the selection committee prior to the firm interviews.

The firm selection process shall be administered under the following criteria:

- 20% The firm's past experience with similar projects, including the firm's ability, familiarity, and involvement in handling similar types of activities
- 20% Specific qualifications of the firm's project manager and key staff's experience related to the development of similar projects
- 20% The firm's project understanding, proposed project approach and methodology, project work plan, and project management techniques
- 20% The firm's record of past performance on similar projects, including FTA and State of Minnesota grant requirements, quality of work, ability to meet deadlines, and ability to control costs
- 20% Current workload and the availability of key personnel and other resources to perform the work within the specified timeframe

The selection committee, at the discretion of the City of Moorhead and under the guidance of FTA policy, may entertain formal oral presentations for the top candidates to provide additional input into the evaluation process. Oral presentations will be followed by a question and answer period during which the selection committee may question the prospective consultants about their proposed approaches.

The City of Moorhead reserves the right to reject any or all proposals or to waive minor irregularities in said proposal, and reserves the right to negotiate minor deviations to the proposal with the successful firm. The City of Moorhead reserves the right to award a contract to the consulting firm or individual that presents the proposal, which, in the sole judgement of the City of Moorhead, best accomplishes the desired results.

This RFQ does not commit the City of Moorhead to award a contract, to pay any costs incurred in the preparation of a response to this request, or to procure or contract for any services or supplies; the City of Moorhead reserves the right to withdraw this RFQ at any time without prior notice.

All proposals, whether selected or rejected, shall become the property of the City of Moorhead.

**Prohibited Contact with Proposers:** Except as otherwise provided, oral communications between Evaluators and Proposers regarding procurement in progress is prohibited. Each Evaluation Panel member shall report any such communication, in writing to the RFQ Administrators, who shall determine, in consultation with the Moorhead City Manager, any appropriate remedial action.

## **XI. Proposal Content and Format**

The purpose of the proposal is to demonstrate the qualifications, competence, and capacity of the consultant seeking to provide comprehensive services specified herein for the City of Moorhead, in conformity with the requirements of the RFQ. The proposal should demonstrate qualifications of the firm and its staff to undertake this project. It should also specify the proposed approach that best meets the RFQ requirements. The proposal must address each of the service specifications under the Scope of Work and Performance Tasks.

At minimum, proposals shall include the following information:

- 1) **Contact Information.** Name, telephone number, email address, mailing address, and other contact information for the Firm's project manager.
- 2) **Introduction and Executive Summary.** This section shall document the firm name, business address (including telephone, email address(es), year established, type of ownership and parent company (if any), project manager name and qualifications, and any major features that may differentiate this proposal from others, if any.
- 3) **Respondent Qualifications.** Respondents must submit evidence that they have relevant past experience and have previously delivered services similar to the requested services within this RFQ. Each respondent may also be required to show that similar work has been performed in a satisfactory manner and that no claims of any kind are pending against such work. No proposal will be accepted from a respondent whom is engaged in any work that would impair his/her ability to perform or finance this work.
- 4) **Work Plan and Project Approach Methodology.** Proposals shall include the following, at minimum:
  - a. A detailed work plan identifying the major tasks to be accomplished relative to the requested study tasks and expected product as outlined in this RFQ. A timeline for completion of the requested services, identifying milestones for development of the project and completion of individual tasks.
  - b. List of projects of similar size, scope, type, and complexity that the proposed project team has successfully completed in the past.
  - c. List of the proposed principal(s) who will be responsible for the work, proposed project manager and project team members (with resumes).
  - d. A breakout of hours for each member of the team by major task area, and an overall indication of the level of effort (percentage of overall project team hours) allocated to each task. Note that specific budget information is to be submitted in a sealed cost proposal as described in Section XIII, Cost Proposal Requirements.
  - e. A list of any subcontracted agencies, the tasks they will be assigned, the percent of work to be performed, and the staff that will be assigned.
  - f. If subcontractors are to be used on this project, the Proposer must also outline their background and experience, including examples of similar work done by each sub-consultant. Proposers must also provide a list of the sub-consultants' personnel who will perform work on the project, detailing their training and work experience.
  - g. List of client references for similar projects described within the RFQ.
  - h. Required Disadvantaged Business Enterprise (DBE) and/or Minority Business Enterprise (MBE) Firms participation documentation or good faith effort documentation, as applicable.
  - i. Ability of firm to meet required time schedules based on current and known future workload of the staff assigned to the project.
- 5) **Signature.** Proposals shall be signed in ink by an authorized member of the

firm/project team.

- 6) **Attachments.** Review, complete, and submit the completed versions of the following RFQ Attachments with the proposal:

Exhibit A – Cost Proposal Form (in separate sealed envelope)  
Exhibit B – Debarment and Suspension Certification  
Exhibit C – Standard Form 330

## **XII. Submittal Information**

Hard copies of technical and/or cost proposals should be delivered to the contacts below:

Lori Van Beek  
Transit Manager  
Metro Transit Garage  
650 23<sup>rd</sup> St N  
Fargo ND, 58102  
[LVanbeek@matbus.com](mailto:LVanbeek@matbus.com)

Jordan Smith  
Assistant Transit Director - Fleet and Facilities  
Metro Transit Garage  
650 23<sup>rd</sup> St N  
Fargo ND, 58102  
[jmsmith@fargond.gov](mailto:jmsmith@fargond.gov)

All proposals received by **2:00 pm CDT on Monday, January 2, 2023**, at the MATBUS office listed above, will be given equal consideration. Minority, women-owned and disadvantaged business enterprises are encouraged to participate. Respondents must submit six (6) hard copies and one (1) PDF copy of the proposal.

The City of Moorhead will hold a preproposal meeting on **Monday, December 19, 2022, at 10 AM in Metro Transit Garage (MTG) conference room, 650 23<sup>rd</sup> St N. Fargo ND, 58102**, where firms may attend and ask any questions they may have about the intent of the RFQ. The City of Moorhead staff will be present at this meeting to give insight into the intricacies of the project. Upon request, the City of Moorhead will provide information for a Microsoft Teams virtual meeting to those who cannot be at the meeting in person. No response will be given to verbal or written questions prior to this meeting. Requests for clarification or modification of the RFQ should be submitted by **Monday, December 12, 2022**; responses to written requests will be provided at the preproposal meeting. The City of Moorhead reserves the right to decline a response to any question if, in the City of Moorhead assessment, the information cannot be obtained and shared with all potential firms in a timely manner. A summary of the preproposal meeting will be posted on the City of Moorhead and MATBUS website before proposals are due.

**Cost and pricing information must be submitted in a separate, sealed and marked envelope.**

## **XIII. Cost Proposal Requirements**

- 1) **Sealed Cost Proposal.** All proposals must be clearly identified and marked with the appropriate project name, with a separately sealed cost proposal per the requirements of this RFQ. Cost proposals shall be based on an hourly “not to exceed” amount and shall follow the general format as provided within Exhibit A of this RFQ. The City of Moorhead may decide, in



its sole discretion, to negotiate a price for the project after the selection committee completes its final ranking. Negotiation will begin with the firm identified as the most qualified per requirements of this RFQ, as determined in the evaluation/selection process. If the City of Moorhead is unable to negotiate a contract for services, negotiations will be terminated and negotiations will begin with the next most qualified firm. This process shall continue until a satisfactory contract has been negotiated.

- 2) **Annual Audit Information for Indirect Cost.** Firms proposing to do work for the City of Moorhead must have a current audit rate no older than fifteen (15) months from the close of the firm's Fiscal Year. Documentation of this audit rate must be provided with the sealed cost proposal. Firms that do not meet this requirement will not qualify to propose or contract for the City of Moorhead projects until the requirement is met. Firms that have submitted all the necessary information to the City of Moorhead and are waiting for the completion of the audit will be qualified to submit proposals for work. Information submitted by a firm that is incomplete will not qualify. Firms that do not have a current cognizant Federal Acquisition Regulations (FARs) audit of indirect cost rates must provide this audit prior to the interview. **This document must be attached with the sealed cost proposal.**
  
- 3) **Disadvantaged Business Enterprise.** Pursuant to U.S. Department of Transportation policy and 49 CFR Part 26, the City of Moorhead supports the participation of DBE/MBE businesses in the performance of contracts financed with federal funds under this RFQ. Consultants shall make an effort to involve DBE/MBE businesses in this project. If the firm is a DBE/MBE, a statement indicating that the business is certified DBE/MBE in North Dakota or Minnesota shall be included within the proposal. If the firm intends to utilize a DBE/MBE to complete a portion of this work, a statement of the subcontractor's certification shall be included. The percent of the total proposed cost to be completed by the DBE/MBE shall be shown within the cost proposal. Respondents should substantiate (within proposal) efforts made to include DBE/MBE businesses.

#### **XIV. Contractual Information**

- 1) The City of Moorhead reserves the right to reject any or all proposals or to award the contract to the next most qualified firm if the successful firm does not execute a contract within forty-five (45) days after the award of the proposal. The City of Moorhead shall not pay for any information contained in proposals obtained from participating firms.
  
- 2) The City of Moorhead reserves the right to request clarification on any information submitted and additionally reserves the right to request additional information of one (1) or more applicants.
  
- 3) Any proposal may be withdrawn up until the proposal submission deadline. Any proposals not withdrawn shall constitute an irrevocable offer for services set forth within the RFQ for a period of ninety (90) days or until one or more of the proposals have been approved by the Moorhead City Council.
  
- 4) If, through any cause, the Firm fails to fulfill in a timely and proper manner the obligations agreed to, the City of Moorhead will have the right to terminate its contract by specifying the date of termination in a written notice to the Firm at least thirty (30) days before the

termination date. In this event, the Firm shall be entitled to just and equitable compensation for any satisfactory work completed.

- 5) Any agreement or contract resulting from the acceptance of a proposal shall be on forms either supplied by or approved by the City of Moorhead and shall contain, as a minimum, applicable provisions of the RFQ. The City of Moorhead reserves the right to reject any agreement that does not conform to the RFQ and any the City of Moorhead requirements for agreements and contracts.
- 6) The Firm shall not assign any interest in the contract and shall not transfer any interest in the same without prior written consent of the City of Moorhead.

## **XV. Payments**

The selected firm shall submit invoices for work completed to the City of Moorhead. Payments shall be made to the Firm by the City of Moorhead in accordance with the contract after all required services, as well as items identified in the scope of work and performance tasks, have been completed to the satisfaction of the City of Moorhead.

## **XVI. Federal and State Funds**

A portion of this project will be grant funded through the Federal Transit Administration (FTA) 5339 Bus and Bus Facilities program CFD 20.526, the FTA 5307 Formula Grant program CFD 20.507; and the City of Moorhead and/or City of Dilworth Funds. Therefore, local, federal and state requirements and corresponding contract clauses will apply to this project and any resulting contractual arrangement.

## **XVII. Title VI Assurances**

Prospective contractors and subcontractors should be aware of the following contractual requirements regarding compliance with Title VI should they be selected pursuant to this RFQ:

- 1) **Compliance with Regulations.** The Firm shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the U.S. Department of Transportation, 49 CFR Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations).
- 2) **Nondiscrimination.** The Firm, with regard to the work performed by it, shall not discriminate on the grounds of race, color, national origin, sex, age, disability/handicap, or income status\*\*, in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Firm shall not participate, either directly or indirectly, in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- 3) **Solicitations for Subcontracts, Including Procurements of Materials and Equipment.** In all solicitations, either by competitive bidding or negotiation, made by the Firm for work to be performed under a subcontract, including procurements of

materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Firm of the contractor's obligations to the City of Moorhead and the regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, disability/handicap, or income status\*\*.

- 4) **Information and Reports.** The Firm shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the City of Moorhead or MnDOT to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a firm is in the exclusive possession of another who fails or refuses to furnish this information, the Firm shall so certify to the City of Moorhead, or MnDOT, as appropriate, and shall set forth what efforts it has made to obtain the information.
- 5) **Sanctions for Noncompliance.** In the event of the Firm's noncompliance with the nondiscrimination provisions as outlined herein, the City of Moorhead and/or MnDOT shall impose such sanctions as it or FTA may determine to be appropriate, including but not limited to:
  - a) Withholding of payments to the Firm under the contract until the Firm complies, and/or;
  - b) Cancellation, termination, or suspensions of the contract, in part or in whole.
- 6) **Incorporation of Title VI Provisions.** The Firm shall include the provisions of Section XVII, paragraphs 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto.

The Firm shall take such action with respect to any subcontract or procurement as the City of Moorhead, the U.S. Department of Transportation, or FTA may direct as a means of enforcing such provisions, including sanctions for noncompliance provided, however, that in the event a consultant becomes involved in, or is threatened with, litigation by a subcontractor or supplier as a result of such direction, the firm may request the City of Moorhead enter into such litigation to protect the interests of the City of Moorhead; and, in addition, the firm may request the United States to enter into such litigation to protect the interests of the United States.

\*\* The Act governs race, color, and national origin. Related Nondiscrimination Authorities govern sex, 23 USC 324; age, 42 USC 6101; disability/handicap, 29 USC 790; and low income, EO 12898.

## **XVIII. Termination Provisions**

The City of Moorhead reserves the right to cancel any contract for cause upon written notice to the Firm. Cause for cancellation will be documented failure(s) of the Firm to provide services in the quantity or quality required. Notice of such cancellation will be given with sufficient time to allow for the orderly withdrawal of the Firm without additional harm to the participants or the City of Moorhead.

The City of Moorhead may cancel or reduce the amount of service to be rendered if there is, in the opinion of the City of Moorhead, a significant increase in local costs; or if there is 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 of Moorhead will notify the Firm in writing thirty (30) days in advance of the date such actions are to be implemented.

In the event of any termination, the City of Moorhead shall pay the agreed rate only for services delivered up to the date of termination. The City of Moorhead has no obligation to the Firm, of any kind, after the date of termination. The Firm shall deliver all records, equipment, and materials to the City of Moorhead within twenty-four (24) hours of the date of termination.

**XIX. Limitation on Firm**

All reports and pertinent data or materials are the sole property of the City of Moorhead and may not be used, reproduced, or released in any form without the explicit, written permission of the City of Moorhead.

The Firm should expect to have access only to the public reports and public files of local governmental agencies and the City of Moorhead in preparing the proposal or reports. No compilation, tabulation or analysis of data, definition of opinion, etc., should be anticipated by the Firm from these agencies, unless volunteered by a responsible official in those agencies.

**XX. Conflict of Interest**

No consultant, subcontractor, or member of any firm proposed to be employed in the preparation of this proposal shall have a past, ongoing, or potential involvement which could be deemed a conflict of interest under Minnesota Statute or other law. During the term of this contract, the Firm shall not accept any employment or engage in any consulting work that would create a conflict of interest with the City of Moorhead or in any way compromise the services to be performed under this agreement. The Firm shall immediately notify the City of Moorhead of any and all potential violations of this paragraph upon becoming aware of the potential violation.

## **XXI. Insurance**

The Firm will provide the City of Moorhead 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 service, whichever occurs first.

Firm and contractors must meet the insurance requirements before commencing work, and the insurance must be maintained in force and effect throughout the term of the contract. Property users must meet the insurance requirements before accessing property and the insurance must be maintained until the property is vacated.

The minimum levels of insurance required are as follows: General Liability \$2M per occurrence/\$4M annual aggregate; Auto Liability \$2M combined single limit; Professional Liability \$2M per claim/\$2M annual aggregate; Workers' Compensation \$100,000/\$500,000/\$100,000. The above insurance levels are minimum requirements.

## **XXII. Indemnification**

The Firm agrees to defend, indemnify, and hold harmless the City of Moorhead, the City of Dilworth, Walmart Inc. and the State of Minnesota, its agencies, officers and employees, from and against claims based on the vicarious liability of the City of Moorhead, the City of Dilworth, Walmart Inc, and the State or its agents, but not against claims based on the City of Moorhead, the City of Dilworth, Walmart Inc, and/or the State's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by the Firm to the City of Moorhead, the City of Dilworth, Walmart Inc, and the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the City of Moorhead and the State is necessary. The Firm also agrees to defend, indemnify, and hold the City of Moorhead, the City of Dilworth, Walmart Inc, and the State harmless for all costs, expenses and attorneys' fees incurred if the City of Moorhead, the City of Dilworth, Walmart Inc, or the State prevails in an action against the Firm in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of the contract.

The City of Moorhead, the City of Dilworth, and the State reserve the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

When a portion of the work under the contract is sublet, the Firm shall obtain insurance protection (as outlined above) to provide liability coverage to protect the Firm, the City of Moorhead, the City of Dilworth, Walmart Inc, and the State of Minnesota as a result of work undertaken by the subconsultant. In addition, the Firm shall ensure that any and all parties performing work under the contract are covered by public liability insurance as outlined above. All subconsultants performing work under the contract are required to maintain the same scope of insurance required of the Firm. The Firm shall be held responsible for ensuring compliance with those requirements by all subconsultants and subcontractors.

The Firm's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by the City of Moorhead, City of Dilworth, Walmart Inc, or the State of Minnesota. Any insurance, self-insurance or self-retention maintained by

the City of Moorhead, the City of Dilworth, Walmart Inc, or the State shall be in excess of the Firm's insurance and shall not contribute to it. The insolvency or bankruptcy of the Firm shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Firm from meeting the retention limit under the policy. Any deductible amount or other obligations under the policy(ies) shall be the sole responsibility of the Firm. This insurance may be in a policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and be placed with insurers rated "A-" or better by A.M. Best Company, Inc. the City of Moorhead, City of Dilworth, Walmart Inc, and the State of Minnesota will be indemnified, saved, and held harmless to the full extent of any coverage actually secured by the Firm in excess of the minimum requirements set forth above.

### **XXIII. Federal Clauses**

**By entering into a contract with the City of Moorhead, the Firm is agreeing to be bound by the federal clauses and certifications, as applicable, contained in Exhibit F.**

### Exhibit A – Cost Proposal Form

**Cost Proposal Form** – Include completed cost form (see below) for each task in a sealed envelope – labeled “**Sealed Cost Form(s) – Vendor Name**” and submit concurrently with the proposal as part of the overall RFQ response. Changes in the final contract amount and contract extensions are not anticipated.

### REQUIRED BUDGET FORMAT Summary of Estimated Project Cost

						Task #:		
1.	Direct Labor	Hours	x	Rate	=	Project Cost	Total	
	Name, Title, Function	0.00	x	0.00	=	0.00	0.00	
			x		=	0.00	0.00	
			x		=	0.00	0.00	
				Subtotal	=	0.00	0.00	
2.	<b>Overhead/Indirect Cost (expressed as indirect rate x direct labor)</b>						0.00	0.00
3.	<b>Subcontractor Costs</b>						0.00	0.00
4.	<b>Materials and Supplies Costs</b>						0.00	0.00
5.	<b>Travel Costs</b>						0.00	0.00
6.	<b>Fixed Fee</b>						0.00	0.00
7.	<b>Miscellaneous Costs</b>						0.00	0.00
<b>Total Cost</b>					=	0.00	0.00	

**Exhibit B – DEBARMENT AND SUSPENSION CERTIFICATION**

The proposer certifies to the best of its knowledge and belief, and that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not, within a three-year period preceding this proposal/contract, been convicted or had a civil judgment awarded against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public bribery, falsification or destruction of records, making false statement, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (2) of this certification;
4. Have not, within a three-year period preceding this application/proposal/contract, had one or more public transactions (Federal, State, Local) terminated for cause or default.

THE PROPOSER CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. 3801 ET SEQ ARE APPLICABLE THERETO.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date



**Exhibit C – Standard Form 330**

# ARCHITECT-ENGINEER QUALIFICATIONS

## PART I - CONTRACT-SPECIFIC QUALIFICATIONS

### A. CONTRACT INFORMATION

1. TITLE AND LOCATION *(City and State)*

2. PUBLIC NOTICE DATE

3. SOLICITATION OR PROJECT NUMBER

### B. ARCHITECT-ENGINEER POINT OF CONTACT

4. NAME AND TITLE

5. NAME OF FIRM

6. TELEPHONE NUMBER

7. FAX NUMBER

8. E-MAIL ADDRESS

### C. PROPOSED TEAM

*(Complete this section for the prime contractor and all key subcontractors.)*

	<i>(Check)</i>			9. FIRM NAME	10. ADDRESS	11. ROLE IN THIS CONTRACT
	PRIME	J-V PARTNER	SUBCON- TRACTOR			
a.				<input type="checkbox"/> CHECK IF BRANCH OFFICE		
b.				<input type="checkbox"/> CHECK IF BRANCH OFFICE		
c.				<input type="checkbox"/> CHECK IF BRANCH OFFICE		
d.				<input type="checkbox"/> CHECK IF BRANCH OFFICE		
e.				<input type="checkbox"/> CHECK IF BRANCH OFFICE		
f.				<input type="checkbox"/> CHECK IF BRANCH OFFICE		

### D. ORGANIZATIONAL CHART OF PROPOSED TEAM

*(Attached)*

**E. RESUMES OF KEY PERSONNEL PROPOSED FOR THIS CONTRACT**

*(Complete one Section E for each key person.)*

12. NAME	13. ROLE IN THIS CONTRACT	14. YEARS EXPERIENCE	
		a. TOTAL	b. WITH CURRENT FIRM

15. FIRM NAME AND LOCATION *(City and State)*

16. EDUCATION <i>(Degree and Specialization)</i>	17. CURRENT PROFESSIONAL REGISTRATION <i>(State and Discipline)</i>
--	---

18. OTHER PROFESSIONAL QUALIFICATIONS *(Publications, Organizations, Training, Awards, etc.)*

**19. RELEVANT PROJECTS**

a.	(1) TITLE AND LOCATION <i>(City and State)</i>	(2) YEAR COMPLETED	
		PROFESSIONAL SERVICES	CONSTRUCTION <i>(If applicable)</i>
	(3) BRIEF DESCRIPTION <i>(Brief scope, size, cost, etc.)</i> AND SPECIFIC ROLE	<input type="checkbox"/> Check if project performed with current firm	
b.	(1) TITLE AND LOCATION <i>(City and State)</i>	(2) YEAR COMPLETED	
		PROFESSIONAL SERVICES	CONSTRUCTION <i>(If applicable)</i>
	(3) BRIEF DESCRIPTION <i>(Brief scope, size, cost, etc.)</i> AND SPECIFIC ROLE	<input type="checkbox"/> Check if project performed with current firm	
c.	(1) TITLE AND LOCATION <i>(City and State)</i>	(2) YEAR COMPLETED	
		PROFESSIONAL SERVICES	CONSTRUCTION <i>(If applicable)</i>
	(3) BRIEF DESCRIPTION <i>(Brief scope, size, cost, etc.)</i> AND SPECIFIC ROLE	<input type="checkbox"/> Check if project performed with current firm	
d.	(1) TITLE AND LOCATION <i>(City and State)</i>	(2) YEAR COMPLETED	
		PROFESSIONAL SERVICES	CONSTRUCTION <i>(If applicable)</i>
	(3) BRIEF DESCRIPTION <i>(Brief scope, size, cost, etc.)</i> AND SPECIFIC ROLE	<input type="checkbox"/> Check if project performed with current firm	
e.	(1) TITLE AND LOCATION <i>(City and State)</i>	(2) YEAR COMPLETED	
		PROFESSIONAL SERVICES	CONSTRUCTION <i>(If applicable)</i>
	(3) BRIEF DESCRIPTION <i>(Brief scope, size, cost, etc.)</i> AND SPECIFIC ROLE	<input type="checkbox"/> Check if project performed with current firm	

<b>F. EXAMPLE PROJECTS WHICH BEST ILLUSTRATE PROPOSED TEAM'S QUALIFICATIONS FOR THIS CONTRACT</b> <i>(Present as many projects as requested by the agency, or 10 projects, if not specified. Complete one Section F for each project.)</i>		20. EXAMPLE PROJECT KEY NUMBER
21. TITLE AND LOCATION <i>(City and State)</i>	22. YEAR COMPLETED	
	PROFESSIONAL SERVICES	CONSTRUCTION <i>(If applicable)</i>

**23. PROJECT OWNER'S INFORMATION**

a. PROJECT OWNER	b. POINT OF CONTACT NAME	c. POINT OF CONTACT TELEPHONE NUMBER
24. BRIEF DESCRIPTION OF PROJECT AND RELEVANCE TO THIS CONTRACT <i>(Include scope, size, and cost)</i>		

**25. FIRMS FROM SECTION C INVOLVED WITH THIS PROJECT**

<b>a.</b>	(1) FIRM NAME	(2) FIRM LOCATION <i>(City and State)</i>	(3) ROLE
<b>b.</b>	(1) FIRM NAME	(2) FIRM LOCATION <i>(City and State)</i>	(3) ROLE
<b>c.</b>	(1) FIRM NAME	(2) FIRM LOCATION <i>(City and State)</i>	(3) ROLE
<b>d.</b>	(1) FIRM NAME	(2) FIRM LOCATION <i>(City and State)</i>	(3) ROLE
<b>e.</b>	(1) FIRM NAME	(2) FIRM LOCATION <i>(City and State)</i>	(3) ROLE
<b>f.</b>	(1) FIRM NAME	(2) FIRM LOCATION <i>(City and State)</i>	(3) ROLE



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**H. ADDITIONAL INFORMATION**

---

30. PROVIDE ANY ADDITIONAL INFORMATION REQUESTED BY THE AGENCY. ATTACH ADDITIONAL SHEETS AS NEEDED.

---

**I. AUTHORIZED REPRESENTATIVE**

*The foregoing is a statement of facts.*

31. SIGNATURE

32. DATE

33. NAME AND TITLE



**Exhibit D – Excerpt from 2018 MATBUS Facility Study – Bus Stop Rendering**





**Existing Walmart Bus Stop**





**Simulation of Proposed Bus Stop at Walmart**





**Exhibit E – Preliminary Environmental Review Categorical Exclusion Forms**

# FTA REGION 8 CATEGORICAL EXCLUSION WORKSHEET

This worksheet is provided to assist project sponsors (grantees) and FTA in complying with the National Environmental Policy Act (NEPA) for projects that may qualify as a Categorical Exclusion (CE) or a Documented Categorical Exclusion (DCE). It will help grantees gather information for environmental analysis, identify potential project impacts, and determine if other environmental laws and permits apply. It will also enable FTA to determine that the project does not result in significant environmental impacts and meets the criteria for a CE. This CE Worksheet should be completed for category C (c-list) CE projects involving construction and all category D (d-list) DCE projects.

All parts below must be completed prior to FTA review. If the project is a c-list CE and does not involve construction, you do not need to complete this worksheet. Compliance with other environmental requirements must also be completed before FTA will issue a determination that the project meets the criteria for a CE. Certain project activities may not begin until this process is complete. For guidance on completing this worksheet, please refer to the CE Worksheet Instructions.

If you need help or have any questions, contact the Region 8 office at 303-362-2400. The completed CE Worksheet should be submitted to the Region 8 with sufficient time for review, especially if other environmental laws or permits apply, prior to submitting a grant application. To “check” a box, double-click on the box and select “checked” under default value.

## PART I: PROJECT INFORMATION

Project Sponsor <i>City of Moorhead - MATBUS</i>	Date Submitted <i>7/15/2020</i>	FTA Grant Number(s)/Funding Source(s) <i>Pending 1159-2020-2 / FTA 5339</i>
Project Title <i>Construct Bus Passenger Shelter (1) – 13.33.10</i>		
Project Description and Location (include physical address) <i>The project includes the removal of an existing 5’x10’ shelter purchased in 1982 located in the parking lot on the north side of the Walmart Supercenter, 415 34<sup>th</sup> St. N., Dilworth, MN 56529, and replacement with a new larger shelter with amenities. This location is a minor transfer hub for three bus routes. The project includes reconfiguring the driving lanes, adding cut-outs for parking up to four buses, providing crosswalks and accessibility. The new shelter will have indoor and outdoor seating, garbage receptacles, bike racks and lighting to improve safety. Walmart has recently added a grocery delivery area near the bus stop. The reconfiguration will allow buses to bypass the grocery delivery area and improve safety for Walmart associates and customers.</i>		
Project Contact (include mailing address, email address and phone number) <i>Lori Van Beek, Transit Manager, City of Moorhead, 650 23<sup>rd</sup> St. N., Fargo, ND 58102</i> <a href="mailto:LVanbeek@matbus.com">LVanbeek@matbus.com</a> <i>701-476-6686 Office / 701-367-0817 Mobile</i>		
Is this project included in an approved TIP and/or STIP? <input checked="" type="checkbox"/> <b>YES – TIP/STIP ID/Page No.:</b> <i>2020-2023 MN STIP, Project TRF-0034-20F, Formal Amendment, Page 4 of 6</i> <input type="checkbox"/> NO		
Is this a re-evaluation of a project previously evaluated/approved or currently under construction? <input checked="" type="checkbox"/> <b>NO</b>		

YES

## PART II: CATEGORICAL EXCLUSION DETERMINATION

Please indicate which CE type under 23 CFR 771.118(c) or (d) best fits the proposed project (select only one). CE descriptions are included in the CE Worksheet Instructions.

**CE (e.g., C-9 or D-6):** 23 CFR 771.118 (c) (5) (5) Activities, including repairs, replacements, and rehabilitations, designed to promote transportation safety, security, accessibility and effective communication within or adjacent to existing right-of-way, such as: The deployment of Intelligent Transportation Systems and components; installation and improvement of safety and communications equipment, including hazard elimination and mitigation; installation of passenger amenities and traffic signals; and retrofitting existing transportation vehicles, facilities or structures, or upgrading to current standards.

## PART III: ENVIRONMENTAL EVALUATION

This section is for the evaluation and identification of any adverse impacts to the built (including social and economic) and natural environment as a result of the project. For each item below, indicate if there are any adverse impacts and describe them. If a resource is not present on or in the vicinity of the proposed project, or if there are no adverse impacts, select NO. If a resource is present and impacted, select YES and succinctly describe the impacts and any necessary mitigation or permits required. The level of information provided should be consistent with the complexity of the project. For guidance on how to evaluate each resource for impacts, see the CE Worksheet Instructions. If your project will result in significant impacts or you aren't sure, and/or it is likely to generate substantial controversy, contact FTA Region 8.

### A. Land Use and Zoning Impacts

Is the proposed project incompatible or inconsistent with existing or future land use and/or zoning in the project area?

NO

YES

A.1. Describe the surrounding land use and zoning. The property location is C3, Commercial (General Business). The property to the north is also C3; to the east the property is R4, Residential (Multiple-Family).

### B. Traffic and Parking Impacts

Does the proposed project have the potential to permanently impact traffic and/or parking (on and off street) in the project area? Describe any temporary construction impacts in item T. Construction Impacts.

NO

YES

### C. Visual/Aesthetics Impacts

Are there any visual or aesthetic resources (e.g., protected view sheds or scenic vistas) or visual character in the vicinity of the proposed project that would be impacted?

NO

YES

**D. Farmland Impacts**

Are there any prime or unique farmlands located at the proposed project site that would be impacted?

- NO**
- YES

**E. Environmental Justice Impacts**

Is the proposed project located within a neighborhood containing minority or low-income residents or businesses? If yes, will it result in disproportionately high and adverse impacts?

- NO**
- YES This project will provide positive impacts through improved function and accessibility of the shelter.

**F. Floodplain Impacts**

Is the proposed project located within the Federal Emergency Management Agency (FEMA) 100-year floodplain or within the floodway? If yes, this project may require further evaluation under EO 11988.

- NO**
- YES

**G. Air Quality Impacts**

Is the proposed project located in an Environmental Protection Agency (EPA)-designated non-attainment or maintenance area?

- NO** Referred to non-attainment map
- YES, indicate the criteria pollutant and contact FTA to determine if a hot spot analysis is necessary.
  - Carbon Monoxide (CO)
  - Sulfur Dioxide (SO<sub>2</sub>)
  - Lead (Pb)
  - Nitrogen Dioxide (NO<sub>2</sub>)
  - Ozone (O<sub>3</sub>)
  - Particulate Matter (PM<sub>10</sub>)
  - Particulate Matter (PM<sub>2.5</sub>)

G.1. Does the proposed project require a conformity analysis or regional analysis under 40 CFR Part 93?

- NO**
- YES

G.2. If the non-attainment area is also in a metropolitan area, was the proposed project required to be and included in the MPO's air quality conformity analysis for the Transportation Improvement Program (TIP)?

- NO**
- YES, date of USDOT conformity finding

**H. Hazardous Materials Impacts**

Is there any known or potential contamination at the proposed project site that would be impacted? Explain how this was determined.

- NO** Referred to MPCA Map.
- YES

**I. Vibration Impacts**

Are there any vibration sensitive receptors located in the vicinity of the proposed project that would be impacted?

- NO**
- YES

**J. Noise Impacts**

Are there any noise sensitive receptors located in the vicinity of the proposed project that would be impacted?

- NO**
- YES

**K. Water Quality Impacts**

Are there any surface or ground water resources present, including an EPA-designated sole source aquifer (SSA), in the vicinity of the proposed project that would be impacted?

- NO**
- YES

K.1 Is there an increase in impervious surface (e.g., roofs, driveways, streets, parking lots, etc.) or restored pervious surface as a result of the proposed project?

- NO**
- YES

**L. Land/Property Acquisition, Relocation, Leases and Easements**

Does the proposed project require any acquisition of land/property or any easements? Note: for acquisitions over \$500,000, FTA concurrence with the property's valuation is also required.

- NO**
- YES An easement from Walmart will be required.



**M. Wetland Impacts**

Are there any wetlands on or adjacent to the proposed project that would be temporarily or permanently impacted?

**NO**

YES

If YES, is a permit from the US Army Corps of Engineers required?

NO

YES

**N. Natural Resource Impacts**

Are there any natural areas present on or near the proposed project that would be impacted? If the proposed project has the potential to impact wildlife or waterfowl refuges, a Section 4(f) evaluation may be required.

**NO**

YES

If YES, does Section 4(f) apply?

NO, explain

YES

**O. Historic, Cultural and Archaeological Resource Impacts**

Are there any historic, cultural or archaeological resources on or near the proposed project site? If yes and the proposed project has the potential to affect such resources, the Section 106 process must be followed and a Section 4(f) evaluation may be required.

**NO**

YES

If YES resources are present, does Section 106 apply?

NO, explain

YES

If YES resources are present, does Section 4(f) apply?

NO, explain

YES

**P. Biological Resource Impacts**

Are there any biological resources or sensitive areas on or in the vicinity of the proposed project that would be impacted?

**NO**

YES

**Q. Threatened and/or Endangered Species Impacts**

Are there any threatened and/or endangered species (plant or animal) or critical habitat present on or in the vicinity of the proposed project that would be impacted? If yes, Section 7 of the Endangered Species Act may apply.

**NO**

YES

**R. Recreation and Park Resource Impacts**

Are there any recreation areas and/or public parks on or adjacent to the proposed project that would be impacted? If the proposed project has the potential to impact recreation areas or publicly-owned parks, a Section 4(f) evaluation may be required. If a park is funded with LWCF funds, Section 6(f) may apply.

**NO**

YES

If YES, does Section 4(f) apply?

NO

YES

If YES, does Section 6(f) apply?

NO

YES

**S. Safety and Security**

Are any measures required for the safe and secure operation of the proposed project after its construction?

**NO**

YES

**T. Construction Impacts**

Will the proposed project result in impacts during construction?

**NO**

YES

**U. Utility Impacts**

Are there any utilities that could be impacted by the proposed project?

**NO There are no public utilities affected; however, private utilities are present.**

YES

**V. Cumulative and Indirect Impacts**

Are adverse cumulative and/or indirect impacts likely?

**NO**

YES

**W. Public Outreach and Agency Coordination**

Was any public outreach and/or agency coordination conducted?

**NO**

**YES** - Adjacent property owners were notified. Meetings were held with the Walmart Store Manager and the City of Dilworth Administrator and Finance Director. Dilworth passed a resolution of support and Walmart is also supportive of the project

**X. State and Local Permits, Policies and Ordinances**

Does the proposed project require compliance with any applicable state and local permits, policies and ordinances?

**NO**

**YES** A building permit will be required by the City of Dilworth.

**SUBMITTED BY (NAME AND TITLE):**

**DATE:**

*Lori Van Beek  
Transit Manager*

*7/15/2020*

9 AVE NW

577

833

820

527

701

601

501

9 ST NW

810

831

818

809

814

805

810

703

806

711

807

707

811

803

807

510

811

703

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4 AVE NW

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1609

1511

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1351

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1101

951

1438

1254

1202

900

1711

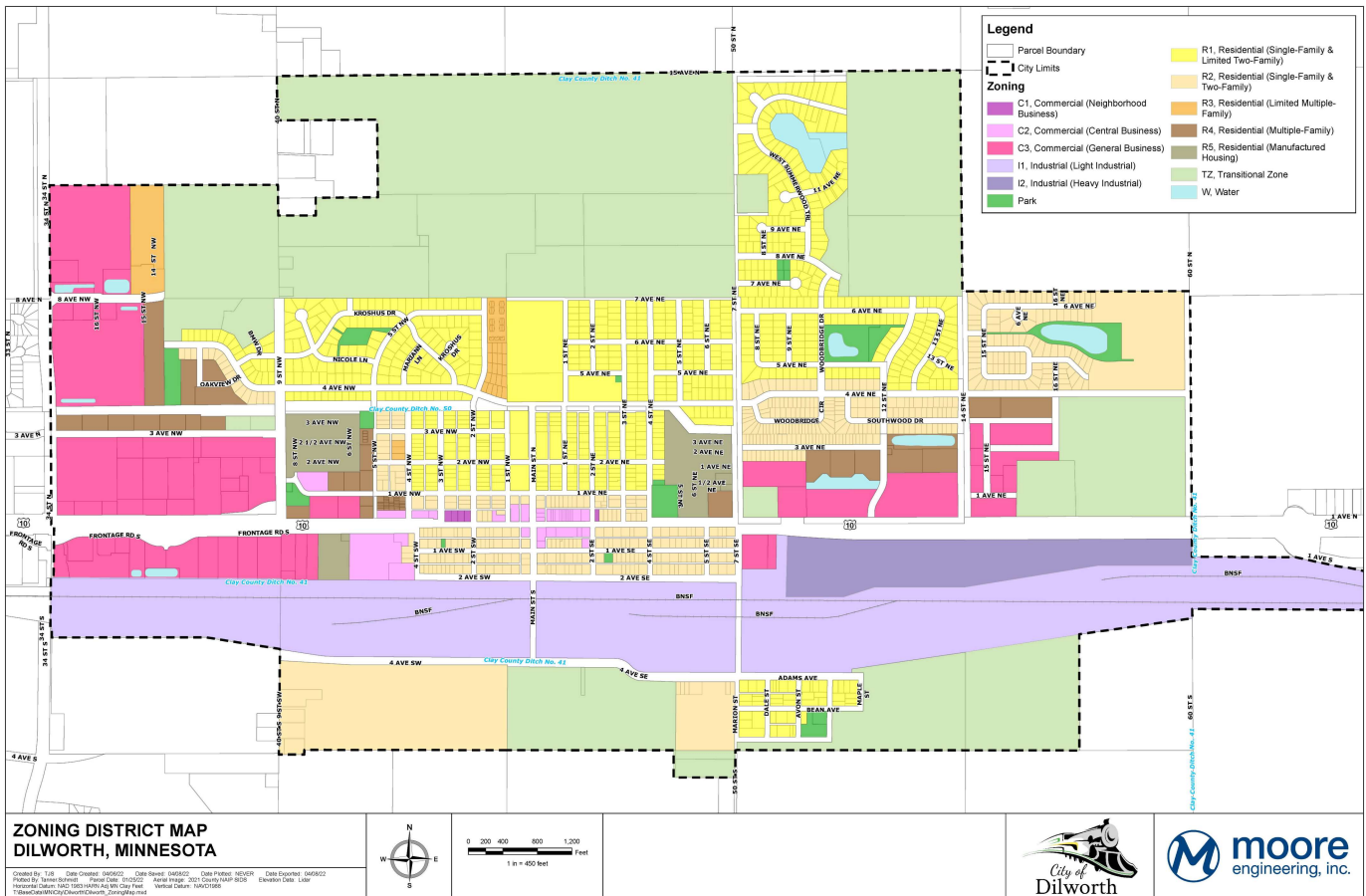
140

110

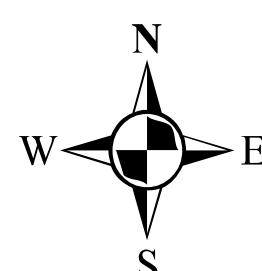


# City of Dilworth

## DILWORTH ZONING MAP







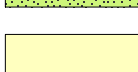
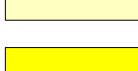

















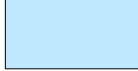




# Official Zoning Map

Summer 2021

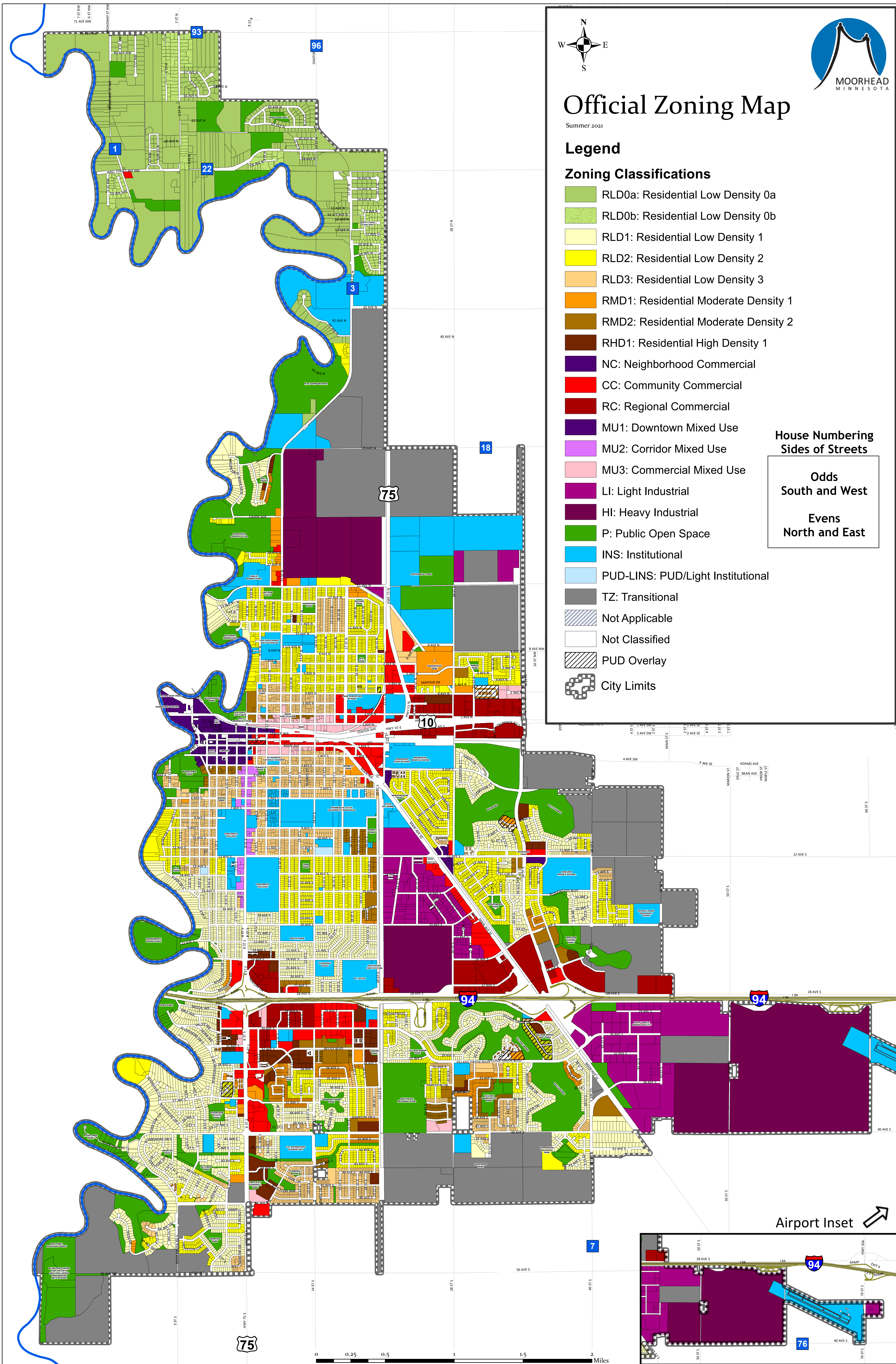
## Legend

### Zoning Classifications

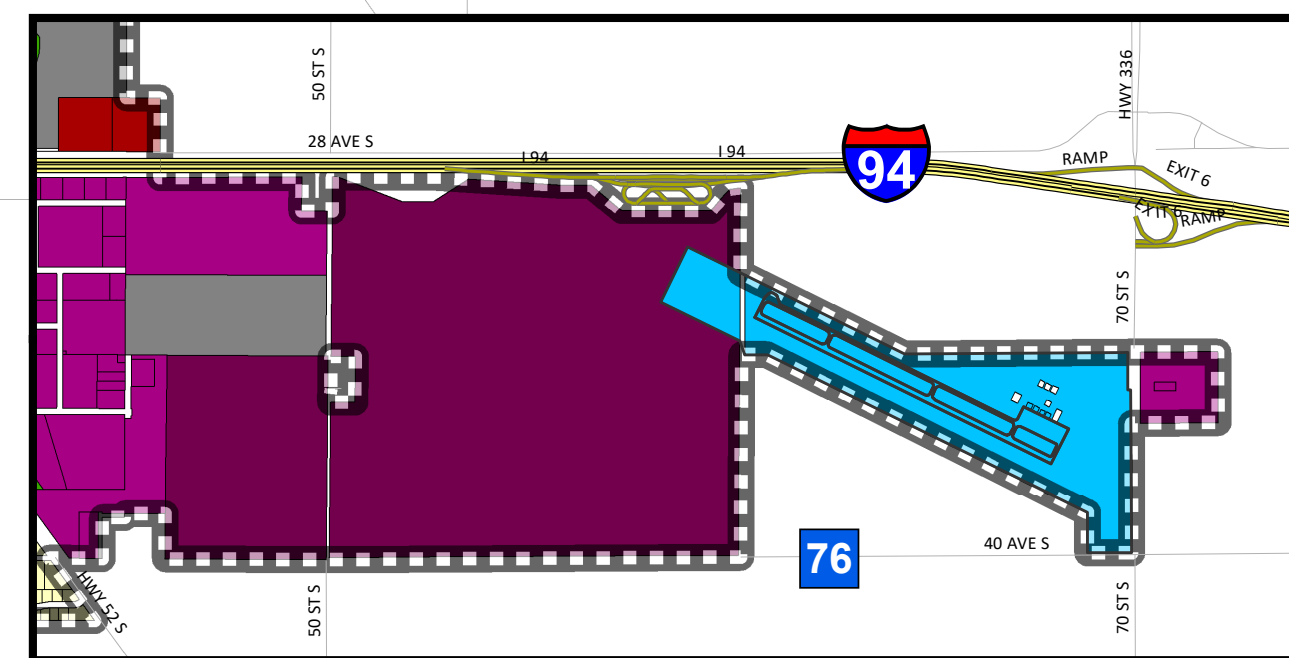
-  RLD0a: Residential Low Density 0a
-  RLD0b: Residential Low Density 0b
-  RLD1: Residential Low Density 1
-  RLD2: Residential Low Density 2
-  RLD3: Residential Low Density 3
-  RMD1: Residential Moderate Density 1
-  RMD2: Residential Moderate Density 2
-  RHD1: Residential High Density 1
-  NC: Neighborhood Commercial
-  CC: Community Commercial
-  RC: Regional Commercial
-  MU1: Downtown Mixed Use
-  MU2: Corridor Mixed Use
-  MU3: Commercial Mixed Use
-  LI: Light Industrial
-  HI: Heavy Industrial
-  P: Public Open Space
-  INS: Institutional
-  PUD-LINS: PUD/Light Institutional
-  TZ: Transitional
-  Not Applicable
-  Not Classified
-  PUD Overlay
-  City Limits

### House Numbering Sides of Streets

- Odds**  
South and West
- Evens**  
North and East



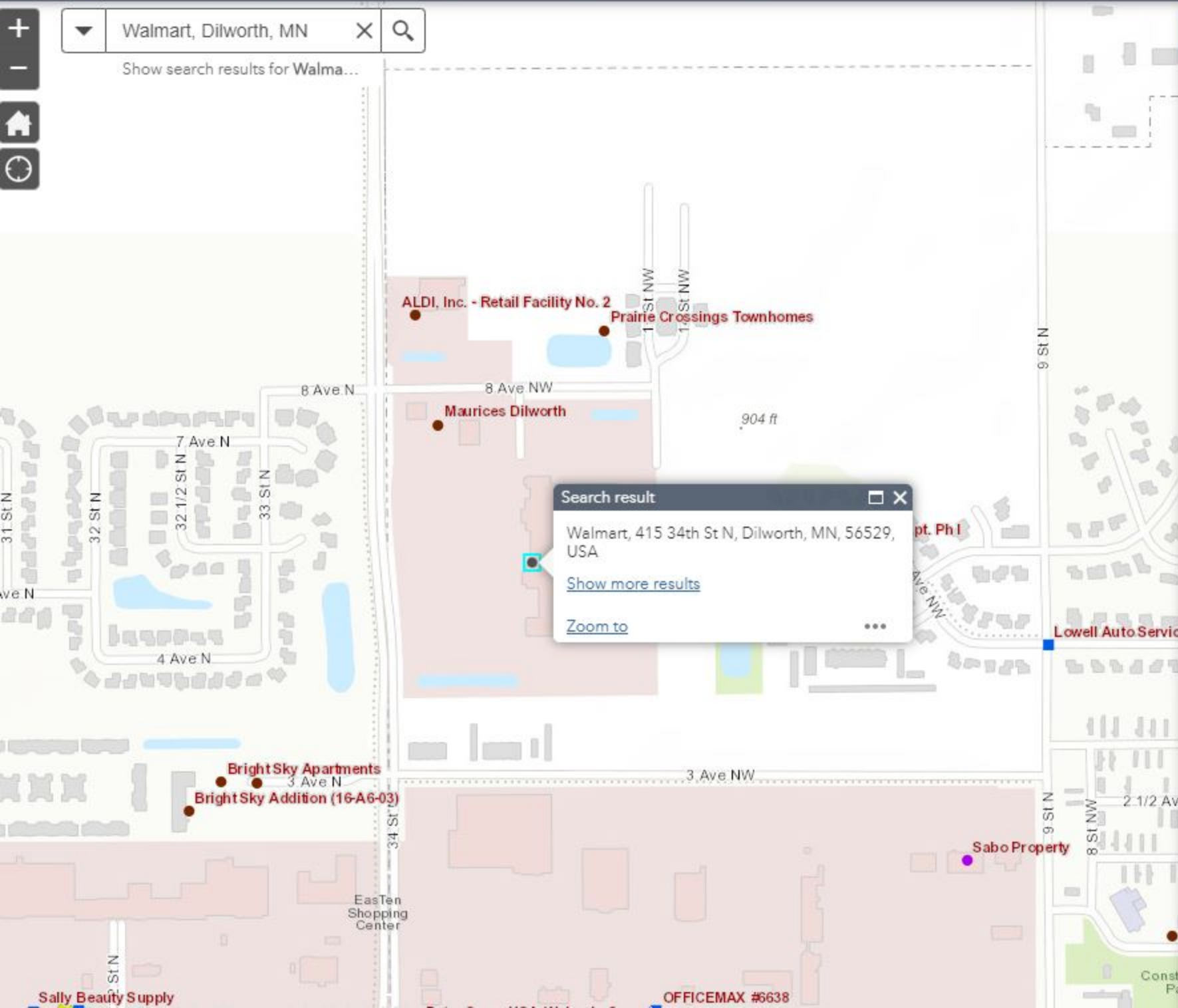
### Airport Inset





Walmart, Dilworth, MN

Show search results for Walma...



Legend

MPCA Sites

Scale 3

- MPCA Sites
  - Multiple Programs
  - Air Quality
  - Environmental Review
  - Feedlots
  - Hazardous Waste
  - Investigation and Cleanup
  - Pollution Prevention
  - Solid Waste
  - Stormwater
  - SSTS
  - Tanks
  - Water Quality

**Exhibit F – Federal Clauses**



**By entering into a sale with the City of Fargo, ND, and/or the City of Moorhead, MN, doing business as MATBUS, the supplier is agreeing to be bound by the following federal clauses and certifications as applicable:**



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

- a. The Agency 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 Agency, 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.



2. **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.



3. **Federal Changes:** *Applies to all contracts.*

The 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 the Agency and FTA, and they may be amended or promulgated from time to time during the term of this contract. The Contractor's failure to so comply shall constitute a material breach of this contract.



4. **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.

- 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 VII 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.



5. **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 Agency requests which would cause the Agency to be in violation of the FTA terms and conditions.



6. **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/or Energy Assessments,' 49 C.F.R. part 622, subpart C.*

The 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).



7. **Veterans Employment:** *Applies to capital projects, to the extent practicable*

As provided by 49 U.S.C. § 5325(k): a. To the extent practicable, the Contractor agrees that it:

- a. 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 funds made available or appropriated for 49 U.S.C. chapter 53, and
- b. 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, and

The Contractor also assures that its sub-recipients will:

- a. 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 funds made available or appropriated for 49 U.S.C. chapter 53, to the extent practicable, and
- b. 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.



8. **Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment:** *Applies to all contracts.*

The Contractor is prohibited from obligating or expending federal funds to:

- a. Procure or obtain
- b. Extend or renew a contract to procure or obtain; or
- c. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, "covered telecommunications equipment or services" is:

- i. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities)
  - ii. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
  - iii. Telecommunications or video surveillance services provided by such entities or using such equipment.
- d. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

The Contractor shall not provide covered telecommunications equipment or services in the performance of this contract.



9. **Termination Provisions:** *Applies to all contracts over \$10,000.*

Termination for Convenience (General Provision): The Agency may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Agency's best interest. The Contractor shall be paid its costs, including contract closeout costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the Agency to be paid the Contractor. If the Contractor has any property in its possession belonging to the Agency, the Contractor will account for the same, and dispose of it in the manner Agency directs.

Termination for Default [Breach or Cause] (General Provision): If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Agency may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the Agency that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Agency, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.5

Opportunity to Cure (General Provision): The Agency in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to the Agency's satisfaction the breach or default or any of the terms, covenants, or conditions of this contract within ten [10] days after receipt by Contractor or written notice from the Agency setting forth the nature of said breach or default, the Agency shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude the Agency from also pursuing all available remedies against Contractor and its sureties for said breach or default.

Waiver of Remedies for any Breach: In the event that the Agency elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by the Agency shall not limit the Agency's remedies for any succeeding breach of that or of any other term, covenant, or condition of this contract.

This termination clause extends to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.



10. **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 I 80, subpart C, as supplemented by 2 C.F.R. part I 200, 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.



11. **Notice to FTA and U.S. DOT Inspector General of Information Related to Fraud, Waste, Abuse, or Other Legal Matters** : *Applies to all contracts exceeding \$25,000.*

If a current or prospective legal matter that may affect the Federal Government emerges, the Contractor must promptly notify City Utilities, which will promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which City Utilities is located. The Contractor must include an equivalent provision in its subagreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.

The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement between the FTA and City Utilities, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.

**Additional Notice to U.S. DOT Inspector General.** The Contractor must promptly notify the Agency, which will promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Agency is located, if the Contractor has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the project is subject to this agreement or another agreement with the Agency involving a principal, officer, employee, agent, or Third-Party Participant of the Contractor. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Contractor. In this paragraph, "promptly" means to refer information without delay and without change. This notification provision applies to all divisions of the Contractor, including divisions tasked with law enforcement or investigatory functions.



12. **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.*

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.

13. **Buy America:** *Applies to projects that involve the purchase of more than \$150,000 of iron, steel, manufactured goods, or rolling stock to be delivered to the recipient to be used in an FTA assisted project.*

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.

The Contractor shall comply with the Dear Colleague letter dated November 7, 2022. This Dear Colleague letter informs project sponsors of a change regarding [Buy America requirements](#) for projects funded with FTA financial assistance. For grants obligated on or after November 10, 2022, FTA will add construction materials to the categories of products that must be manufactured in America on federally funded transit infrastructure projects. A waiver from these requirements is under consideration by FTA and should be reviewed prior to implementation.

14. **Clean Air Act and the Federal Water Pollution Control Act:** *Applies to all contracts exceeding \$150,000.*

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq and the Federal Water Pollution Control Act as amended, 33 U.S.C. § 1251-1388. The Contractor agrees to report each

violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq . The Contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

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15. **Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate:** *Applies to all contracts in excess of the Simplified Acquisition Threshold (currently set at \$250,000) 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.*

- a. Disputes will be presented in writing to the appropriate Agency personnel - in Fargo, the Fargo Transit Director, in Moorhead, the Moorhead Transit Manager. Agency 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, the 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.



16. **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.



17. **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.*

*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.

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

- a. 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.
- b. 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.
- c. 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]:

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(End of statement)

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

18. **Davis-Bacon Act and Copeland Act – Prevailing Wage and Anti-Kickback:**

*Applies to all FTA funded contracts for all prime construction, alteration or repair contracts in excess of \$2,000. The recipient will ensure that each third-party contractor complies with all federal laws, regulations, and requirements, including:*

*a. Prevailing Wage Requirements*

- i. Federal transit laws, specifically 49 U.S.C. § 5333(a), (FTA 's 'Davis-Bacon Related Act");*
- ii. The Davis-Bacon Act, 40 USC. §§ 3141-3144, 3146, and 3147; and*
- iii. 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.*

*b. "Anti-Kickback" Prohibitions*

- i. Section 1 of the Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. § 874;*
- ii. Section 2 of the Copeland "Anti-Kickback" Act, as amended, 40 USC. § 3145; and*
- iii. US. DOL regulations, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States," 29 C.F.R. part 3.*

For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland "Anti-Kickback" Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, "Contractors and Subcontractors on Public

Building or Public Work Financed in Whole or in part by Loans or Grants from the United States." The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

19. **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 USC §§ 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.*

b. **For Construction Contracts:**

- i. For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 C.F.R. part 5. Under 40 U.S.C. § 3702 of the Act, the Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.
- ii. In the event of any violation of the clause set forth herein, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this clause.

- iii. The FTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in this section.
- iv. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this agreement.

c. **For Awards Not Involving Construction:**

- i. 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.
- ii. 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.
- iii. 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.



20. **Bonding:** *The Common Grant Rules require bonds for all construction contracts exceeding the simplified acquisition threshold (exceeding \$250,000. Minnesota State*

*Statute 574.26 limit is \$175,000) unless FTA determines that other arrangements adequately protect the Federal interest. FTA's bonding policies are as follows:*

- a. A bid guarantee from each bidder equivalent to five [5] percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- b. A performance bond on the part to the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from Contractors are as follows:
  - i. 50% of the contract price if the contract price is not more than \$1 million;
  - ii. 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
  - iii. \$2.5 million if the contract price is more than \$5 million.
- d. A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond. Bid Bond Requirements (Construction)

Bid Security - A Bid Bond must be issued by a fully qualified surety company acceptable to the Agency and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.

Rights Reserved - In submitting this Bid, it is understood and agreed by bidder that the right is reserved by the Agency to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of ninety [90] days subsequent to the opening of bids, without the written consent of the Agency.

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within ninety [90] days after the bid opening without the written consent of the Agency, shall refuse or be unable to enter into this contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of the Agency's damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.



It is further understood and agreed that to the extent the defaulting Bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by the Agency as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense the Agency for the damages occasioned by default, then the undersigned bidder agrees to indemnify the Agency and pay over to the Agency the difference between the bid security and the Agency's total damages, so as to make the Agency whole.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive. Performance and Payment Bonding Requirements (Construction)

**The Contractor shall be required to obtain performance and payment bonds as follows:**

Performance bonds

- a. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the Agency determines that a lesser amount would be adequate for the protection of the Agency.
- b. The Agency may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The Agency may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

Payment bonds

- a. The penal amount of the payment bonds shall equal:
  - i. Fifty percent of the contract price if the contract price is not more than \$1 million.
  - ii. Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million;
  - iii. Two and one half million if the contract price is more than \$5 million.
- b. If the original contract price is \$5 million or less, the Agency may require additional protection as required by subparagraph 1 if the contract price is increased.

Performance and Payment Bonding Requirements (Non-Construction)

The Contractor may be required to obtain performance and payment bonds when necessary to protect the Agency's interest.

The following situations may warrant a performance bond:

- a. The Agency's property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).

- b. A contractor sells assets to or merges with another concern, and the Agency, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
- c. Substantial progress payments are made before delivery of end items starts.
- d. Contracts are for dismantling, demolition, or removal of improvements.

When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:

- a. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the Agency determines that a lesser amount would be adequate for the protection of the Agency.
- b. The Agency may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price.  
The Agency may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.
- c. A payment bond is required only when a performance bond is required, and if the use of payment bond is in the Agency's interest.
- d. When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:

The penal amount of payment bonds shall equal:

- I. Fifty percent of the contract price if the contract price is not more than \$1 million;
- II. Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
- III. Two and one half million if the contract price is increased.

#### Advance Payment Bonding Requirements

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. The Agency shall determine the amount of the advance payment bond necessary to protect the Agency.

#### Patent Infringement Bonding Requirements (Patent Indemnity)

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished, and the financial responsibility of the Contractor is unknown or doubtful. The Agency shall determine the amount of the patent indemnity to protect the Agency.

#### Warranty of the Work and Maintenance Bonds

The Contractor warrants to the Agency, the architect and/or engineer that all materials and equipment furnished under this contract will be of highest quality and new unless otherwise specified by the Agency, free from faults and defects and in conformance with the contract documents. All work not so conforming to these standards shall be considered defective. If required by the project manager, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

The work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the work against defective materials or faulty workmanship for a minimum period of one [1] year after final payment by the Agency and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to the Agency. As additional security for these guarantees, the Contractor shall, prior to the release of final payment, furnish separate maintenance (or guarantee) bonds in form acceptable to the Agency written by the same corporate surety that provides the performance bond and labor and material payment bond for this contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one [1] year after final payment and shall be written in an amount equal to ONE HUNDRED PERCENT [100%] of the CONTRACT SUM, as adjusted (if at all).

21. **EEO:** *Applies to all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3*

All Firms will be required to follow Federal Equal Employment Opportunity (EEO) policies. The Agency will affirmatively assure that on any project constructed pursuant to this advertisement, equal employment opportunity will be offered to all persons without regard to race, color, creed, religion, national origin, sex, and marital status, status with regard to public assistance, membership or activity in a local commission, disability, sexual orientation, or age.

22. **Seismic Safety:** *Applies only to contracts for the construction of new buildings or additions to existing buildings.*

The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

**23. 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 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.



**24. Charter Service Operations:** *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.



**25. 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.

If the 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.



**26. 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 non-revenue 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 or such services; or an employer who receives funding under 49 USC § 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.

- 27. Rights to Inventions Made Under a Contract or Agreement:** *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*
- 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, 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.



**28. Disadvantaged and Small Business Enterprise (DBEs):** *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).

In connection with the performance of this service, the Contractor will cooperate with the Agency 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 ensure that disadvantaged business enterprises have the maximum practicable opportunity to compete for subcontract work. In order to ensure 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 Agency for purchases pertaining to this contract to the best of the Contractor's ability and will provide the Agency 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 Agency 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 Agency.

Fostering Small Business Participation

The Agency 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 Agency. This program is race and gender-neutral, however SBEs can also count towards DBE goals.



**29. Prompt Payment and Return of Retainage:** *Applies to all contracts.*

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 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).



**30. 6002 of the Solid Waste Disposal Act:** *Applies to all contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the fiscal year or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds. These regulations apply to all procurement actions involving items designated by the EPA, where the procuring agency purchases \$10,000 or more of one of these items in a fiscal year, or when the cost of such items purchased during the previous fiscal year was \$10,000.*

The Contractor agrees to comply with all the requirements of Section 6002 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6962) by the Resource Conservation and Recovery Act (RCRA), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.



**31. Americans with Disabilities Act Access (ADA):** *Applies to all contracts.*

Introduction: 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. Sections 12101 *et seq.*, prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private public and private entities. Third party contractors must comply with their responsibilities under Titles I thru V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issues by other Federal agencies.



- a) **Rolling Stock Accessibility:** Rolling stock must comply with the accessibility requirements of DOT regulations, “Transportation Services for Individuals with Disabilities (ADA), “49 CFR Part 37, and Joint ATBCB/DOT regulations, “Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 CFR Part 1192 and 49 CFR Part 38. Vehicles acquired (with limited exceptions) should be accessible to and usable by individuals with disabilities, including individuals using wheelchairs;



- b) **Purchased Transportation Services Accessibility:** A third party contractor providing public transportation services must operate its services in compliance with 42 U.S.C. Sections 12101 *et seq.* and DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” using facilities and equipment that comply with 49 CFR Part 37; and Joint ATBCB/DOT regulations, “Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 CFR Part 1192 and 49 CFR Part 38. Private entities must comply with the requirements of 49 CFR Part 37 applicable to public entities with which they contract to provide public transportation services. MART advises its third party contractors operating public transportation services to review the requirements for public entities in this context which include but are not limited to:
- a. **Complementary Paratransit Service:** Requirements that public entities providing fixed-route service provide complementary paratransit service to individuals with disabilities who cannot use the fixed-route system.
  - b. **Equal Opportunity:** Requirements for service with service requirements intended to ensure that individuals with disabilities are afforded equal opportunity to use transportation systems and services.



- c) **Design and Construction Accessibility:** Facilities to be used in public transportation systems and service must comply with 42 U.S.C. Sections 12101 *et seq.* and DOT regulations, “Transportation Services for Individuals with Disabilities (ADA), “49 CFR Part 37; and Joint ATBCB/DOT regulations, “Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles, “ 36 CFR Part 1192 and 49 CFR Part 38. Notably, DOT incorporated by reference the ATBCB’s Americans with Disabilities Act Accessibility Guidelines” (ADAAG), revised July 2004, which include accessibility guidelines for buildings and facilities, and are incorporated into Appendix A to 49 CFR Part 37. DOT also added specific provisions to Appendix A modifying the ADAAG, with the result that buildings and facilities must

comply with both the ADAAG and amendments thereto in Appendix A to 49 CFR Part 37.



**32. Assignability Clause:** *Applies to all contracts.*

Procurements through assignments: Neither the Agency nor the Contractor shall assign or transfer any of its rights or obligations hereunder without the prior written consent of the other.



**33. 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.
- 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.



**34. Bus Testing:** *Applies only to the purchase or lease of any new bus model, or any bus model with a major change in configuration or components to be acquired or leased with funds obligated by FTA. Recipients are responsible for determining whether a vehicle to be acquired requires full or partial testing or has already satisfied the bus testing*

*requirements by achieving a passing test score in accordance with 49 C.F.R. part 665. Recipients must certify compliance with FTA 's bus testing requirements in all grant applications for FTA funding for bus procurements.*

The Contractor [Manufacturer] agrees to comply with the Bus Testing requirements under 49 U.S.C. 5318(e) and FT A's implementing regulation at 49 C.F.R. part 665 to ensure that the requisite testing is performed for all new bus models or any bus model with a major change in configuration or components, and that the bus model has achieved a passing score. Upon completion of the testing, the contractor shall obtain a copy of the bus testing reports from the operator of the testing facility and make that report(s) publicly available prior to final acceptance of the first vehicle by the recipient.



- 35. Pre-Award and Post-Delivery Audits of Rolling Stock Purchases:** *Applies to the purchase of revenue service rolling stock with FTA funds and must comply with the pre-award and post-delivery audit requirements set forth in 49 U.S.C. 5323(111) and supplemented by 49 C.F.R. part 663.*

The Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. part 663. The Contractor shall comply with the Buy America certification(s) submitted with its proposal/bid. The Contractor agrees to participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 C.F.R. part 663 and related FTA guidance



- 36. 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.

#### 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 Contactor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.



**37. 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.



U.S. Department  
of Transportation  
**Federal Transit  
Administration**

Administrator

1200 New Jersey Avenue, SE  
Washington, DC 20590

November 7, 2022

Dear Colleague:

The purpose of this letter is to remind project sponsors of an upcoming change regarding Buy America requirements for projects funded with Federal Transit Administration (FTA) financial assistance. For grants obligated on or after November 10, 2022, FTA will add construction materials to the categories of products that must be manufactured in America on federally funded transit infrastructure projects. I also wish to call your attention to two Buy America waivers the U.S. Department of Transportation (DOT) proposed late last week and invite your input on DOT's proposals.

On November 15, 2021, President Biden signed the Bipartisan Infrastructure Law, which includes the Build America, Buy America Act (BABA), [Public Law 117-58, div. G §§ 70901-27](#). The law not only makes an historic investment in American transportation—from roads and bridges to rail to transit—but also ensures that the future of American transportation is made in America. Specifically, BABA expands the coverage and application of Buy America preferences in Federal financial assistance programs for infrastructure. For projects funded by FTA grants, BABA requires that all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States. To provide an opportunity for grantees to adjust to the new construction materials requirement, DOT issued a temporary [waiver](#) on May 19, 2022, delaying the effective date of BABA's construction materials requirement for all DOT programs to November 10, 2022.

**Following the expiration of the temporary waiver on November 10, every award FTA obligates will require that any construction materials procured under the award be manufactured in the United States.**

Awards that FTA obligated before May 14, 2022, are *not* affected by this construction materials requirement because they are not covered by BABA. Awards that FTA obligated on or after May 14 and before November 10 also are *not* affected by this requirement, because they are covered by the temporary waiver DOT issued in May. A contract for a project that will be federally funded solely by one or more pre-November 10 awards need not comply with the new construction materials requirement, regardless of when the project sponsor executes the contract.

Any FTA award obligated on or after November 10, however, will be subject to the BABA requirement that construction materials used on those projects be produced in the United States, and the costs for construction materials that are not manufactured in the United

States will be ineligible for reimbursement under the grant, regardless of when the project sponsor incurred the cost. FTA recognizes that some project sponsors have already contracted for, or issued solicitations for, non-U.S. manufactured construction materials, with the expectation of receiving reimbursement from FTA grants obligated after November 10. To address this situation, DOT has proposed a waiver that, if it becomes final, will provide relief to some project sponsors in this situation. Any waiver, as currently proposed, would not apply to any grants obligated between November 10 and when the proposed waiver is made final, and any such grants will require compliance with the BABA construction materials requirement.

Project sponsors should look to the U.S. Office of Management and Budget's (OMB) [Memorandum M-22-11](#), "Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure" (April 18, 2022), for an explanation of the standards FTA will apply to construction materials beginning November 10. Neither the OMB memorandum nor any binding DOT or FTA condition requires a project sponsor to use a specific mechanism to ensure the construction materials used in its project are manufactured in the United States, but FTA recommends project sponsors follow FTA's well-established Buy America certification requirements for steel, iron, and manufactured products as an example. [49 CFR 661.6](#).

I expect Federal agencies may provide further guidance and refinements in the future, as we all work together to implement these new standards and as you encounter questions we could not anticipate. FTA is ready to help our grantees manage this transition, with the combined goal of delivering high quality public transportation projects and, in the words of BABA, "ensuring a commonsense procurement preference for the materials and products produced by companies and workers in the United States."

\* \* \*

Finally, as I noted previously, earlier this week, DOT published two proposed Buy America waivers for public review and comment. You can find each of the proposals here: <https://www.transportation.gov/office-policy/transportation-policy/made-in-america>.

The first proposed waiver is intended to ease the transition to applying Buy America to construction materials. It would make certain contracts for non-U.S. manufactured construction materials eligible for FTA awards obligated on or after November 10. Please note, however, that if the proposed waiver is adopted in its current form, it is unlikely to be in effect before November 10, and any grants obligated after November 10 and before the waiver is finalized would not be covered by the proposed waiver. In addition, although not proposed to be included in the waiver, DOT is requesting information on potential impacts for projects with existing grant awards for which additional Federal funds will be awarded in future grants or amendments, and for which not all contracts including construction materials have been awarded by the recipient with pre-award authority. For example, this could include a Capital Investment Grant project with a Full Funding Grant Agreement for which not all funds have yet been obligated.

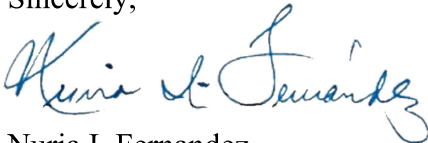


The other DOT proposal would affect Buy America generally, not just for construction materials, by waiving Buy America for certain de minimis costs, small grants, and minor components.

I hope that each of you will have the opportunity to read these proposals and share your comments by the November 20, 2022, deadline. Wherever possible, we encourage you to provide specific, detailed information in response to the questions posed in the waivers.

Should you have any questions about the changes that will affect construction materials after November 10, please contact the regional counsel for the FTA [region](#) in which you are located, or [jason.luebbers@dot.gov](mailto:jason.luebbers@dot.gov). If you have any questions about DOT's proposed waivers, please use the respective points of contact named in each proposed waiver.

Sincerely,

A handwritten signature in blue ink that reads "Nuria I. Fernandez". The signature is written in a cursive style with a large, stylized "N" and "F".

Nuria I. Fernandez

The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies. The public should refer to FTA's statutes and regulations for applicable requirements.