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Request for Qualifications (RFQ) Transit Reorganization Study



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I. Agency Overview

The City of Fargo, North Dakota, and the City of Moorhead, Minnesota, cooperatively operate Metro Area Transit (MATBUS) public transportation services in the metropolitan area. Each jurisdiction is currently a federal grantee for Federal Transit Administration (FTA) Section 5307 appropriations. With the implementation of 2020 United States Census, the population of the Fargo-Moorhead metropolitan area has exceeded 200,000 and the FTA now considers the area a large urbanized area (UZA).

As a large UZA, there are new grant programs directly allocated (Section 5310 and 5339) with related and expanded requirements. These changes in federal requirements provide opportunities to consolidate assets and personnel, identify methods for distribution of federal funds and identify methods to allocate transit costs between participating jurisdictions in the Fargo-Moorhead UZA.

II. Purpose of Request

The intent of this RFQ is to receive proposals from qualified firms to provide planning services to address coordination of transit services throughout the Fargo-Moorhead UZA, by providing a detailed plan for the reorganization of existing Fargo and Moorhead transit staff under a new governance model, outline new FTA requirements and opportunities to reduce duplication between grantees, develop formulas for distribution of federal funds between jurisdictions and provide an equitable cost allocation formula for participating entities for transit service operating costs.

III. Background Information

Previous Studies:

The Metropolitan Council of Governments (Metro COG) and its partners studied the reorganization of the structure of MATBUS as the metropolitan area transitions to a Transportation Management Area (TMA) and Large Urban transit system to meet current and future needs for coordinating and providing transit service, and to improve management of the MATBUS organization. This transit reorganization study will build on previous related studies that formed the strategic direction and preferred growth scenarios for MATBUS operations. Two related studies are identified as:

- 2018 MATBUS Transit Facility Study
- 2020 Transit Authority Study

The 2020 study outlined options for possible formation of a Transit Authority and changes in funding and operation as Fargo becomes the direct recipient of funds for the metro area. The recommendations of the study outlined next steps, including

creation of a governance and staffing model and cost allocation plan. Although recommended in the 2020 Study, a transit authority is not being pursued at this time, but may be considered in the future. Since the 2020 Study, Fargo Transit has transitioned to an Enterprise Fund in preparation for the future.

Current Agreements:

Fargo and Moorhead currently operate transit services cooperatively under a Master Joint Powers Agreement dated January 31, 2018, which outlines responsibilities as well as cost and revenue sharing formulas. The Metro Area Transit (MAT) Coordinating Board provides guidance and recommendations to the elected officials under a Joint Powers Agreement between the City of Fargo and City of Moorhead dated December 6, 2011, and related By-Laws updated on September 28, 2012.

Currently, the City of West Fargo purchases transit service from the City of Fargo. The City of Dilworth purchases transit service from the City of Moorhead. Valley Senior Services provides service in rural Cass County as well as in the urban areas of Fargo-Moorhead. Moorhead and Dilworth have a Joint Powers Agreement with Valley Senior Services for Metro Senior Ride Service in their perspective jurisdictions.

Revenue agreements with the area colleges and universities are also in place in each jurisdiction.

The Cities of Grand Forks and East Grand Forks operate a coordinated metropolitan transit system. In their organization, East Grand Forks purchases service from Grand Forks under an Indirect Cost Allocation Plan. A copy of the cost sharing spreadsheet will be provided as a resource for this study.

This transit study will recommend options to simplify cost and revenue sharing, and provide an avenue for expanded local transit funding for additional bus service. The study will recommend a governance structure that provides participants involvement in the budget and management process in order to direct service levels and agree on reasonable costs.

The City of Fargo could lead the transition to a permanent change in governance structure towards a North Dakota transit authority, with Moorhead purchasing service from the City of Fargo or future transit authority. The Cities of West Fargo, North Dakota, and Dilworth, Minnesota, could also purchase service from the City of Fargo under a proposed new governance model.

Grant Agreements:

The Fargo-Moorhead UZA is bi-state. Fargo and Moorhead are currently each

direct recipients of FTA 5307 funds as designated by the Governors of each State. The study will include meetings with Federal and State grantor agencies to determine if the splitting of federal grants funds between jurisdictions can be accomplished through internal agreements or if multiple federal grantees will be needed. The City of Moorhead must remain the grantee for State of Minnesota operating assistance.

Contained in Exhibit C is correspondence from FTA on the process for certifying designated recipient(s) for FTA funds and approvals by State Governors as a new Large UZA. This study will require identification options and benefits to either become a single grantee or remain as separate grantees, including identification of formulas for splitting grant funds between the two existing grantees. Included in Exhibit C are several templates provided by the Fort Collins/Loveland, CO, UZA, as examples. In addition, the study will ascertain whether or not a single federal grantee would be beneficial by substantially reducing reporting requirements (such as the National Transit Database report, financial and milestone grant reports, DBE reports, charter service reports, etc.) and eliminating duplicate plans (such as the Safety Plan, the Transit Asset Management Plan, Title VI Plan, Human Services Coordination Plan, DBE Program, etc.).

Gubernatorial approval of funding splits or allocations will be needed by both North Dakota and Minnesota. The split formula, gubernatorial approval and notification to FTA must be accomplished prior to FFY2024 (October 1, 2023).

IV. Project Objective

- Outline of new grant requirements and coordination with FTA, MnDOT and NDDOT, identification of options and benefits if consolidate Federal grantees and reductions in reports and plans, and potential effect on staffing
- New Governance Model and new board/oversight committee
- New organizational structure utilizing existing staff and identifying any changes needed for the new grant requirements and governance model
- Cost Allocation Formula for transit systems purchasing service from City of Fargo (Designated FTA Grantee)
- Federal funding split or alternate allocation between Fargo, ND and Moorhead, MN for FFY2024. Draft letter to State Governors for approval and to FTA for implementation.
- Incorporate study outcomes into revised agreements

V. Project Budget

This is a joint project between the City of Fargo and City of Moorhead with cost sharing of 50/50. Total project cost not to exceed \$50,000. This project is contained in the 2023 Transportation Improvement Plan, with FTA 5307 funding funds (CFD or assistance listing #20.507) of 80% and local match funds of 20%. The awarded contractor will have one joint contract with the two cities, but will invoice each City based on the 50/50 formula.

VI. Definitions

- 1) The terms "request for qualifications, RFQ, proposal, RFP, bid, offer" are synonymous and mean a solicitation of a formal sealed qualifications and proposal and refer to the product required by the Request for Qualifications.
- 2) The terms "City of Fargo, City of Moorhead, Cities, Cities of Fargo and Moorhead, MAT, MATBUS, Fargo Transit, Moorhead Transit, Grantee, Transit Office", are synonymous and mean the Cities of Fargo and/or Moorhead.
- 3) The terms "Bidder, Contractor, Offerer, Proposer, Vendor, Firm, Company" are synonymous and mean the offerer or vendor.
- 4) Additional Acronyms Used throughout the document
 - a. GTC – Ground Transportation Center
 - b. MTG – Metro Transit Garage
 - c. FTA – Federal Transit Administration
 - d. NDDOT – North Dakota Department of Transportation
 - e. MnDOT – Minnesota Department of Transportation

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 Fargo and 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 Fargo and City of Moorhead Transit and FTA can pursue the matter further in the Minnesota state courts.

VIII. Scope of Work and Performance Tasks

Task 1: Project Management

Day to day project management efforts, including monthly invoicing and progress reporting, periodic meetings with Fargo Transit Director and Moorhead Transit Manager.

Project Working Group (PWG) – Schedule and facilitate up to four project working group (PWG) meetings. PWG meetings are comprised of administrative and technical level staff as determined by the City of Fargo and the City of Moorhead.

Task 2: Outline of new grant requirements and coordination with FTA, MnDOT and NDDOT, identification of options and benefits of consolidation of Federal grantees and reductions in reports and plans, and potential effect on staffing.

Changes in Federal Requirements – Identify new grant requirements applicable to a Large Urban and options to remove redundancy in reporting and plans/programs in order to determine staffing needs. Identify staffing to monitor potential subrecipients of Section 5310/5339 funds for compliance.

Task 3: New Governance Model and new board/oversight committee

Governance Model – Develop a detailed governance model for oversight and management of the MATBUS system, including relationships between local, state and Federal entities. Provide a detailed framework for operations, administration, and funding/cost sharing of the new governance model that maximizes and recognizes various state and federal funding resources. Establish a new

board/oversight committee.

Task 4: New organizational structure utilizing existing staff and identifying any changes needed for the new grant requirements and governance model

Organization/Staffing Plan – Develop a detailed organization/staff chart and plan demonstrating the evolution of the new structure, efficient utilization of existing transit staff and inclusion of any new staff requirements identified in Task 2. The new chart should take into consideration the imminent retirement of senior transit administrators. The study should also identify functions that will continue through coordination with other City of Fargo and City of Moorhead departments, such as IT, HR, Legal, Finance, Drug and Alcohol Testing, etc. This includes specific roles and responsibilities of staff from participating and partner entities to support the new governance model. Establish FTEs needed under the new structure.

Task 5: Cost Allocation Formula for transit systems purchasing service from City of Fargo (Designated FTA Grantee)

Task 6: Federal funding split or alternate allocation between Fargo, ND and Moorhead, MN for FFY2024. Draft letter to ND/MN governors for approval and to FTA for implementation. This federal funding allocation formula will need to be approved by City of Moorhead and City of Fargo and approved by the governors by September 1, 2023 for submission to FTA for the FFY2024.

Task 7: New Joint Powers Agreement

For purposes of this study, any agreements drafted by the contractor will be reviewed in detail by the cities' legal teams. Contractor will not need to vet agreements through any legal process.

New Board/Oversight Committee – Based on work completed in Task 3 regarding a Governance Structure.

Model and Organization/Staff Plan - Develop a new Joint Powers Agreement (JPA) establishing a new governing/management board for MATBUS.

Cost Sharing Agreement – Develop a revised operational/cost sharing agreement to support operation of new MATBUS organization structure.

Task 8: Project Communications

Provide updates and presentations as needed to support education and information

sharing on the decision-making process to initiate and complete the transition towards a new MATBUS management structure. Included would be up to six (6) presentations/briefings/project updates to the following groups:

- Moorhead City Council
- Dilworth City Council
- Fargo City Commission
- West Fargo City Commission
- MATBUS Coordinating Board
- Metro COG Policy Board

IX. Implementation Schedule

1) Timeline/Schedule

Date	Description
May 12, 2023	Release of RFQ
May 19, 2023	Requests for Clarification Due
May 22, 2023	Cities provide written response to requests for clarification
May 26, 2023	Deadline for receipt of sealed qualifications and separate sealed cost proposals by 2:00 p.m. CDT in the Metro transit Garage, 650 23 rd St N, Fargo, ND 58102
May 27-June 6, 2023	Cities review and evaluate proposals, interview candidate(s) as needed
June 12, 2023	Award at Moorhead City Council and Fargo City Commission
June 16, 2023	Contract signed and notice to proceed

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

2) Project Development (Major Milestones)

Date	Description
July 1, 2023	Complete Task 2
July 8, 2023	Complete Task 5
Aug. 1, 2023	Complete Task 3
Aug. 15, 2023	Complete Task 4
Sept. 1, 2023	Complete Task 6
Oct. 1, 2023	Complete Task 7
Dec. 1, 2023	Complete Task 8
Dec. 31, 2023	Finalize study and approvals

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. Task 6 completion must occur by September 1, 2023.

X. Evaluation and Selection Process

Selection Committee. The Cities of Fargo and Moorhead will establish a selection committee to determine which firm, by its determination, has the best skills and approach to complete the project. The Cities 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 and State of North Dakota 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 Cities of Fargo and 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 Cities reserve the right to reject any or all proposals or to waive minor irregularities in said proposal, and reserve the right to negotiate minor deviations to the proposal with the successful firm. The Cities reserves the right to award a contract to the consulting firm or individual that presents the proposal, which, in the sole judgement of the Cities, best accomplishes the desired results.

This RFQ does not commit the Cities 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 Cities reserve the right to withdraw this RFQ at any time without prior notice.

All proposals, whether selected or rejected, shall become the property of the Cities of Fargo and 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 Fargo City Administrator and 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 Cities, 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:

- 5) **Contact Information.** Name, telephone number, email address, mailing address, and other contact information for the Firm's project manager.
- 6) **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.
- 7) **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.
- 8) **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.

9) **Signature.** Proposals shall be signed in ink by an authorized member of the firm/project team. An electronic signature on the proposal will be accepted.

10) **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

XII. Submittal Information

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

Lori Van Beek
Moorhead Transit Manager
Metro Transit Garage
650 23rd St N
Fargo ND, 58102
LVanbeek@matbus.com

Julie Bommelman
Fargo Transit Director
Metro Transit Garage
650 23rd St N
Fargo ND, 58102
jmsmith@fargond.gov

All proposals received by **2:00 pm CDT on Friday, May 26, 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.

Requests for clarification or modification of the RFQ should be submitted by **Friday, May 19, 2023**. The Cities reserve the right to decline a response to any question if, in the Cities assessment, the information cannot be obtained and shared with all potential firms in a timely manner. A summary of the requests for clarification or modification and responses will be posted on the MATBUS website by end of day on **Monday, May 22, 2023**.

Addenda

In the event it becomes necessary to revise any part of this RFQ, or if additional information is necessary to enable the proposer to make an adequate interpretation of the provisions of this RFQ, a written addendum to the RFQ will be posted on our website and notice provided to each prospective proposer by e-mail. Receipt of all addenda must be acknowledged by each prospective proposer as requested on Exhibit A, Cost Proposal Form. Oral instructions by Cities representatives are not binding.

All communications related to this RFQ will be posted on our website;
<http://matbus.com/doing-business/current-procurements>.

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 Cities may decide, in their 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 Cities are 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 Cities 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 Cities project until the requirement is met. Firms that have submitted all the necessary information to the Cities 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 Cities support 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 Cities reserve 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 Cities shall not pay for any information contained in proposals obtained from participating firms.
- 2) The Cities reserve 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 Cities will have the right to terminate its contract by specifying the date of termination in a written notice to the Firm at least fifteen (15) 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 Cities and shall contain, as a minimum, applicable provisions of the RFQ. The Cities reserve the right to reject any agreement that does not conform to the RFQ and any the Cities 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 Cities.

XV. Payments

The selected firm shall submit invoices for work completed to the Cities. Payments shall be made to the Firm by the Cities 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 Cities.

XVI. Federal Funds

A portion of this project will be grant funded through the Federal Transit Administration (FTA) 5307 Formula Grant program CFD 20.507; and the City of Moorhead and City of Fargo local match 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 Cities 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 Cities, FTA, MnDOT or NDDOT 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 Cities, FTA or State DOTs, 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 Cities, FTA and or State DOTs 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 Cities, 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 Cities enter into such litigation to protect the interests of the Cities; 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 Cities 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 Cities.

The Cities may cancel or reduce the amount of service to be rendered if there is, in the opinion of the Cities, 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 Cities will notify the Firm in writing fifteen (15) days in advance of the date such actions are to be implemented.

In the event of any termination, the Cities shall pay the agreed rate only for services delivered up to the date of termination. The Cities have no obligation to the Firm, of any kind, after the date of termination. The Firm shall deliver all records, equipment, and materials to the Cities 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 Cities and

may not be used, reproduced, or released in any form without the explicit, written permission of the Cities.

The Firm should expect to have access only to the public reports and public files of local governmental agencies and the Cities 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 Cities or in any way compromise the services to be performed under this agreement. The Firm shall immediately notify the Cities of any and all potential violations of this paragraph upon becoming aware of the potential violation.

XXI. Insurance

The Firm will provide the Cities 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.

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 and the City of Fargo, its agencies, officers and employees, from and against claims based on the vicarious liability of the City of Moorhead and the City of Fargo, its agencies, but not against claims based on the City of Moorhead and/or the City of Fargo, 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 and the City of Fargo 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 City of Fargo is necessary. The Firm also agrees to defend, indemnify, and hold the City of Moorhead and the City of Fargo harmless for all costs, expenses and attorneys' fees incurred if the City of Moorhead and the City of Fargo prevail 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 and the City of Fargo 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 and the City of Fargo 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 and/or City of Fargo. Any insurance, self-insurance or self-retention maintained by the City of Moorhead and/or, City of Fargo shall be in excess of the Firms 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 and City of Fargo 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 Cities, the Firm is agreeing to be bound by the federal clauses and certifications, as applicable, contained in Exhibit D.

Exhibit A – Cost Proposal Form

Cost Proposal Form – Include completed cost form (see below) 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. Acknowledgment of all addenda issued and proposer’s signature are required on the Summary Project Cost form.

REQUIRED BUDGET FORMAT Summary of Estimated Project Cost

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.	Overhead/Indirect Cost (expressed as indirect rate x direct labor)					0.00	0.00
3.	Subcontractor Costs					0.00	0.00
4.	Materials and Supplies Costs					0.00	0.00
5.	Travel Costs					0.00	0.00
6.	Fixed Fee					0.00	0.00
7.	Miscellaneous Costs					0.00	0.00
Total Cost					=	0.00	0.00

Acknowledgement of Addenda:

The undersigned acknowledges receipt of the following addenda to the RFQ solicitation:

Addendum No. _____ Dated _____
Addendum No. _____ Dated _____
Addendum No. _____ Dated _____
Addendum No. _____ Dated _____

Addendum No. _____ Dated _____

PROPOSER'S NAME: _____

DATE OF SIGNING: _____

SIGNATURE BY: _____

TITLE: _____

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 — FTA Correspondence on New Large Urban and
Template Samples from Fort Collins-Loveland, CO**

Exhibit D – Federal Clauses



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

REGION 8
Colorado, Montana,
North Dakota,
South Dakota,
Utah and Wyoming

1961 Stout Street
Suite 13301
Denver, Colorado 80294
(303) 362-2400 (voice)

February 10, 2023

Mayor Tim Mahoney
City of Fargo
225 4th Street North
Fargo, North Dakota 58102

RE: 2020 Census - Urbanized Areas of 200,000 or More in Population

Dear Mayor Mahoney:

This letter is to inform you of upcoming changes to the Federal Transit Administration's (FTA's) allocation of Urbanized Area Formula Grants (Section 5307) and Formula Grants for Rural Areas (Section 5311), and other FTA formula-based programs authorized by the Bipartisan Infrastructure Law, enacted on November 15, 2021. These changes result from the Census Bureau's recent publication of new urban area boundaries based on 2020 Census data and will affect how funding is awarded to grantees beginning in Federal Fiscal Year (FY) 2024, which begins on October 1, 2023. Funds apportioned prior to FY 2024 will not be affected and may continue to be used under the terms for which they were originally apportioned.

The U.S. Census Bureau has notified FTA that the population in **Fargo, ND-MN is 216,214**. This has led FTA to classify the City as a *Large Urbanized Area* (UZA) – the category for jurisdictions with a population over 200,000. This change will affect the amount of funding the City will receive in Federal FY 2024 under FTA's Section 5307 Urbanized Area Formula Program and potentially other urban-focused formula programs. In order to receive funding through FTA and other Federal transportation funding programs, transit providers in UZAs are required to participate in the federally prescribed multimodal planning processes of a metropolitan planning organization (MPO). The MPO for the UZA will be required to comply with Federal planning requirements by preparing a Unified Planning Work Program (UPWP), a Metropolitan Transportation Plan (MTP), and a Transportation Improvement Program (TIP). These documents will enable transit providers to receive Section 5307 funding and access funding opportunities from a range of other sources. Funding will also be allocated to the MPO to support transit planning activities, as provided in 49 U.S.C. 5305.

For a new large UZA the Governor, in cooperation with providers of publicly owned public transportation service in the UZA and the appropriately designated MPO for the UZA, must select a designated recipient of Section 5307, 5310 (Enhanced Mobility of Seniors & Individuals with Disabilities), 5337 (State of Good Repair Program), and/or 5339(a) (Buses and Bus Facilities Formula Program) funds, as applicable, which will be responsible for sub-allocating FTA formula funding to other transit providers and recipients in the UZA. For multi-state large UZAs, the Governors of the States must coordinate in the selection or concurrence of one or more designated recipients. In addition to other responsibilities detailed in Chapter II of FTA Circular 9030.1E (Urbanized Area Formula Program: Program Guidance and Application Instructions), the designated recipient(s) will be responsible for sub-allocating FTA formula funding to other transit providers and recipients in the UZA.

The allocation of formula funding to your area in FY 2024 will be based on specific variables set in federal law. A summary of [FTA formula factors by formula program](#) is available on FTA's website. For more detailed information on how funding made available under each of the FTA formula grant programs is apportioned, including the weighting of specific variables driving the apportionments, visit [FTA's 'Formula Flowcharts' webpage](#).

The following summarizes the changes that will apply to transit providers in large UZAs that were previously designated as a small UZA:

- Transit providers will be eligible to receive funds under the Section 5307 Urbanized Area Formula Program and potentially other formula funds made available for use in large UZAs.
- MPOs that serve areas designated as a transportation management area (TMA) will need to include representation from providers of public transportation on the MPO's governing body. (Note that all UZAs over 200,000 in population are TMAs.)
- Designated recipients of Section 5310 funds are required to certify that projects selected for funding under Section 5310 are included in a locally developed, coordinated public transit human services transportation plan. Additional information about this requirement can be found in [FTA Circular 9070.1G](#).
- Transit providers that are eligible public entities may elect to become or remain a direct recipient of FTA funds. Direct recipients are subject to oversight by FTA, which includes additional reporting requirements and compliance reviews (e.g., triennial reviews).
- With the applicable designated or direct recipient's approval, transit providers that are eligible public entities may also become or remain subrecipients of a designated or direct recipient, respectively. To receive Section 5310 funds, any recipients other than the designated recipient must be subrecipients of that entity.
- Private non-profit organizations that provide public transit services in large UZAs may only receive Section 5307 funds as a subrecipient if they are carrying out Job Access and Reverse Commute projects as defined in [49 U.S.C. 5302\(10\)](#). Private non-profit organizations are eligible subrecipients for Section 5339(a) funds for public transportation projects and for Section 5310 funds (for certain public transportation projects and certain alternatives to public transportation) made available for use in UZAs.
- Except for those operators for which safety is regulated by another Federal agency, transit providers that receive Section 5307 funds and serve a large UZA must establish a Safety Committee, and the Safety Committee must approve an update to their Agency Safety Plan (ASP) incorporating applicable Public Transportation Agency Safety Plan requirements as defined in [49 U.S.C. 5329\(d\)](#).
- Recipients must be in compliance with applicable FTA requirements and have completed the FTA Certifications and Assurances before FTA can award FY 2024 funding.

A summary of additional changes to select program requirements that apply to a change in area designation, along with other information on the 2020 Census, is provided on the [FTA Census Resources and Information](#) webpage. For general guidance related to the Section 5307 program, please consult [FTA Circular 9030.1E](#). Please contact Ms. Ranae Tunison in our FTA Region 8 office at Ranae.Tunison@dot.gov should you have any questions.

Sincerely,

CINDY ELISE TERWILLIGER Digitally signed by CINDY ELISE TERWILLIGER
Date: 2023.02.10 15:50:28 -07'00'

Cindy Terwilliger
Regional Administrator

cc: Ms. Julie Bommelman, City of Fargo
Ms. Lori Van Beek, City of Moorhead
North Dakota DOT: Ron Henke, Director and Paul Benning, Transportation Division Director
FTA Region 8: Tracey MacDonald, Ranae Tunison



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

REGION 8
Colorado, Montana,
North Dakota,
South Dakota,
Utah and Wyoming

1961 Stout Street
Suite 13301
Denver, Colorado 80294
(303) 362-2400 (voice)

February 10, 2023

Governor Doug Burgum
State of North Dakota
600 East Boulevard Avenue
Bismark, North Dakota 58505-0001

Dear Governor Burgum:

This letter is to inform you of upcoming changes to the Federal Transit Administration's (FTA's) allocation of Urbanized Area Formula Grants (Section 5307), Formula Grants for Rural Areas (Section 5311), and other FTA formula-based programs authorized by the Bipartisan Infrastructure Law enacted on November 15, 2021. These changes result from the Census Bureau's recent publication of new urban area boundaries based on 2020 Census data and will affect how funding is awarded to grantees beginning with the release of the Federal Fiscal Year (FY) 2024 budget and apportionments. Some of these changes may require the Governor to select a new designated recipient to administer/allocate funds to new direct recipients and/or subrecipients.

The allocation of formula funding to the State for small urbanized areas (UZAs) in FY 2024 will be based on specific variables set in Federal law. A summary of FTA formula factors by formula program is provided on the [FTA Census Resources and Information webpage](#). Funds apportioned prior to FY 2024 will not be affected and may continue to be used under the terms for which they were originally apportioned. For example, funds apportioned under the Section 5311 program for rural areas prior to FY 2024 may continue to be used for areas that were classified as rural prior to the 2020 Census for purposes eligible under the Section 5311 program.

The following two changes have been identified in the State of North Dakota:

- **the City of Minot (population of 50,925) is now designated as a *Small UZA***
- **the City of Fargo, ND-MN (population of 216,214) is now designated as a *Large UZA***

For areas designated as a small UZA (with populations between 50,000-199,999):

- Transit providers will be eligible to receive funds under the Section 5307 Urbanized Area Formula Program and potentially other formula funds made available for use in small UZAs. Funding for all small UZAs in the State will be apportioned as a lump sum to the Governor or designee, who is then responsible for allocating these funds to the various small UZAs in the State. States notify FTA Regional Offices of small UZA allocations via annual "Split Letters."
- Amounts based on ridership and census data specific to each small UZA in the State are published by FTA for informational purposes only and are non-binding.
- For multi-state small UZAs, the apportionment for your State will include an amount attributable to your State's share of the small UZA's population.

For areas designated as a large UZA (population of 200,000 and greater):

- Transit providers will be eligible to receive funds under the Section 5307 Urbanized Area Formula Program and potentially other formula funds made available for use in large UZAs. If a designated recipient has not yet been selected for each large UZA in your State, then the Governor must select an organization--typically either a large transit agency or the Metropolitan Planning Organization (MPO) to serve as the locally designated recipient of Section 5307, 5310 (Enhanced Mobility of Seniors & Individuals with Disabilities Program), and 5339(a) (Buses and Bus Facilities Formula

Program) funds, as applicable. This recipient will sub-allocate and pass-through FTA formula funding to other transit providers and recipients in the UZA. The designated recipient does not need to be the same for all formula programs but can be. For multi-state large UZAs, the Governors of the two or more States must coordinate in the selection or concurrence of designated recipients.

- If a designated recipient for a large UZA has previously been selected, then either the Governor or the designated recipient must submit documentation to the FTA Regional Office for any transit providers that are new to operating in the UZA have concurred in the selection of the designated recipient(s).
- MPOs that serve areas designated as a transportation management area (TMA) will need to include representation from providers of public transportation on the MPO's governing body. Note that all UZAs with a population of 200,000 or more will be TMAs. A notice from both FHWA and FTA that formally lists new TMAs will be published in the Federal Register.

Items applicable to both small and large UZAs:

- Transit providers in UZAs should fully participate in the planning activities of a newly designated or expanded MPO. The MPO, transit providers, and the State will be required to coordinate the programming of Federal transit funding.
- Eligible public entities may elect to become direct recipients of FTA funds. Direct recipients are subject to oversight by FTA, which includes additional reporting requirements and compliance reviews (e.g., triennial reviews). However, with the State or designated recipient's approval, eligible transit providers may also become or remain subrecipients. To receive Section 5310 funds, any recipients other than the Designated Recipient must be subrecipients of the Designated Recipient.
- Private non-profit organizations that provide public transit services in small UZAs may only receive Section 5307 funds as a subrecipient if they are carrying out Job Access and Reverse Commute projects as defined in 49 U.S.C. 5302(10). Private non-profit organizations are eligible subrecipients of Section 5339(a) (Buses and Bus Facilities Formula Program) funds for public transportation projects and for Section 5310 funds (for certain public transportation projects and certain alternative to public transportation) made available for use in UZAs.

In addition to the above-referenced changes, the changes in population between the 2010 Census and 2020 Census will also affect the amount of Federal transit funding that rural areas and UZAs will receive under both rural and urbanized area formula programs, respectively. Please refer to the FTA Census Resources and Information webpage for more information, including a summary of changes to program requirements that apply to a change in area designation. For more detailed information on how funding made available under each FTA formula grant program is apportioned, visit FTA's 'Formula Flowcharts' webpage. Additional information on the Census updates is also available on the FTA website. Please contact Ms. Ranae Tunison in our FTA Region 8 office at Ranae.Tunison@dot.gov should you have any questions.

Sincerely,

CINDY ELISE TERWILLIGER
Digitally signed by CINDY ELISE
TERWILLIGER
Date: 2023.02.10 16:09:07 -07'00'

Cindy Terwilliger
Regional Administrator

cc: Secretary of State Michael Howe
North Dakota DOT: Ron Henke, Director and Paul Benning, Transportation Division Director
FTA Region 8: Tracey MacDonald, Ranae Tunison

2022 - PROPOSED 5307 BASE ALLOCATIONS(2) -

	Loveland	Berthoud
Population	#DIV/0!	#DIV/0!
Population x Density	\$ -	\$ -
Bus Revenue Miles	#DIV/0!	#DIV/0!
Bus Incentive(1)	#DIV/0!	#DIV/0!
FLEX Contribution from the TMA		
	#DIV/0!	#DIV/0!

Minus FLEX 2021 FLEX Contributions

\$ 116,102

Full Amount

62%

Swap Ratio

#DIV/0!

#DIV/0!

Remaining

\$5,687,110

NFRMPO	Fort Collins
N/A	#DIV/0!
N/A	\$ -
#DIV/0!	#DIV/0!
#DIV/0!	#DIV/0!
	\$ 350,000
#DIV/0!	#DIV/0!

62%

#DIV/0!

#DIV/0!

#DIV/0!

#DIV/0!

**2023 TOTAL 5307 APPORTIONMENT
MINUS TMA COMMITMENT TO FLEX
2023 REMAINING APPORTIONMENT TO DISTRIBUTE**

\$ -

Apportionment Calculation # 1 - Population

	Service Area Population within TMA				
	Population	Area (mi ²)	Population Density	%	Low Income
City of Fort Collins		54.00	0.0	#DIV/0!	0
City of Loveland		32.00	0.0	#DIV/0!	0
Town of Berthoud		9.75	0.0	#DIV/0!	0
Other					
TOTALS		95.75	-	#DIV/0!	-

25% of 90.8% of Remaining Apportionment

\$ -

Apportionment Calculation # 2 - Population x Density

25% of 90.8% of Remaining Apportionment

\$ -

Apportionment Calculation # 3 - Bus Revenue Miles

50% of 90.8% of Remaining Apportionment

\$ -

Loveland Revenue Miles		#DIV/0!
Fort Collins Revenue Miles		#DIV/0!
Berthoud Revenue Miles		#DIV/0!
NFRMPO Revenue Miles		#DIV/0!
	0	

Apportionment Calculation # 4 - Bus Incentive

9.2% of Remaining Apportionment

\$ -

Bus Passenger Miles x Bus Passenger Miles/Operating Expenses

Loveland Passenger Miles		Loveland Operating Expenses		#DIV/0!
Fort Collins Passenger Miles		Fort Collins Operating Expenses		#DIV/0!
Berthoud Passenger Miles		Berthoud Operating Expenses		#DIV/0!
NFRMPO Passenger Miles		NFRMPO Operating Expenses		#DIV/0!
	0		\$ -	

2021 - PROPOSED 5339 BASE ALL

Loveland	
Population	#DIV/0!
Population x Density	\$ -
Bus Revenue Miles	#DIV/0!
Bus Incentive(1)	#DIV/0!
	#DIV/0!

	Full Amount
Swap Ratio	#DIV/0!
Remaining	

OCATIONS(2) - \$420,665

Berthoud	NFRMPO	Fort Collins
#DIV/0!	N/A	#DIV/0!
\$ -	N/A	\$ -
#DIV/0!	#DIV/0!	#DIV/0!
#DIV/0!	#DIV/0!	#DIV/0!
#DIV/0!	#DIV/0!	#DIV/0!

62%
#DIV/0!

62%
#DIV/0!

#DIV/0!

#DIV/0!
#DIV/0!

2021 TOTAL 5339 APPORTIONMENT

Apportionment Calculation # 1 - Population

	Service Area Population within TMA				
	Population	Area (mi ²)	Population Density	%	Low Income
City of Fort Collins		54.00	0.0	#DIV/0!	0
City of Loveland		32.00	0.0	#DIV/0!	0
Town of Berthoud		9.75	0.0	#DIV/0!	0
Other					
TOTALS		95.75	-	#DIV/0!	-

25% of 90.8% of Apportionment

\$ -

Apportionment Calculation # 2 - Population x Density

25% of 90.8% of Remaining Apportionment

\$ -

Apportionment Calculation # 3 - Bus Revenue Miles

50% of 90.8% of Remaining Apportionment

\$ -

Loveland Revenue Miles		#DIV/0!
Fort Collins Revenue Miles		#DIV/0!
Berthoud Revenue Miles		#DIV/0!
NFRMPO Revenue Miles		#DIV/0!
	0	

Apportionment Calculation # 4 - Bus Incentive

9.2% of Remaining Apportionment

\$ -

Loveland Passenger Miles		Loveland Operating Expenses		#DIV/0!
Fort Collins Passenger Miles		Fort Collins Operating Expenses		#DIV/0!
Berthoud Passenger Miles		Berthoud Operating Expenses		#DIV/0!
NFRMPO Passenger Miles		NFRMPO Operating Expenses		#DIV/0!
	0		\$ -	

2022 - PROPOSED 5310 BASE ALL

Loveland	
Population	#DIV/0!
Population x Density	\$ -
Bus Revenue Miles	#DIV/0!
Bus Incentive(1)	#DIV/0!
	#DIV/0!

	Full Amount
Swap Ratio	#DIV/0!
Remaining	

OCATIONS(2) - \$343,067

Berthoud	NFRMPO	Fort Collins
#DIV/0!	N/A	#DIV/0!
\$ -	N/A	\$ -
#DIV/0!	#DIV/0!	#DIV/0!
#DIV/0!	#DIV/0!	#DIV/0!
#DIV/0!	#DIV/0!	#DIV/0!

62%

62%

#DIV/0! #DIV/0!

#DIV/0!

#DIV/0!

#DIV/0!

2022 TOTAL 5310 APPORT

Apportionment Calculation # 1 - Population

	Population
City of Fort Collins	
City of Loveland	
Town of Berthoud	
Other	
TOTALS	0

25% of 90.8% of Apportionment

Apportionment Calculation # 2 - Population x Density

25% of 90.8% of Remaining Apportionment

Apportionment Calculation # 3 - Bus Revenue Miles

50% of 90.8% of Remaining Apportionment

Loveland Revenue Miles	
Fort Collins Revenue Miles	
Berthoud Revenue Miles	
NFRMPO Revenue Miles	
	0

Apportionment Calculation # 4 - Bus Incentive

9.2% of Remaining Apportionment

Loveland Passenger Miles
Fort Collins Passenger Miles
Berthoud Passenger Miles
NFRMPO Passenger Miles

0

IONMENT

Service Area Population within TMA			
Area (mi ²)	Population Density	%	Low Income
	#DIV/0!	#DIV/0!	0
	#DIV/0!	#DIV/0!	0
	#DIV/0!	#DIV/0!	0
0.00	#DIV/0!	#DIV/0!	-

\$ -



\$ -

\$ -

#DIV/0!
#DIV/0!
#DIV/0!
#DIV/0!

\$ -

Loveland Operating Expenses
Fort Collins Operating Expenses
Berthoud Operating Expenses
NFRMPO Operating Expenses

#DIV/0!
#DIV/0!
#DIV/0!
#DIV/0!

\$

-

June 10, 2022

RE: FFY2022 SECTIONS 5307, 5310 & 5339 FUNDING EXCHANGE

Dear Mx. XXX:

The City of Fort Collins, as designated recipient of FFY 2022 FTA formula funding for program 5307, 5339 and 5310, proposes the following exchange considerations for the FFY2022 federal formula funding:

- That the Town of Berthoud will relinquish their FFY2022 Section 5307 funding in the amount of \$XXX in exchange for local funds from the City of Fort Collins in the amount of \$XXX.
- That the Town of Berthoud will relinquish their FFY2022 FTA Section 5310 funding in the amount of \$XXX in exchange for local funds from the City of Fort Collins in the amount of \$XXX.
- That the Town of Berthoud will relinquish their FFY2022 FTA Section 5339 funding in the amount of \$XXX in exchange for local funds from the City of Fort Collins in the amount of \$XXX.
- The City of Fort Collins, as designated recipient for the three sources of funding, will designate the Town of Berthoud's former allocations of FTA Section 5307, FTA Section 5310 and FTA Section 5339 funding for alternate transit-related projects within the TMA.
- For every year that an exchange of funds is in effect, the Town of Berthoud will no longer be considered a sub-recipient of the TMA's FTA Section 5307, Section 5310 and FTA Section 5339 annual grants.

The City of Fort Collins, as designated recipient for FTA Section 5307, FTA Section 5310 and FTA Section 5339 formula funds, is pleased to enter into an exchange of funds with the Town of Berthoud and sees the following benefits for the Town of Berthoud as a result of the proposed exchange:

- The elimination of grant management responsibilities
- The elimination of federal procurement guidelines for transit-related expenditures
- Ensuring for more resources to be directed towards the FLEX regional fixed route

Funds will be exchanged when the City of Fort Collins receives approval from the FTA on new grants.

Funds will be exchanged when the City of Fort Collins receives approval from the FTA on the new grant.

Request for Concurrence

If the Town of Berthoud is agreeable to the above stated proposal, the City of Fort Collins requests the written concurrence from the Town of Berthoud by either signing and dating the signature block at the end of this letter, or by separate letter from the Town of Berthoud to the City of Fort Collins. Once this letter of concurrence has been received by the City of Fort Collins, the Town of Berthoud may invoice for the above amounts in order to receive funds in a timely manner.

Please feel free to contact me with any questions or concerns.

Sincerely,

Drew Brooks, Transfort Director

cc: Stephanie Brothers P.E., Public Works Director, Town of Berthoud
Kaley Zeisel, Capital Planning & Grant Compliance Manager, City of Fort Collins
Travis Storin, Chief Financial Officer, City of Fort Collins

Concurrence

By: _____

Title: _____

Date: _____

June 10, 2022

RE: FFY2022 Sections 5307 and 5339 Allocation of Funding, FFY2022 Section 5310 Funding Exchange

Dear Mx. XXX:

The City of Fort Collins, as designated recipient of FFY2022 FTA formula funding for program 5307, 5339 and 5310, proposes the following exchange considerations for the FFY2022 federal formula funding:

- As a direct recipient, the City of Loveland will receive FFY2022 Section 5307 funding in the amount of \$XXX, after withholding 50% of Loveland's remaining FLEX contribution as requested, in the amount of \$XXX.
- As a direct recipient, the City of Loveland will receive FFY2022 FTA Section 5339 funding in the amount of \$XXX.
- The City of Loveland will relinquish their FFY2022 FTA Section 5310 funding in the amount of \$XXX in exchange for 3,310 Dial-A-Taxi trips in calendar year 2023.
- The City of Loveland agrees to expend at least 1% of its allocation of FTA Section 5307 funding on security related projects and 0.75% on safety related projects as defined in FTA Circular 9030.1E Urbanized Area Formula Program: Program Guidance and Application Instructions.
- The City of Loveland will be responsible for obligating their allocation of FTA Sections 5307 and 5339 in FTA's Transit Award Management System (TrAMS).

Request for Concurrence

If the City of Loveland is agreeable to the above stated proposal, the City of Fort Collins requests the written concurrence from the City of Loveland by either signing and dating the signature block at the end of this letter, or by separate letter from the City of Loveland to the City of Fort Collins. Once this letter of concurrence has been received by the City of Fort Collins, the City of Fort Collins will submit a split letter to FTA Region 8 outlining the allocations of ARP funding as agreed upon above.

Please feel free to contact me with any questions or concerns.

Sincerely,

Drew Brooks, Transfort Director

cc: Candice Folkers, Transit Manager, City of Loveland
Kaley Zeisel, Capital Planning & Grant Compliance Manager, City of Fort Collins
Travis Storin, Chief Financial Officer, City of Fort Collins

Concurrence

By: _____

Title: _____

Date: _____

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 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The Bidder or Proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.



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.

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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.

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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.

- ☐ 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]:

(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,

certifies 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 Contractor 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.