



# Fargo-Moorhead Metropolitan Council of Governments

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**To:** MAT Coordinating Board Members  
**From:** Fargo-Moorhead Metropolitan Council of Governments (Metro COG)  
Metro Area Transit (MATBUS)  
**Date:** November 13, 2017  
**RE:** MAT Coordinating Board Agenda and Correspondence

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**70th Meeting of the  
Metro Area Transit Coordinating Board  
November 15, 2017 – 8:00am  
Fargo City Commission Chambers – 200 3<sup>rd</sup> Street North, Fargo ND**

## *Meeting Agenda*

1. Call to Order and Introductions –
  2. Review and Action on Minutes from September 20, 2017 (**Attachment 1**)
  3. Proposed Changes to Route 24 – Matt Peterson (**Attachment 2**)
  4. Preliminary Results of LinkFM Survey – Matt Peterson (**Attachment 3**)
  5. FM Metro Senior Ride Cost Sharing Model – Lori Van Beek/Paul Grindeland/Brian Arett
  6. Proposed 2018 JPA for Metro Senior Ride – Lori Van Beek (**Attachment 4**)
  7. Proposed 2018 Dilworth Transit Service Contract – Lori Van Beek (**Attachment 5**)
  8. MATBUS Operations and Ridership Reports – Matt Peterson
    - a. New Graphs
  9. Proposed Fargo-Moorhead Master Agreement – Julie Bommelman & Lori Van Beek (**Attachment 6**)
  10. Shelter Snow Removal Contract – Julie Bommelman & Lori Van Beek (**Attachment 7**)
  11. Proposed 2018 Meeting Schedule – Julie Bommelman & Lori Van Beek (**Attachment 8**)
  12. Other Business
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Questions, comments or concerns prior to the meeting can be directed to Michael Maddox (701.232.3242 x33; [maddox@fmmetrocog.org](mailto:maddox@fmmetrocog.org)).

*People with disabilities who plan to attend this meeting and need special arrangements should contact Michael Maddox at Metro COG (701.232.3242 Ext. 33), at least two days before the meeting to make arrangements.*

A PLANNING ORGANIZATION SERVING

FARGO, WEST FARGO, HORACE, CASS COUNTY, NORTH DAKOTA AND MOORHEAD, DILWORTH, CLAY COUNTY, MINNESOTA

# Attachment 1

**70<sup>th</sup> Meeting of the  
Metro Area Transit Coordinating Board  
September 18<sup>th</sup>, 2017  
Fargo Commission Chambers**

**Members Present:**

Jim Aasness, Dilworth City Council  
Melissa Fabian, Moorhead City Council  
Paul Grindeland, Valley Senior Services  
Steve Fox, MSUM  
Brit Stevens, NDSU

**Members Absent:**

Brenda Amenson-Hill, MSUM  
Brian Arett, Valley Senior Services  
Tony Gehrig, Fargo City Commission  
Tony Grindberg, Fargo City Commission  
Kevin Hanson, Chair  
Mark Simmons, West Fargo City Commission  
Teresa Stolfus, M|State  
Samantha Westrate, Concordia College  
Sara Watson Curry, Moorhead City Council

**Others Present:**

Adam Altenburg, Metro COG  
Julie Bommelman, City of Fargo  
William Christian, Metro COG  
Shawn Crowell, MATBUS Mobility Manager  
Matt Peterson, City of Fargo  
Jordan Smith, MATBUS Transit Fleet & Facility Manager  
Lori Van Beek, City of Moorhead

A quorum was not present at the meeting. Non-actionable items were presented as information to the Board and no action was taken on any items.

**1. Call to Order and Introductions**

Mr. Altenburg called the meeting to order and introductions were made. Mr. Altenburg stated that Chair Hanson was absent, and that a temporary chair would need to be elected. Ms. Van Beek suggested that Mr. Altenburg serve as acting chair for the meeting.

**2. Review and Action on Minutes from May 17th, 2017.**

No action was taken.

**3. New MATBUS Website**

Mr. Peterson introduced the new MATBUS website which was rolled out in May 2017. He stated that new features include a Trip Planner, Rider Alerts, Real-Time Bus Tracker, updated Calendar with Current Events and News, and a search feature.

**4. Social Media Changes and Constant Contact**

Mr. Peterson informed the Board of several changes made to MATBUS' social media. He stated that these updates were implemented via HootSuite, MATBUS' social media marketing and management dashboard.

He explained that MATBUS' Constant Contact information was recently updated. He stated that in the past, all interested persons would receive a mass email about detours, classes, routes, etc. He explained that with the update, interested persons could now choose which functions and email notifications they would like to receive.

**5. Bus Contract Award (New Flyer Industries), Fargo Transit Grants Update**

Ms. Van Beek provided an update on the federal grant applications. She explained that two busses will be purchased via state and federal grants. She informed the Board that this information would be presented to the Moorhead City Council meeting in September.

**6. Fargo Transit Grants Update**

Ms. Bommelman provided an update transit grants for the City of Fargo. She explained that \$400,000 was awarded for one 35' replacement bus under NDDOT's 5339 Discretionary Capital Bus and Bus Facilities Grant in 2017. She stated that \$846,026 was awarded for two 35' replacement buses as well as computer hardware and mobile surveillance and security equipment under the 5339 grant in 2018. She explained that an additional \$187,128 was awarded for a 35' replacement bus under NDDOT's 5310 Discretionary Capital Grant program in 2018.

She explained that, under the Federal Highway Administration's (FHWA's) transfer to Federal Transit Administration (FTA) Capital – Urban Roads Program (STPU), \$1488,000 was awarded for three or possibly four replacement buses contingent upon final pricing. She stated that this capital allocation has not been finalized.

She informed the Board that the FTA 5307 Capital and Operating programmed full appropriation of \$2,397,121 was not announced until July 2017.

Mr. Smith provided an update on the transit pool. He discussed the cost differences of maintenance and upkeep on the older buses, versus the cost of purchase of a new bus.

**7. Moorhead 2018 Mass Transit Budget Summary**

Ms. Van Beek provided a summary on the Moorhead transit budget for 2018.

**8. MATBUS Operations and Ridership Reports**

Ms. Van Beek and Ms. Bommelman provided an update on operations and monthly ridership reports for July and August.

**9. Paratransit Updates**

Mr. Crowell provided a summary of changes made to the MATBUS Paratransit program in 2017, as well as future goals for the program.

**10. Other Business**

No additional business.

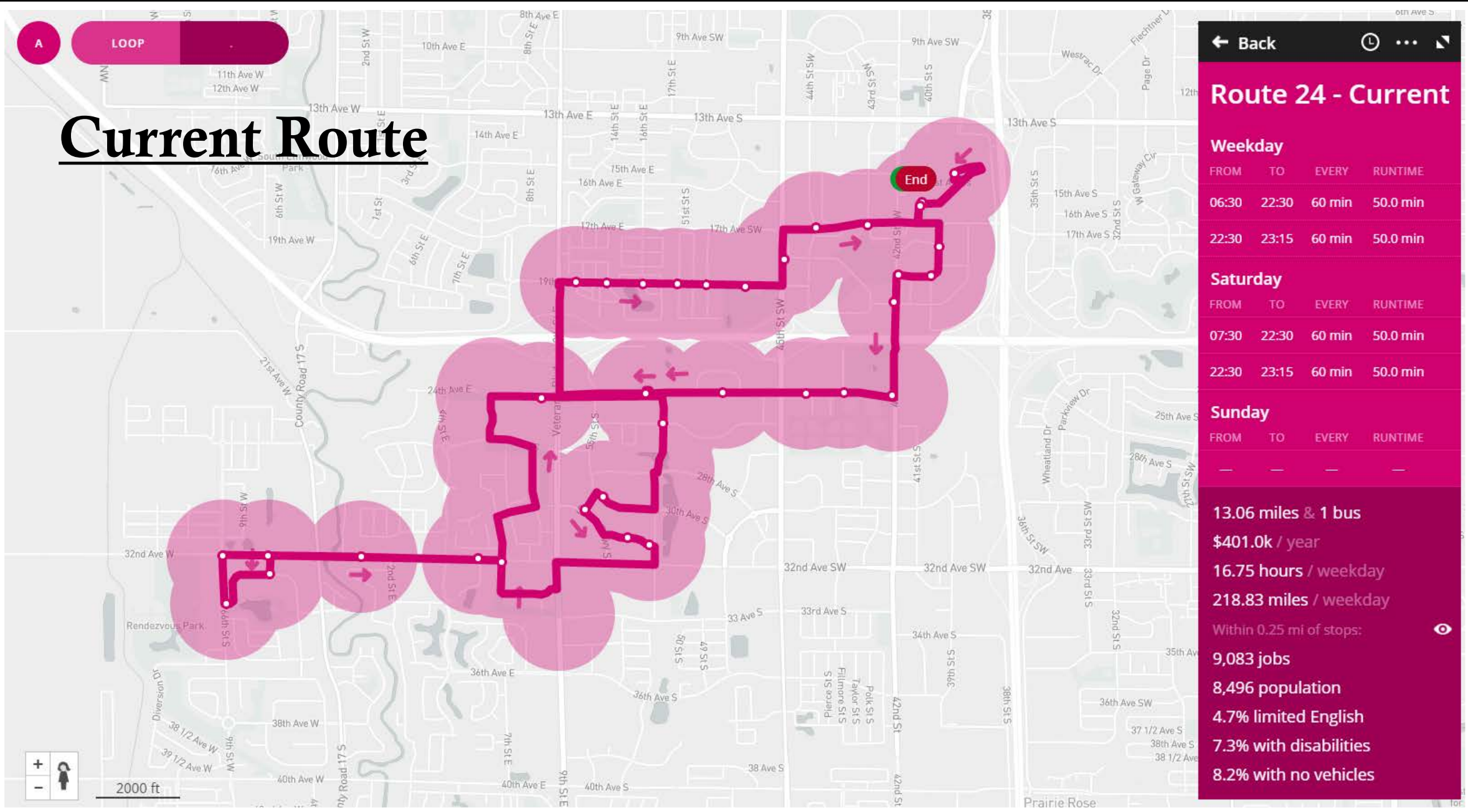
Acting Chair Altenburg adjourned the meeting at 9:00 AM.



# Route 24 Changes

Effective December 1, 2017

# Current Route



## Route 24 - Current

### Weekday


FROM	TO	EVERY	RUNTIME
06:30	22:30	60 min	50.0 min
22:30	23:15	60 min	50.0 min

### Saturday

FROM	TO	EVERY	RUNTIME
07:30	22:30	60 min	50.0 min
22:30	23:15	60 min	50.0 min

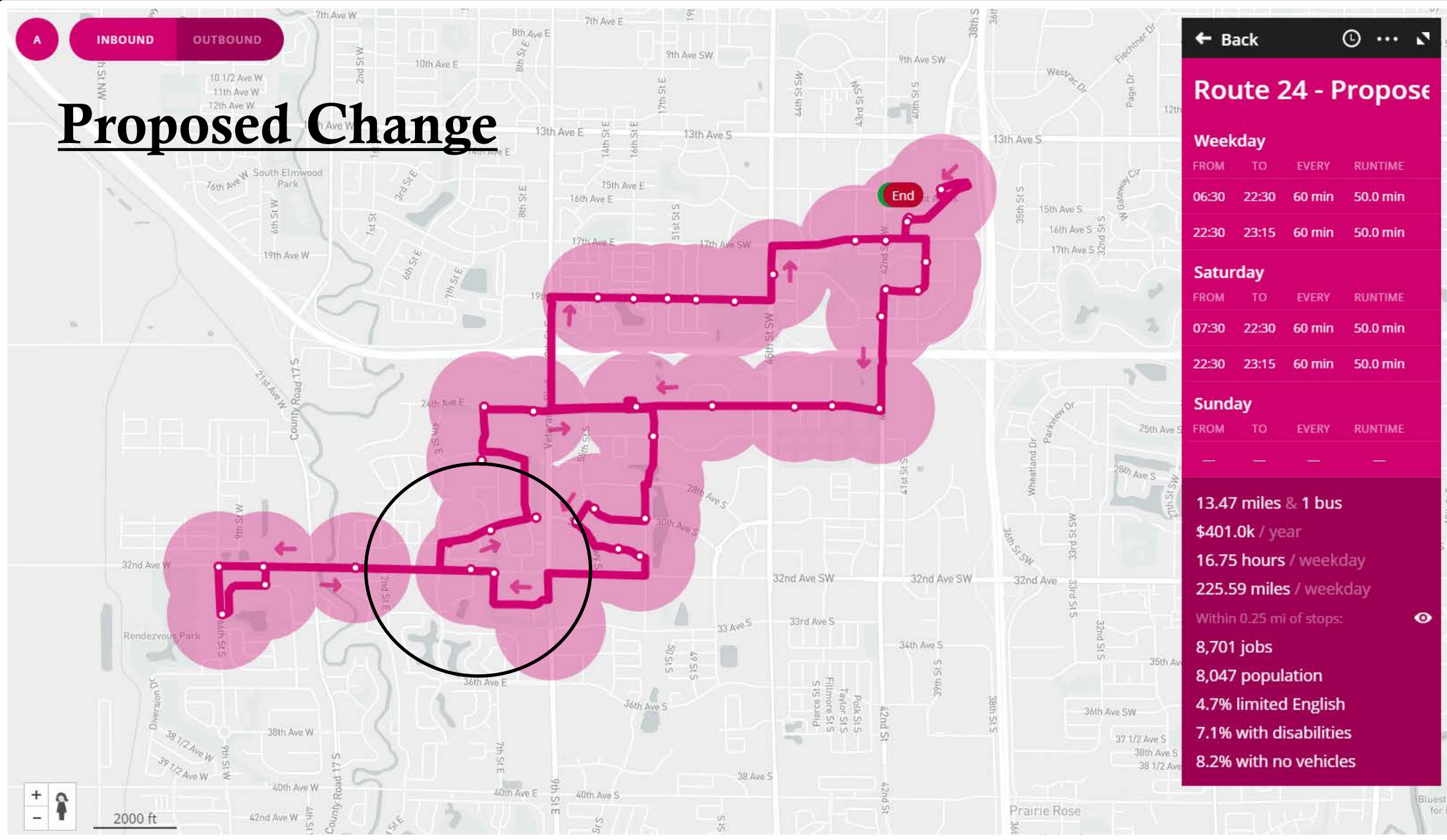
### Sunday

FROM	TO	EVERY	RUNTIME
—	—	—	—

**13.06 miles & 1 bus**  
**\$401.0k / year**  
**16.75 hours / weekday**  
**218.83 miles / weekday**  
 Within 0.25 mi of stops:   
**9,083 jobs**  
**8,496 population**  
**4.7% limited English**  
**7.3% with disabilities**  
**8.2% with no vehicles**

A **INBOUND** **OUTBOUND**

# Proposed Change



**Route 24 - Proposed**

**Weekday**

FROM	TO	EVERY	RUNTIME
06:30	22:30	60 min	50.0 min
22:30	23:15	60 min	50.0 min

**Saturday**

FROM	TO	EVERY	RUNTIME
07:30	22:30	60 min	50.0 min
22:30	23:15	60 min	50.0 min

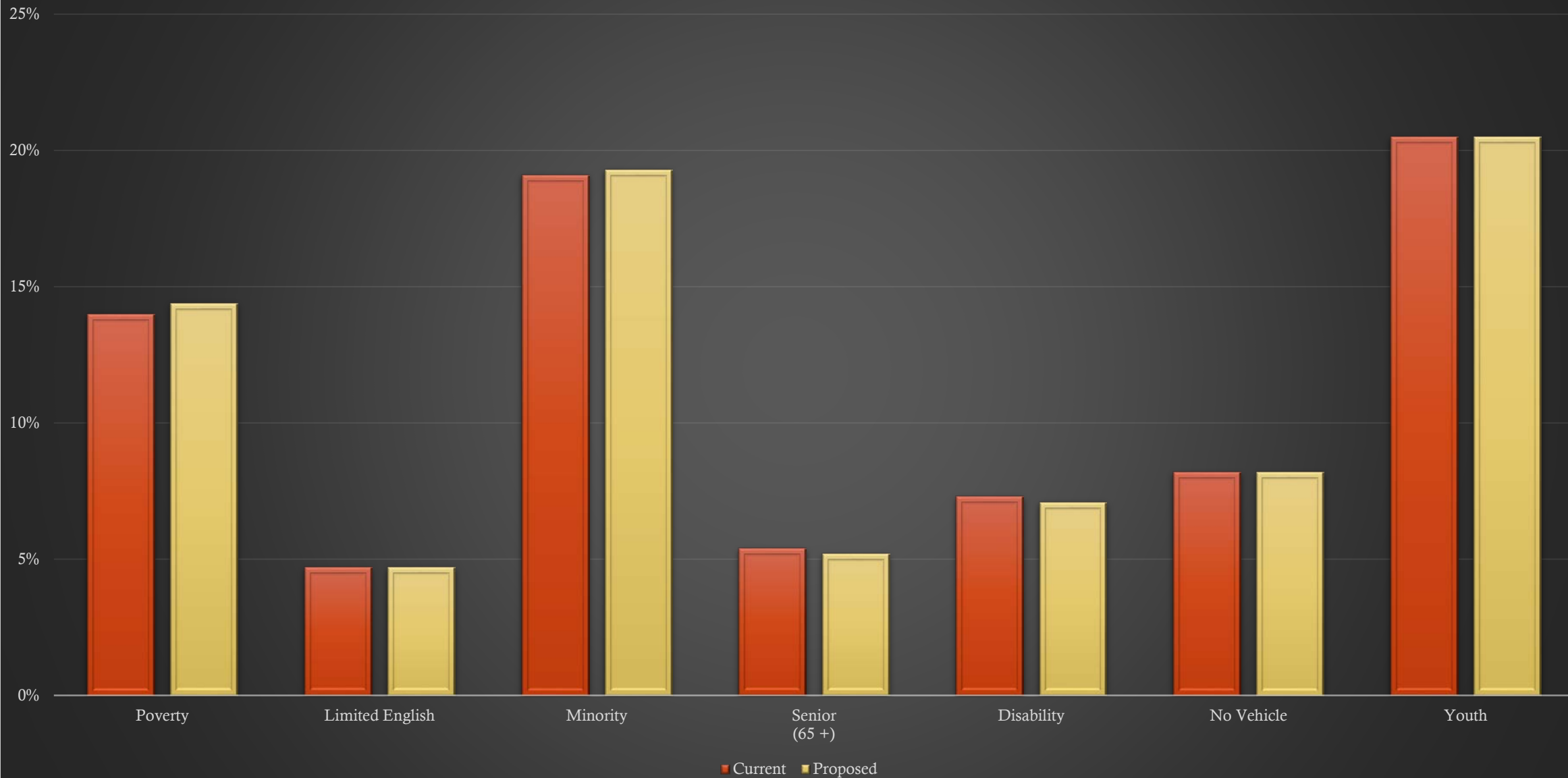
**Sunday**

FROM	TO	EVERY	RUNTIME
—	—	—	—

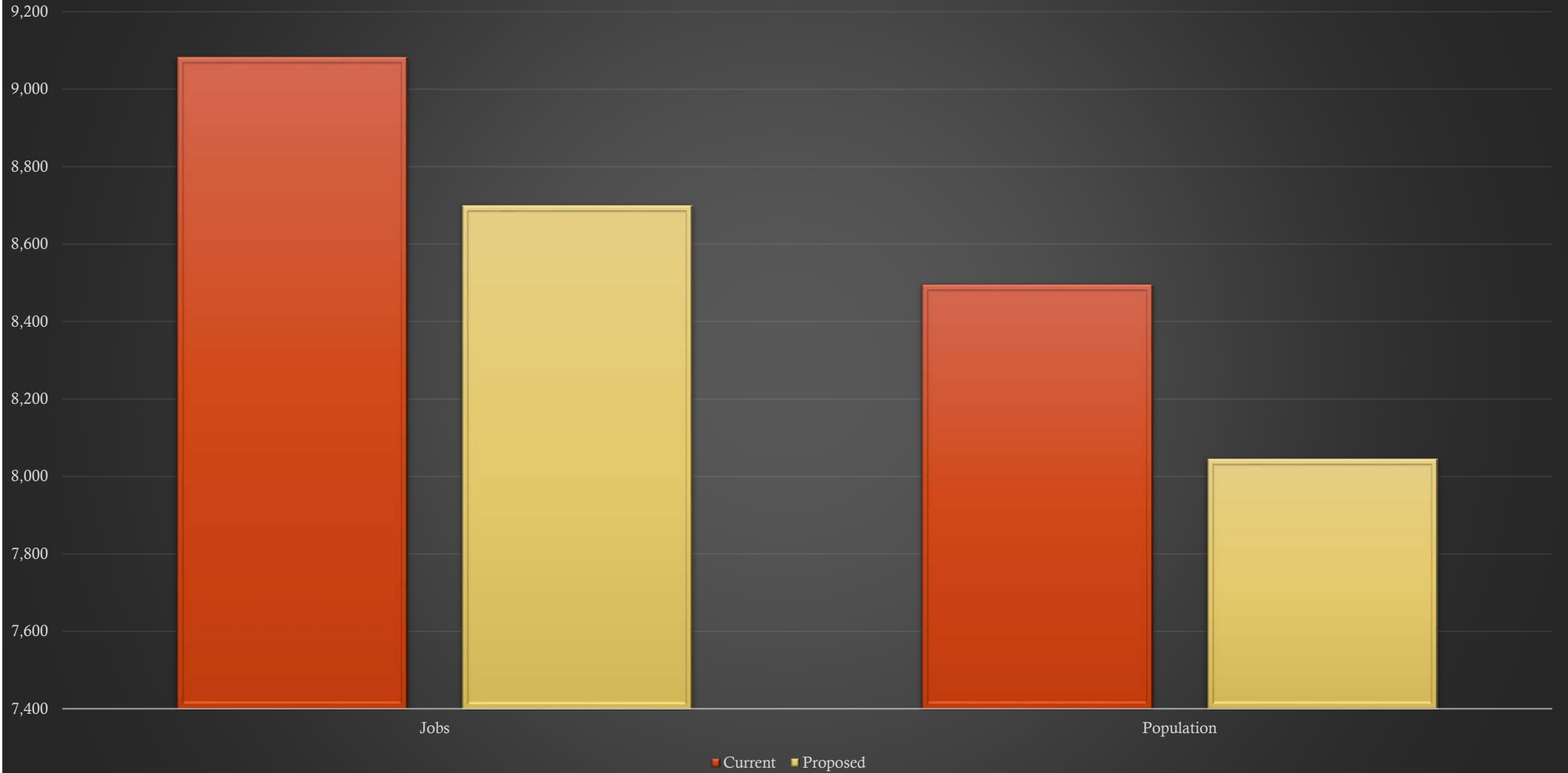
**13.47 miles & 1 bus**  
**\$401.0k / year**  
**16.75 hours / weekday**  
**225.59 miles / weekday**

Within 0.25 mi of stops: **8,701 jobs**  
**8,047 population**  
**4.7% limited English**  
**7.1% with disabilities**  
**8.2% with no vehicles**

# Enviromental Justice Stats



# Jobs / Population





# Attachment 3



## Constant Contact Survey Results

**Survey Name:** LinkFM Ridership Survey

**Response Status:** Partial & Completed

**Filter:** None

11/13/2017 6:41 PM CST

### TextBlock:

LinkFM operates from 7:00am to 7:00pm Monday through Friday, and from 10:00am to 5:00pm on Saturday. The route features a continuous loop starting and ending at the Moorhead Center Mall. LinkFM arrives every 15-20 minutes at each stop along its route and is within walking distance of numerous popular destinations throughout the downtown's of Fargo-Moorhead.

### \*1. Have you used LinkFM in the past year?

Answer	0%	100%	Number of Response(s)	Response Ratio
Yes			85	63.4 %
No			48	35.8 %
No Response(s)			1	<1 %
<b>Totals</b>			<b>134</b>	<b>100%</b>

### 2. How would you rate the overall service of LinkFM?

1 = Poor, 2 = Below Average, 3 = Average, 4 = Above Average, 5 = Excellent

	1	2	3	4	5	Number of Response(s)	Rating Score*
						81	4.0

\*The Rating Score is the weighted average calculated by dividing the sum of all weighted ratings by the number of total responses.

3. Please rate the ease of use with LinkFM.

1 = Very Difficult, 2 = Difficult, 3 = Neutral, 4 = Easy, 5 = Very Easy

	1	2	3	4	5	Number of Response(s)	Rating Score*
						80	4.3

\*The Rating Score is the weighted average calculated by dividing the sum of all weighted ratings by the number of total responses.

4. Have you used LinkFM for any special events downtown?

Answer	0%	100%	Number of Response(s)	Response Ratio
Yes			47	35.0 %
No			30	22.3 %
No Response(s)			57	42.5 %
<b>Totals</b>			<b>134</b>	<b>100%</b>

5. What special events have you used LinkFM for? - Please check all that apply.

Answer	0%	100%	Number of Response(s)	Response Ratio
Street Fair			38	80.8 %
Unglued Craft Fest			6	12.7 %
Celtic Festival			2	4.2 %
Scandinavian and Viking Festival			6	12.7 %
Red River Market			16	34.0 %
TEDxFargo			2	4.2 %
German Kulturfest			3	6.3 %
Holiday Lights Parade			11	23.4 %
Other			6	12.7 %
<b>Totals</b>			<b>47</b>	<b>100%</b>

6. Please rate your experience with riding LinkFM during special events. - Type any comments related to your experience during special events in the box below.

1 = Poor, 2 = Below Average, 3 = Average, 4 = Above Average, 5 = Excellent

	1	2	3	4	5	Number of Response(s)	Rating Score*
						47	4.4

\*The Rating Score is the weighted average calculated by dividing the sum of all weighted ratings by the number of total responses.

7. What have you used LinkFM for? - Please check all that apply.

Answer	0%	100%	Number of Response(s)	Response Ratio
Work			26	34.2 %
Shopping			31	40.7 %
Entertainment			35	46.0 %
Restaurants / Lunch			34	44.7 %
Other			18	23.6 %
<b>Totals</b>			<b>76</b>	<b>100%</b>

8. What times of day do you currently use LinkFM? - Please check all that apply.

Answer	0%	100%	Number of Response(s)	Response Ratio
7:00am to 9:00am			12	16.0 %
9:00am to 11:00am			24	32.0 %
11:00am to 2:00pm			46	61.3 %
2:00pm to 5:00pm			42	56.0 %
5:00pm to 7:00pm			25	33.3 %
<b>Totals</b>			<b>75</b>	<b>100%</b>

9. Would you like to see LinkFM operate at any of these other times?

Answer	0%	100%	Number of Response(s)	Response Ratio
6:00am to 7:00am			4	2.9 %
7:00pm to 9:00pm			29	21.6 %
Hours are good as they are.			28	20.8 %
Other			8	5.9 %
No Response(s)			65	48.5 %
<b>Totals</b>			<b>134</b>	<b>100%</b>

10. Does LinkFM have enough bus stops?

Answer	0%	100%	Number of Response(s)	Response Ratio
Yes			62	46.2 %
No - Please list other stop you would like to see below.			13	9.7 %
No Response(s)			59	44.0 %
<b>Totals</b>			<b>134</b>	<b>100%</b>

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### 11. Are there any improvements you'd like to see for LinkFM?

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33 Response(s)

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### 12. Why haven't you tried LinkFM in the past? - Please check all that apply.

Answer	0%	100%	Number of Response(s)	Response Ratio
It doesn't operate during the hours I need.			2	4.3 %
It doesn't travel to the locations i go.			13	28.2 %
I don't understand how to use it.			5	10.8 %
I did not know it was available year round.			6	13.0 %
I'm not interested in this type of service.			17	36.9 %
Other			12	26.0 %
<b>Totals</b>			<b>46</b>	<b>100%</b>

## Memorandum



**To:** MAT Coordinating Board  
**From:** Lori Van Beek, Moorhead Transit Manager *LVB*  
**Date:** November 13, 2017

**RE:** *Joint Powers Agreement with Dilworth and Fargo Park District (dba Valley Senior Services)*

In January 2008, Valley Senior Services began operating Metro Senior Ride transportation in the Cities of Moorhead and Dilworth. All parties are interested in continuing this service for calendar year 2018. The draft contract incorporates budgets, vehicle maintenance, insurance, and operating policies for three vans from 7:40 a.m. to 4:30 p.m., Monday through Friday.

Ridership on Metro Senior Ride has been steadily increasing since its inception. A second vehicle was added in March 2010 to meet increasing demand. A third vehicle was added in January 2015 to expand service into newly annexed Oakport Township. As of September 30, 2017, ridership was 8,314.

### METRO SENIOR RIDE SERVICE

<u>Year</u>	<u>Ridership</u>	<u>% Change</u>
2008	4,050	
2009	5,111	26%
2010	5,961	17%
2011	7,471	25%
2012	7,492	0%
2013	8,042	7%
2014	8,301	3%
2015	10,143	22%
2016	10,765	6%
2017 Projected	11,085	3%

The draft 2018 contract with Dilworth to provide transit service includes Dilworth's local share of costs for MATBUS Fixed Route service, as well as Dilworth's share of both MAT Paratransit and Senior Ride based on actual costs and grant funding, and distributed based upon ridership.

The proposed Metro Senior Ride budget of \$142,601 submitted by Valley Senior Services is included as Attachment C to the JPA. It represents an increase of \$21,104 or 17% over 2017's budget. The majority of the increase is due to charging one of three (33%) of the Dispatcher positions to Moorhead. Moorhead has three out of 12 vans dispatched, which is 25% of the fleet. Also of note is that the actual expenditures for 2017 as of September 30, 2017, are projected to exceed the budget by \$13,000.

The proposed expenses and related revenues were included in the approved 2018 Mass Transit Budget. However, the State of Minnesota has informed Moorhead that they did not fully fund the Paratransit/Senior Ride/Mobility Management budget for 2018. Moorhead requested \$497,376 and they funded \$490,000. The 2018 budget will need to be reduced by \$7,376 due to the unfunded costs. Staff is recommending that the reduction be split 50/50 between the MAT Paratransit and Metro Senior Ride budgets at \$3,688 each.

**Recommended Motion:** Recommend to the Moorhead City Council approval of a Joint Powers Agreement with the City of Dilworth and Fargo Park District for Operation of Metro Senior Ride for 2018.

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN**

**THE CITY OF MOORHEAD, MINNESOTA  
THE CITY OF DILWORTH, MINNESOTA  
AND  
PARK DISTRICT OF THE CITY OF FARGO, NORTH DAKOTA  
(D/B/A VALLEY SENIOR SERVICES)**

This agreement made and entered into this 1st day of January 2018, by and between the City of Moorhead, Minnesota, a municipal corporation hereinafter referred to as "MOORHEAD", the City of Dilworth, Minnesota, a municipal corporation hereinafter referred to as "DILWORTH" and the Park District of the City of Fargo, North Dakota, d/b/a Valley Senior Services, hereinafter referred to as "CONTRACTOR". Collectively, MOORHEAD and DILWORTH may be described as "PURCHASER".

**WITNESSETH**

WHEREAS, MOORHEAD, DILWORTH and CONTRACTOR entered into a Intergovernmental Agreement on January 1, 2008, for the operational of Metro Senior Ride curb-to-curb public transportation service for residents age 60 and over throughout the Fargo-Moorhead metropolitan area; and

WHEREAS, MOORHEAD and DILWORTH have determined that there is a continued and growing demand need for demand responsive service for residents age 60 and over; and

WHEREAS, CONTRACTOR currently operates a public transportation system for seniors citizens age 60 and over in the bordering cities of Fargo and West Fargo, North Dakota, and has operated same in Dilworth and Moorhead, Minnesota, since January 1, 2008; and

WHEREAS, CONTRACTOR has represented that it has the necessary expertise and personnel and is qualified to perform such services; and

WHEREAS, pursuant to Chapter 54-40.3, N.D.C.C., and Minnesota Statutes § 471.59 (joint exercise of powers), the above-named governmental units have the legal authority to enter into an agreement, through action of their respective governing bodies, to jointly or cooperatively exercise any power common to the contracting powers or any similar powers, including those which are the same except for territorial limits within which they may be exercised;

NOW, THEREFORE, it is mutually understood and agreed as follows:

**ARTICLE 1 - COMPLETE AGREEMENT**

- 1.1 This Agreement and the attachments and documents incorporated herein constitute the complete and exclusive statement of the terms of the Agreement between MOORHEAD, DILWORTH and CONTRACTOR and it supersedes all prior representations, understanding and communications. The invalidity in whole or in part of any provision of this Agreement shall not affect the validity of other provisions. MOORHEAD and DILWORTH'S failure to insist in one or more instances upon performance of any term or terms of this Agreement shall not be construed as a waiver or relinquishment of their right to such performance by the CONTRACTOR. Notwithstanding the above, if the invalidity of a term affects the economics of the ability of the CONTRACTOR to reasonably provide the services, the CONTRACTOR may terminate this Agreement under terms similar to those contained in Section 13.1 below.

## **ARTICLE 2 - CITY AND CONTRACTOR DESIGNEES**

- 2.1 The City Manager, or his Designee, shall have the authority to act for and exercise any of the rights of MOORHEAD as set forth in the herein Agreement, subsequent to the authorization by the City Council of MOORHEAD.
- 2.2 The City Administrator, or his Designee, shall have the authority to act for and exercise any of the rights of DILWORTH as set forth in the herein Agreement, subsequent to the authorization by the City Council of DILWORTH.
- 2.3 The Executive Director, or his/her Designee, shall have the authority to act and exercise any of the right of CONTRACTOR as set forth in the herein Agreement.

## **ARTICLE 3 - EMPLOYMENT OF THE CONTRACTOR**

- 3.1 MOORHEAD and DILWORTH hereby engage the CONTRACTOR and the CONTRACTOR agrees to perform the services hereinafter described in the connection with the supervision, management, and operation of Metro Senior Ride Service and the lease of vehicle(s) to be used in the operation of said services for residents of MOORHEAD and DILWORTH.

## **ARTICLE 4 - CONTRACTOR'S EMPLOYEES**

- 4.1 The personnel performing services under this Agreement shall at all times be under CONTRACTOR'S exclusive direction and control and shall be either employees of CONTRACTOR or independent contractors under agreement with and not employees or agents of MOORHEAD or DILWORTH. CONTRACTOR shall pay all wages, salaries and other amounts due its employees or agents in connection with the Agreement and shall be responsible for social security,



income tax withholding, unemployment compensation, worker compensation insurance and similar matters.

- 4.2 MOORHEAD and DILWORTH shall not interfere in the normal day to day management of CONTRACTOR'S employees or agents nor attempt to directly discipline CONTRACTOR employees or agents. MOORHEAD and DILWORTH reserve the right to interview any and all CONTRACTOR employees or agents performing under this Agreement. MOORHEAD and DILWORTH shall have the right to demand, upon written notice to CONTRACTOR, the removal of any employee or agent from providing services on the Metro Senior Ride Program and CONTRACTOR shall timely comply with said written requests. CONTRACTOR may request a meeting with MOORHEAD, DILWORTH and the CONTRACTOR to discuss the demand and the reasons for the same.

#### **ARTICLE 5 - SCOPE OF WORK**

- 5.1 CONTRACTOR shall provide services in accordance with **Attachment A** to this Agreement, attached hereto and by reference incorporated herein, during the entire term of the Agreement.

#### **ARTICLE 6 - CHANGES IN SCOPE OF WORK: AMENDMENT**

- 6.1 It is understood and agreed by MOORHEAD, DILWORTH and CONTRACTOR that it may be necessary, from time to time during the term of this Agreement, to modify the scope of work provisions or to revise the scope and/or extent of Metro Ride Service. In each such instance, MOORHEAD, DILWORTH and CONTRACTOR shall consult with each other and shall come to a mutually acceptable agreement as to the nature of the required modification or revision desired. Each modification or revision required shall be reduced in writing and when appropriately executed by all parties and the same shall constitute an amendment to this Agreement. Each amendment will be identified and sequentially numbered as "Amendment No. 1" and so forth, shall be subject to all the other applicable provisions of the Agreement, and shall be attached to the Agreement. Until an amendment has been approved in the foregoing manner, it shall have no force or effect.
- 6.2 During a national, State, or Locally declared emergency, MOORHEAD and DILWORTH shall have the right to issue verbal and/or written instructions to CONTRACTOR for CONTRACTOR to operate emergency transportation services consistent with the purposes of this Agreement and as may be required by MOORHEAD and DILWORTH. In such event, CONTRACTOR will supply such services to the extent possible. MOORHEAD and DILWORTH and CONTRACTOR agree to meet, after the conclusion of said emergency, to negotiate compensation for such services provided during the emergency.

## ARTICLE 7 – VEHICLES & INSURANCE

7.1 MOORHEAD shall lease to CONTRACTOR, at no cost other than the obligations to maintain the vehicle as described in Section 7.6 below, the following described vehicles to provide the services contemplated by this agreement.

- 2015 Dodge Grand Caravan Extended Minivan  
VIN 2C4RDGBGXFR703439 - Unit 5151
- 2014 Dodge Grand Caravan Extended Minivan  
VIN 2C4RDGBG8ER378787 - Unit 1226
- 2013 Dodge Grand Caravan Extended Minivan  
VIN 2C4RDGBG7DR813703– Unit 1209
- 1999 Ford Windstar, VIN 2FMZA5146XBB52498 - Unit 1167

During the life of the vehicles, MOORHEAD will retain ownership and title of the vehicles prospectively. At the end of the useful life of vehicle, or in the event the cost to maintain the vehicle, in the collaborative decision of the PURCHASER and CONTRACTOR, is not economically feasible, MOORHEAD will determine disposition of the vehicle. Any replacement vehicle to be purchased/provided will be mutually agreed upon in advance by MOORHEAD, DILWORTH and CONTRACTOR.

7.2 CONTRACTOR shall provide indoor storage for the vehicles described above and shall notify PURCHASER of the location of said storage.

7.3 The CONTRACTOR shall obtain and keep in force during the terms of this Agreement the insurance coverage listed below.

The CONTRACTOR shall provide casualty, liability and no-fault insurance on the vehicles provided by MOORHEAD under this agreement and MOORHEAD shall have no responsibility to provide such coverage. Deductible and Self Insured retainers, if any, shall be identified. All deductible payments are the responsibility of CONTRACTOR. CONTRACTOR shall provide insurance coverage's, limited, however, to the statutory amount or amounts established by the State of Minnesota laws governing municipal liability. Alternatively, if allowed by law, CONTRACTOR may provide casualty and liability coverage through the North Dakota Insurance Reserve Fund. The minimum auto insurance requirements are: Auto Liability \$1.5 Million per person, \$1.5 Million per occurrence, and comprehensive and collision in the amount of the actual cash value of the vehicle.

MOORHEAD shall be named as additional insured on all liability policies. CONTRACTOR agrees not to cancel nor have the coverage reduced until thirty (30) days after the City of Moorhead shall have received written notice of such cancellation or reduction by certified mail. In addition, MOORHEAD shall be listed as the Loss Payees on the insurance.

The CONTRACTOR shall provide handling of all claims, demands, lawsuits and all other liability associated with the leasing and operation of the vehicle. MOORHEAD and DILWORTH shall not be required to provide vehicle liability insurance, contribute to the settlement of any claim nor pay for any attorney fees resulting from the operation of vehicles or the provision of service under this Agreement.

The CONTRACTOR shall provide North Dakota Worker's Compensation and Employer Liability Insurance at the limits established by the State of North Dakota.

CONTRACTOR will provide the MOORHEAD documentation proving insurance coverage, in the form of a Certificate of Insurance, before commencing transportation service and annually thereafter.

- 7.4 CONTRACTOR agrees that vehicle(s) shall be used for the provision of transportation services as described in the Scope of Work. If vehicle(s) is/are not used in this manner or withdrawn from transportation service, CONTRACTOR shall immediately notify MOORHEAD and DILWORTH.
- 7.5 CONTRACTOR shall maintain the vehicle as outlined in the attached Vehicle Maintenance Plan (Attachment B). CONTRACTOR shall exceed the manufacturer's recommendation with regard to oil changes by servicing the vehicle every 3,000 miles rather than 5,000 miles. CONTRACTOR shall keep satisfactory documentation/records regarding maintenance and provide MOORHEAD with a detailed maintenance report submitted monthly.
- 7.6 CONTRACTOR shall be responsible for all maintenance and operating costs of the vehicle(s), including maintenance to include all parts, labor, service, cleaning, diesel fuel, gasoline, motor oil, lubricants, antifreeze, and solvents.
- 7.7 CONTRACTOR and MOORHEAD shall jointly inspect the vehicle and determine and agree upon the condition of the vehicle prior to start of service.
- 7.8 CONTRACTOR and MOORHEAD shall jointly conduct a final inspection of the vehicle at the end of this agreement and/or at the time of termination, if applicable, to determine and agree upon the condition of the vehicle. CONTRACTOR shall return the vehicles to MOORHEAD in operable condition with all preventive maintenance completed per the terms of the Vehicle Maintenance Plan in Attachment B, including any repairs as necessitated by improper maintenance identified in the final inspection.

## **ARTICLE 8 - INDEMNIFICATION**

- 8.1 CONTRACTOR shall defend, indemnify and save harmless MOORHEAD and DILWORTH, its officers, agents and employees, from any and all claims, demands, damages, costs, expenses, judgments, or liability arising out of CONTRACTOR'S performance under this contract or attempted performance of the provisions hereof. Nothing contained in the foregoing indemnity provision shall be construed to require indemnification for claims demands damages costs, expenses or judgments resulting from the negligence or willful misconduct of MOORHEAD and DILWORTH.

## **ARTICLE 9 - PAYMENT**

Records of the expenses pertaining to the work performed under this contract and records of accounts between the MOORHEAD, DILWORTH and the CONTRACTOR shall be kept on a generally recognized accrual accounting basis. MOORHEAD and DILWORTH, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the CONTRACTOR which are directly pertinent to this Agreement for the purpose of making an audit, examination, excerpts and transcriptions.

The CONTRACTOR shall retain information in its files that shall clearly document all activities performed in conjunction with this Agreement. These records shall be retained by the CONTRACTOR for a period of three years.

- 9.1 MOORHEAD agrees to submit and administer State and Federal grant applications, reports, and draw downs as applicable for the operation of Metro Senior Ride service under this Agreement.
- 9.2 DILWORTH agrees to pay MOORHEAD their prorata share of the local match funds required by State and Federal operating grants for this service based on a percentage of total ridership.
- 9.3 MOORHEAD agrees to pay CONTRACTOR for the performance of services set forth in this Agreement as follows:
- 9.3.1 On or before the 10<sup>th</sup> day of each month CONTRACTOR shall submit an invoice to MOORHEAD, itemizing CONTRACTOR'S gross operating costs (as defined in Attachment C) for the previous monthly period. Invoices shall contain a detailed record of the expenses by line item, the amount of fares/revenue collected from passengers, and the net invoiced amount. The invoice shall also list the number of vehicle service hours provided and miles driven and the number of passengers provided rides, indicated by city of residence. CONTRACTOR shall also supply a copy of the detailed records mentioned above to DILWORTH.
- 9.3.2 All payments by MOORHEAD shall be made in arrears after the service has been provided. MOORHEAD shall pay CONTRACTOR's invoice

within thirty (30) days following receipt of such invoice. If MOORHEAD disputes any item on an invoice for a reasonable cause, MOORHEAD may deduct that disputed item from the payments, but shall not delay payment for the undisputed portion. MOORHEAD shall document the amounts and reasons for such deletions to CONTRACTOR within fifteen (15) working days after receipt of invoice. CONTRACTOR and MOORHEAD shall meet to resolve any disputed amount within ten (10) working days following MOORHEAD'S notice to CONTRACTOR. If MOORHEAD and CONTRACTOR are unable to resolve dispute through negotiation, MOORHEAD and CONTRACTOR agree to resolve dispute in accordance with Article 15, Section 11, herein.

9.3.3 MOORHEAD shall pay CONTRACTOR the following for services provided during the term of this Agreement: The maximum amount that CONTRACTOR can invoice MOORHEAD in each calendar year under this Agreement per the estimated budget submitted by CONTRACTOR (see Attachment C).

## **ARTICLE 10 – OPERATING REVENUES**

10.1 All operating revenues collected by CONTRACTOR are to be documented and applied against the gross operating costs per Section 9.3.3. The revenue to be charged per passenger is contained in Attachment A, Operating Guidelines.

## **ARTICLE 11 – FORCE MAJEURE**

11.1 Neither party shall be held responsible for delays or lack of performance caused by events beyond its control. Such events shall include, but are not limited to, acts of God, inclement weather, strikes and labor disputes, lack of fuel, road closures, changes in government regulation, war, insurrection, and other unanticipated events. MOORHEAD will not compensate CONTRACTOR for any missed hours resulting from an interruption or termination of service due to events beyond its control.

## **ARTICLE 12 – TERM OF AGREEMENT**

This Agreement shall become effective January 1, 2018, and shall continue in full force and effect through December 31, 2018, unless earlier terminated as herein provided.

## **ARTICLE 13 – TERMINATION**

13.1 MOORHEAD and DILWORTH reserve the right to terminate this Agreement for cause by written notice to the CONTRACTOR. Cause for termination will be

documented failure(s) of the CONTRACTOR to provide services in the quantity and/or quality contemplated by the Agreement. Notice of such intent to terminate the Agreement will be provided to CONTRACTOR. CONTRACTOR will, within ten (10) days, correct the failure or present MOORHEAD and DILWORTH with a plan to correct the failure. In the event CONTRACTOR does not correct failure or complete its plan to correct failure, then MOORHEAD and DILWORTH may terminate this Agreement by notifying CONTRACTOR of date of termination. Notice of such termination will be given with sufficient time to allow for the orderly withdrawal of the CONTRACTOR without additional harm to the participants or MOORHEAD and DILWORTH. Said termination shall not diminish MOORHEAD and DILWORTH'S rights under law or equity.

- 13.2 MOORHEAD and DILWORTH may terminate or reduce the amount of service to be rendered if there is, in the opinion of the City Councils, a significant increase in local costs; or, in the opinion of the City Councils, insufficient state or federal funding available for the service, thereby terminating this Agreement or reducing the compensation to be paid under this contract. In such event MOORHEAD and DILWORTH will notify CONTRACTOR in writing ninety (90) days in advance of the date such actions are to be implemented.
- 13.3 In like manner, CONTRACTOR may terminate or reduce the amount of service if there is, in the opinion of the Park District's Commission, a significant increase in the costs that are not deemed part of the gross operating costs, burdensome administrative requirements as described in Article 15, an inability to hire drivers, or insufficient use of the service in Dilworth or Moorhead. Any reduction in service must be first approved by MOORHEAD and DILWORTH. In such event, CONTRACTOR will notify MOORHEAD and DILWORTH, in writing, not less than ninety (90) days prior to the actions to be implemented.
- 13.4 In the event of any termination, MOORHEAD and DILWORTH shall pay the agreed rate only for services delivered up to the date of termination. MOORHEAD and DILWORTH have no obligation to CONTRACTOR, of any kind, after the date of termination. CONTRACTOR shall deliver all records, equipment including leased vehicle, materials owned by MOORHEAD and DILWORTH to MOORHEAD and DILWORTH within twenty-four (24) hours of the date of termination.

#### **ARTICLE 14 – CONFLICT OF INTEREST**

The CONTRACTOR agrees that neither it nor any member of its Board of Commissioners, officers, or employees presently have any interest in any project to be financed under this Agreement, and shall not acquire any interest in the project which would conflict with performance required under this Agreement or applicable statute, rule, or regulation.

#### **ARTICLE 15 – GENERAL PROVISIONS AND APPLICABLE FEDERAL CLAUSES**

Only to the extent any of the following sections are applicable to a contract of the nature herein contemplated, the following shall apply:

15.1 No Government Obligation to Third Parties

a. The PURCHASER and CONTRACTOR acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the PURCHASER, CONTRACTOR, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

b. The CONTRACTOR agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

15.2 Program Fraud & False or Fraudulent Statements & Related Acts

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 cause 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. 5307, the Government reserves the right to impose the penalties of 18 U.S.C. 1001 and 49 U.S.C. 5307(n)(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.

### 15.3 Access To Records

a. Where the PURCHASER is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(l), the CONTRACTOR agrees to provide the PURCHASER, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the CONTRACTOR which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. CONTRACTOR also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO CONTRACTOR access to CONTRACTOR's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

b. Where the PURCHASER is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, CONTRACTOR agrees to provide the PURCHASER, the FTA Administrator or his authorized representatives, including any PMO CONTRACTOR, access to the CONTRACTOR's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.

c. Where the PURCHASER enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, CONTRACTOR agrees to provide the PURCHASER, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the CONTRACTOR which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

d. Where any PURCHASER which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the CONTRACTOR shall make available records related to the contract to the PURCHASER, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purpose of conducting an audit and inspection.

e. The CONTRACTOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.



f. The CONTRACTOR agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of the litigation or settlement of claims arising from the performance of this contract, in which case CONTRACTOR agrees to maintain same until the PURCHASER, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(I)(11).

#### 15.4 Federal Changes

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

15.5 Civil Rights Requirements (EEO, Title VI & ADA). The following requirements apply to the underlying contract:

a. Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. 12132, and 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, creed, national origin, sex, age, or disability. In addition, the CONTRACTOR agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

b. Equal Employment Opportunity. The following equal employment opportunity requirements apply to the underlying contract:

1. Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. 2000e, 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. Parts 60 et seq., (which implement Executive Order No. 11246, Equal Employment Opportunity, as amended by Executive Order No. 11375, Amending Executive Order 11246 Relating to Equal Employment Opportunity, 42 U.S.C. 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The CONTRACTOR agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment,

upgrading, 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 implementation requirements FTA may issue.

2. Age. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 623 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.

3. Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. 12112, the CONTRACTOR agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act, 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the CONTRACTOR agrees to comply with any implementing requirements FTA may issue.

c. The CONTRACTOR also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

15.6 Termination Provisions. Refer to Article 13 – Termination

15.7 Disadvantaged Business Enterprise

a. In connection with the performance of this service, the CONTRACTOR will cooperate with the PURCHASER in the utilization of disadvantaged business enterprises including women-owned business enterprises for the duration of the contract and will use its best efforts to insure that disadvantaged business enterprises have the maximum practicable opportunity to compete for subcontract work. In order to insure that a fair proportion of the purchases of supplies and services is placed with disadvantaged business enterprises, the CONTRACTOR agrees to take affirmative action to identify disadvantaged business firms, solicit bids or quotations from them for supplies and services related to this proposal. In addition, the CONTRACTOR shall provide opportunities and foster small business enterprises (SBE) participation in connection with the performance of service under this agreement.

b. The CONTRACTOR agrees to meet any goals established by PURCHASER for purchases pertaining to this Contract to the best of the CONTRACTOR's ability and will provide the PURCHASER with the necessary certification and records for reporting purposes. The majority of the contract is labor, which is not a contracting opportunity.

c. The CONTRACTOR 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 CFR Part 26 in the award and administration of this DOT-assisted contract. 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 PURCHASER deems appropriate. Each subcontract the CONTRACTOR signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

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

e. The CONTRACTOR is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the CONTRACTOR's receipt of payment for that work from the PURCHASER. In addition, the CONTRACTOR is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.

f. The CONTRACTOR must promptly notify the PURCHASER 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 PURCHASER.

#### 15.8 Incorporation of FTA Terms

a. 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 4220.1F, 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 PURCHASER requests which would cause the PURCHASER to be in violation of the FTA terms and conditions.

#### 15.9 Debarred, Suspended, or Ineligible Contractors

a. The CONTRACTOR certifies that his/her firm is not included on the U.S. Comptroller General's or General Services Administration's Consolidated List of Persons or Firms Currently Debarred or Suspended for Violations of Various Public Contracts Incorporating Labor Standards.

#### 15.10 Buy America

a. The CONTRACTOR shall comply with applicable Buy America requirements set forth under the requirements of Section 165(a) of the Surface Transportation Act of 1982 and the applicable regulations in 49 CFR Part 661, as amended.

#### 15.11 Breach of Contract and Dispute Resolution

a. Disputes will be presented in writing to the appropriate city personnel – the Moorhead Transit Manager or the Dilworth City Administrator. MOORHEAD, DILWORTH and the CONTRACTOR will attempt to resolve any dispute arising in the performance of the Contract.

1. Disputes. Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by arbitration with MOORHEAD and DILWORTH, collectively selecting one arbitrator, CONTRACTOR selecting one arbitrator and the two selectees, selecting a third. This majority decision of the three arbitrators shall be final and conclusive unless within ten (10) calendar days from the date of receipt of its copy, either party commences an action in Cass County, North Dakota, District Court. Each party shall be afforded an opportunity to be heard and to offer evidence in support of its position at the arbitration hearing. Unless appealed, the decision of the Arbitrator shall be binding upon the parties and the parties shall abide by the decision.

2. Performance During Dispute. Unless otherwise directed by the MOORHEAD or DILWORTH, CONTRACTOR shall continue performance under this Contract while matters in dispute are being resolved unless such dispute pertains to the CONTACTOR's claim that MOORHEAD and DILWORTH have not paid the invoiced amounts in a timely manner.

3. Claims of Damages. Should any party to the Contract suffer injury or damage to person or property because of any act or omission of another party or of any of their employees, agents or others for whose acts it 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.

4. Remedies. Unless this Agreement provides otherwise, all claims, counterclaims, disputes and other matters in question between MOORHEAD, DILWORTH 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 State of North Dakota.

5. Rights and Remedies. The duties and obligations imposed by this Agreement and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by MOORHEAD, DILWORTH or

CONTRACTOR shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

#### 15.12 Lobbying Restrictions

a. The CONTRACTOR certifies that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the CONTRACTOR, 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 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.

2. 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.

3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreement) and that all sub-recipients shall certify and disclose accordingly.

#### 15.13 Clean Air

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

b. The CONTRACTOR also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

#### 15.14 Clean Water

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

b. The CONTRACTOR also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

#### 15.15 Contract Work Hours & Safety Standards Act

a. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate no less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

b. Payrolls and basic records. (i) Payrolls and basic records relating thereto shall be maintained by the CONTRACTOR during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the CONTRACTOR shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. CONTRACTOR's employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

c. All practices, materials, supplies, and equipment shall comply with the Federal Occupational Safety and Health Act, as well as any pertinent Federal, State and/or local safety or environmental codes.

#### 15.16 Transit Employee Protective Arrangements - General Transit Employee Protective Requirements

a. To the extent that FTA determines that transit operations are involved, the CONTRACTOR agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. § 5333(b), and U.S. DOL guidelines at 29 CFR Part 215, and any amendments thereto.

#### 15.17 Charter Service Operations

a. The CONTRACTOR agrees to comply with 49 U.S.C. 5323(d) and 49 CFR 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 under one of the exceptions at 40 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental", i.e., it must not interfere with or detract from the provision of mass transportation.

#### 15.18 Drug & Alcohol Testing

a. The CONTRACTOR agrees to establish and implement a drug and alcohol testing program that complies with 40 CFR 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 CFR Parts 40 and 655 and review the testing process. The CONTRACTOR agrees further to certify annually its compliance with Parts 40 and 655 before February 1 and to submit the Management Information System (MIS) reports before February 1 to the City of Moorhead Transit Manager. 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. The CONTRACTOR agrees to furnish to MOORHEAD and DILWORTH prior to start of this service all necessary documentation for a compliant drug and alcohol testing program.

#### 15.19 Cargo Preference

a. 46 U.S.C. 1241(b)(1) and 46 CFR Part 381 impose cargo preference requirements on shipment of foreign made goods. Requirements therein apply to the contract arising from this procurement.

#### 15.20 Davis-Bacon Act and Copeland Act

b. The selected CONTRACTOR shall comply with provision under the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor Regulations 29 CFR Part 5. The CONTRACTOR shall also comply with provisions under the Copeland (Anti-Kickback) Act (18 U.S.C. 874) as supplemented in Department of Labor Regulations (29 CFR Part 3).

#### 15.21 Energy Conservation

a. 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).

#### 15.22 Environmental Violations

a. For all contracts and subcontracts in excess of \$100,000, CONTRACTOR agrees to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857 (h)), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency Regulations (40 CFR Part 15) which prohibits the use under nonexempt Federal contracts, grant or loans of facilities included on the EPA List of Violating Facilities. The CONTRACTOR shall obtain and keep in force during the terms of this Agreement the insurance coverage listed below. CONTRACTOR shall report violations to FTA and to the US/EPA Assistant Administrator for Enforcement (ENO329).

#### 15.23 Bonding Requirements

a. A performance bond will not be required with this contract. A performance bond is one executed in connection with a contract to secure fulfillment of all the CONTRACTOR's obligations under such contract.

b. A payment bond will not be required with this contract. 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.

### **ARTICLE 16 – BINDING**

This Agreement shall be binding on the assignees, transferees, successors, heirs, trustees, executors and administrators of the parties hereto.

### **ARTICLE 17 – SEVERABILITY**



In the event any provision of the Agreement is declared or determined to be unlawful, invalid or unconstitutional, such declaration shall not affect in any manner, the legality or the remaining provisions of the Agreement and each provision of the Agreement will be and is deemed to be separate and severable from each other provision.

#### **ARTICLE 18 – NOTICE**

All notices hereunder and communications with respect to this Agreement shall be effected upon the mailing thereof registered or certified mail return receipt requested or by Federal Express and addressed as follows:

**DILWORTH**  
City Administrator  
PO Box 187  
Dilworth, MN 56529

**MOORHEAD**  
City Manager  
500 Center Avenue  
Moorhead, MN 56560

**CONTRACTOR**  
Executive Director  
Valley Senior Service  
2801 32<sup>nd</sup> Ave. S., PO Box 2217  
Fargo, ND 58103

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year first above written.

**PARK DISTRICT OF THE CITY OF FARGO,  
NORTH DAKOTA (D/B/A/ VALLEY SENIOR  
SERVICES)**

By: \_\_\_\_\_  
Brian Arett, Executive Director

Date: \_\_\_\_\_

**CITY OF MOORHEAD, MINNESOTA**

By: \_\_\_\_\_  
Del Rae Williams, Mayor

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Christina M. Volkens, City Manager

Date: \_\_\_\_\_

**CITY OF DILWORTH, MINNESOTA**

By: \_\_\_\_\_  
Chad Olson, Mayor

Date: \_\_\_\_\_

**ATTESTED:**

By: \_\_\_\_\_  
Peyton Mastera, City Administrator

Date: \_\_\_\_\_

**ATTACHMENT A**  
**OPERATING GUIDELINES**

**ATTACHMENT B**  
**VEHICLE MAINTENANCE SCHEDULE**

# 1999 Ford Windstar

# **2015 Dodge Grand Caravan Extended Minivan**

# **2013 Dodge Grand Caravan Extended Minivan**

# **2014 Dodge Grand Caravan Extended Minivan**



ATTACHMENT C

2018 TRANSIT BUDGET - MOORHEAD/DILWORTH

**MOORHEAD & DILWORTH BUDGET  
METRO SENIOR RIDE**

<u>EXPENSES</u>	<u>2018 BUDGET</u>
DIRECTOR OF TRANSIT	\$0
DISPATCHERS	\$29,099
VAN DRIVER	\$72,072
HEALTH INSURANCE	\$4,500
PAYROLL TAX	\$7,740
WORKERS COMP	\$2,000
DEFERRED COMP	\$350
DRUG SCREENING	\$250
VAN/BUS FUEL	\$14,000
VAN/BUS REPAIR	\$5,000
VEHICLE INSURANCE	\$1,800
UNIFORMS	\$250
STORAGE	\$3,840
MARKETING	\$1,200
MISCELLANEOUS	\$100
RADIO MTCE	\$400
<b>TOTAL EXPENSES</b>	<b>\$142,601</b>
<b>Adjustment due to MnDOT Funding</b>	<b>(\$3,688)</b>
<b>ADJUSTED EXPENSES</b>	<b>\$138,913</b>
 <b>REVENUES</b>	
FARES	\$31,046
ESTIMATED STATE GRANT FUNDS	\$118,076
LOCAL SHARE (EXCESS REVENUE)	(\$10,209)
<b>TOTAL REVENUES</b>	<b>\$138,913</b>

## Memorandum

To: MAT Coordinating Board

From: Lori Van Beek, Moorhead Transit Manager



Date: November 13, 2017



**RE: Dilworth Transit Service 2018 Contract**

Beginning in January 2014, the City of Moorhead began operations of MATBUS Fixed Route service in the city of Dilworth. Dilworth is interested in continuing this service in 2018, in addition to continuing the complementary services of Metro Senior Ride and MAT Paratransit for persons with disabilities. The City of Moorhead's grant applications to the State of Minnesota again included these operating costs and funding was approved by MN/DOT for the Fixed Route service. MN/DOT did not fully fund the demand responsive services, which include MAT Paratransit, Metro Senior Ride and Mobility Management by \$7,376. A budget amendment will be prepared to reflect the decrease in funding. At this time, I am proposing that the decrease be split 50/50 between MAT Paratransit and Metro Senior Ride budgets AT \$3,688 each. The attached draft agreement provides for Dilworth reimbursement of costs for the continuance of the fixed route and also reflects Dilworth's share of costs for complementary service to persons with disabilities and senior citizens through support of MAT Paratransit and Metro Senior Ride.

**Recommended Motion:** Recommend to the Moorhead City Council approval a contract with the City of Dilworth to specify the terms and conditions by which the City of Dilworth will remit funds to the City of Moorhead for the provision of MATBUS Fixed Route, MAT Paratransit and Metro Senior Ride services during calendar year 2018.

**OPERATIONAL CONTRACT  
BETWEEN THE CITY OF MOORHEAD  
AND THE CITY OF DILWORTH FOR TRANSIT SERVICES**

This Contract between the City of Moorhead, a municipal corporation of the State of Minnesota, hereinafter referred to as MOORHEAD, and the City of Dilworth, a municipal corporation of the State of Minnesota, hereinafter referred to as DILWORTH, specifies the procedures, conditions and agreements between the parties for the operation of a transit system within the City of Dilworth, Minnesota.

The parties hereby set forth that the procedures, conditions and agreements contained within this Contract are for a term of one (1) year, commencing **January 1, 2018 and continuing until December 31, 2018** unless earlier terminated by either party upon thirty (30) days written notice to the other prior to termination.

Further, it is understood that the validity of this Contract between MOORHEAD and DILWORTH is contingent upon the receipt by MOORHEAD of maximum State assistance in funding the operating deficit of the transit system during the time period specified. It is further understood that any reduction or loss of State financial assistance in funding the operating deficit of the transit system is sufficient justification for MOORHEAD, upon thirty (30) days written notification to DILWORTH, to terminate this contract.

WHEREAS, DILWORTH perceives a definite need for continued daily bus service for residents of the community, and since the parties to this agreement agree daily bus service in the City of Dilworth will be beneficial; and

WHEREAS, MATBUS Fixed Route Service cannot be provided without an equivalent level of paratransit service;

WHEREAS, Metro Senior Ride Service is provided to the City of Dilworth through a Joint Powers Agreement;

THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, MOORHEAD and DILWORTH agree as follows:

**A. MATBUS FIXED ROUTE BUS SERVICE**

1. MOORHEAD agrees to provide daily MATBUS fixed route bus service at the agreed upon rate of \$74.76 per bus hour for approximately 1,816 hours, according to the schedule set forth as Exhibit "A" attached hereto and made a part hereof by reference.
2. DILWORTH agrees that it will be responsible for a maximum monetary contribution to support MATBUS fixed route bus service as set forth in Exhibit "A."

**B. MAT PARATRANSIT SERVICE**

1. MOORHEAD agrees to provide paratransit service for persons with disabilities who are ADA Paratransit Eligible and reside in the City of Dilworth through their contract with the City of Fargo, North Dakota. MAT Paratransit hours of service are set forth

in Exhibit "A" attached hereto and made a part hereof by reference.

2. DILWORTH agrees that it will be responsible for a maximum monetary contribution to support MAT Paratransit service for Dilworth residents and visitors as set forth in Exhibit "A."

**C. METRO SENIOR RIDE SERVICE**

1. MOORHEAD agrees to provide service to senior citizens age 60 and older who reside in the City of Dilworth through the current Joint Powers Agreement between MOORHEAD, DILWORTH and Valley Senior Services.
2. DILWORTH agrees that it will be responsible for a maximum monetary contribution to support Metro Senior Ride service for Dilworth residents and visitors with any resulting profit to be applied toward MAT Paratransit service costs as set forth in Exhibit "A."

**D. OTHER**

1. Fares will be charged to all passengers utilizing the transit service in accordance with the fare structure established by MOORHEAD for MATBUS Fixed Route, MAT Paratransit services and Metro Senior Ride services.
2. MOORHEAD accepts administrative responsibility for implementation of the transit program which is the subject of this agreement; DILWORTH agrees to cooperate in the development and distribution of marketing information, advertising and other service implementation functions.
3. The Director of Planning and Neighborhood Services and the Transit Manager for the City of Moorhead, and the contracted operator(s) are directly responsible for day to day management and operations of the transit program.
4. All filings and reporting responsibility to the Minnesota Department of Transportation shall be the responsibility of the contracting operator(s) and MOORHEAD.
5. All payments made to MOORHEAD shall be made subsequent to the end of each month the service is actually rendered and in accordance with MOORHEAD billing procedures. Payment shall be made upon submission by MOORHEAD to DILWORTH of a billing detailing operating statistics, for the monthly period.

- .6. Liability insurance coverage for the operation of the Transit Services shall be the responsibility of MOORHEAD and/or the contracted operator(s). MOORHEAD shall upon request obtain and present to DILWORTH a copy of its liability insurance policy.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

CITY OF MOORHEAD

By: \_\_\_\_\_  
Del Rae Williams, Mayor

By: \_\_\_\_\_  
Christina M Volkens, City Manager

CITY OF DILWORTH

By: \_\_\_\_\_  
Chad Olson, Mayor

ATTEST:

\_\_\_\_\_

Exhibit "A"

**CITY OF DILWORTH TRANSIT SERVICE**  
Project Period: January 1, 2018 - December 31, 2018

**SCOPE OF SERVICE**

**MATBUS Service - January 1, 2018:**

*Operation of Dilworth MATBUS Fixed Route (Full Service on Route 6, Interlined with Moorhead Route 9 for hourly frequency)*

6:40 am to 6:10 pm Monday through Friday

7:40 am to 6:10 pm Saturday

No service Sundays or Major Holidays

**Operation of Paratransit Service:**

Hours shall be equivalent to those of MATBUS fixed route service in Moorhead, including the night buses

6:15 am to 11:15 pm Monday through Friday

7:15 am to 11:15 pm Saturday

No service Sundays or Major Holidays

**Metro Senior Ride Service (Per Joint Powers Agreement):**

7:40 am to 4:30 pm Monday through Friday

No service Saturdays, Sundays or Major Holidays

**STATEMENT OF REVENUE AND EXPENSE**

**A. Fixed Route Operations**

Number of weekdays	255.0
Hours per day	<u>6.0</u>
Total Weekday hours	1,530.0

Number of Saturdays	52.0
Hours per day	<u>5.5</u>
Total Saturday hours	286.0

TOTAL HOURS	1,816.00
Cost per hour	<u>\$74.76</u>
Total Cost	\$135,764

Funding Allocation	
Dilworth (20%)	\$27,153
MN/DOT (80%)	\$108,611
TOTAL	\$135,764

Dilworth Share of Cost	\$27,153
Less Estimated Farebox Revenue	\$7,620
12,700 riders @ \$0.60	
Net Cost to Dilworth	\$19,533

\*Dilworth net cost depends on ridership and revenue collected from passenger fares; therefore, the cost could range from:

\$19,533 to \$27,153

**B. Fixed Route Capital Equipment**

**Bus Unit 2151, 2015 New Flyer 35-foot Low Floor**

<b>Cost</b>	\$443,362
<b>20% local share</b>	\$88,672
Life Miles (50% Dilworth)	500,000
Local share cost per mile	\$0.1773
Route 6 Miles	23,557.15
Dilworth Share	\$4,178

**C. MAT Paratransit & Metro Senior Ride Operations**

Per the City of Moorhead's contract with the City of Fargo for MAT Paratransit service and the Joint Powers Agreement with Valley Senior Services for Metro Senior Ride, *actual* operating costs are split based upon percent of total ridership. Moorhead's cost per ride will be applied to rides provided to Dilworth residents. Therefore, the maximum contribution by the City of Dilworth is dependent on the number of rides given to Dilworth residents. The *\*estimated* cost and ridership is computed as follows:

	<b>MAT Paratransit</b>	<b>Metro Senior Ride</b>	<b>Total</b>
2018 Budgeted Expense	\$313,094	\$139,153	\$452,247
Federal Grant Funding	\$0	\$0	\$0
State of Minnesota Grant Funding	\$266,130	\$118,280	\$384,410
Total Grant Funding	\$266,130	\$118,280	\$384,410
Local Share	\$46,964	\$20,873	\$67,837
2018 Budgeted Farebox Revenue	\$27,000	\$30,000	\$57,000
Exterior Advertising Revenue	\$0	\$0	\$0
Net Local Share	\$19,964	(\$9,127)	\$10,837
Estimated Total Ridership (Dilworth & Moorhead)	11,000	11,600	22,600
Net Cost Per Ride	\$1.81	(\$0.79)	\$0.48
Estimated Dilworth Ridership	880	696	1,576

<b>ESTIMATED DILWORTH COST</b>	<b>\$1,597</b>	<b>(\$548)</b>	<b>\$1,050</b>
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**D. Total ESTIMATED City of Dilworth Support**

*MATBUS Fixed Route Operations: Maximum of	\$27,153	\$19,533
MATBUS Fixed Route Capital Equipment		\$4,178
MAT Paratransit & Senior Ride Operations		\$1,050
<b>TOTAL</b>		<b>\$24,760</b>

NOTE: New Sunday Paratransit Service is paid 100% through a State of Minnesota New Service Expansion Pilot Program July 1, 2017-June 30, 2019.



# Attachment 6



## Memorandum

**To:** MAT Coordinating Board

**From:** Julie Bommelman, Fargo Transit Director  
Lori Van Beek, Moorhead Transit Manager

**Date:** November 13, 2017

**RE:** ***Metro Area Transit (MAT) – City of Fargo – City of Moorhead – Master Operating Agreement***

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The Cities Transit Departments are required to have an agreement or agreements, to set forth the terms and conditions associated with delivery of public mass transportation in the Metro Area, including allocation of related costs. The Cities have worked with their Legal Departments to develop the attached Master Operating Agreement to cooperate in the joint operation of all matters related to providing public mass transportation in the metro area. Specifically, this agreement outlines the parties' financial and operational responsibilities for the following components of the Metro Area Transit program, hereinafter referred to as "MAT":

- Metro Transit Garage (MTG)
- Vehicle Maintenance
- MAT Fixed Route Transit
- MAT Paratransit
- Ground Transportation Center (GTC)
- Marketing, Revenue and Programming
- Administration and Staffing
- Insurance, Licensing, and Safety Considerations for property and vehicles
- MAT Non-revenue Vehicles

In the past, the Cities of Fargo and Moorhead had entered into the following joint powers agreements in carrying out MAT services:

- Joint Powers Agreement – Fargo – Moorhead – Agreement Governing, Ownership, Use, Management and Operation of the Joint Transit Maintenance Building (Metro Transit Garage - MTG) dated August 15, 2005, and amended in 2007
- Joint Powers Agreement - City of Fargo - City of Moorhead – Mass Transit Facility Management Agreement dated September 14, 1981 and amended on

September 8, 1986 by Joint Powers Agreement - Conditions Governing the Use, Management and Operation of the Ground Transportation Center (GTC) and Addendum 1 dated December 16, 2002

- Joint Powers Agreement – City of Fargo – City of Moorhead - Conditions Governing the Management and Operation of the Fargo-Moorhead MAT Paratransit System for Persons With Disabilities, dated November 25, 2002

These agreements reflected Moorhead had approximately one-third and Fargo had two-thirds of the combined fleet of buses and other transit vehicles, which the cities agree is a reasonable basis for determining allocation of ownership of a jointly owned maintenance and storage building.

The cities of Fargo and Moorhead have created the Master Operating Agreement to allow for the equitable cost share and coordination of several operational facets of MAT, and further agree and intend that the Joint Powers Agreement/Master Operating Agreement shall amend, replace, and supersede all prior Joint Powers Agreements between the parties referenced above. Upon adoption of the attached agreement, the federal and state requirements for a governing document will be complete.

**Requested motion:** Recommend approval to the Fargo City Commission and Moorhead City Council of the attached Metro Area Transit (MAT) – City of Fargo – City of Moorhead – Master Operating Agreement.

**JOINT POWERS AGREEMENT  
CITY OF FARGO – CITY OF MOORHEAD  
METRO AREA TRANSIT  
MASTER OPERATING AGREEMENT**

**THIS AGREEMENT**, made effective the day of \_\_\_\_\_, 2017, by and between the **CITY OF FARGO, NORTH DAKOTA**, a municipal corporation of the State of North Dakota, hereafter referred to as “Fargo” and the **CITY OF MOORHEAD, MINNESOTA**, a municipal corporation of the State of Minnesota, hereinafter referred to as “Moorhead,” amends and supersedes all prior joint powers agreements between the parties.”

**WITNESSETH:**

**WHEREAS**, Fargo and Moorhead provide public mass transportation for the citizens of the Fargo-Moorhead Metro Area (hereinafter Metro Area), including the cities of Dilworth and West Fargo; and

**WHEREAS**, Fargo and Moorhead have worked cooperatively over the past three decades for delivery of public mass transit services to meet the needs of residents of the metro area; and

**WHEREAS**, given recent advances in coordinating the delivery of public mass transit in the metro area, including the development of the Metro Area Transit (MAT) Coordinating Board (hereinafter MAT Board) and the joint development of the Metro Transit Garage (hereinafter MTG) opportunities exist for the parties to expand their joint operation of public mass transit services for residents in the metro area; and

**WHEREAS**, pursuant to Chapter 54-40.3 N.D.C.C. and Minnesota Statutes § 471.59 (Joint Exercise of Powers), the above-named cities have the legal authority to enter into an agreement, through action of their respective governing bodies, to jointly or cooperatively exercise any power common to the contracting powers or any similar powers, including those which are the same except for territorial limits within which they may be exercised; and

**WHEREAS**, the parties previously entered into joint powers agreements to jointly own, operate and manage a joint maintenance and storage building in order to maximize storage, maintenance and administrative of MAT services;

**WHEREAS**, the cities previously entered into the following joint powers agreements in carrying out MAT services:

- a. Joint Powers Agreement – Fargo – Moorhead – Agreement Governing, Ownership, Use, Management and Operation of the Joint Transit Maintenance Building (Metro Transit Garage - MTG) dated August 15, 2005, and amended in 2007;

- b. Joint Powers Agreement - City of Fargo - City of Moorhead – Mass Transit Facility Management Agreement dated September 14, 1981 and amended on September 8, 1986 by Joint Powers Agreement - Conditions Governing the Use, Management and Operation of the Ground Transportation Center (GTC) and Addendum 1 dated December 16, 2002; and,
- c. Joint Powers Agreement – City of Fargo – City of Moorhead - Conditions Governing the Management and Operation of the Fargo-Moorhead MAT Paratransit System for Persons With Disabilities, dated November 25, 2002  
[hereinafter referred to as the “Prior Joint Powers Agreements”]

**WHEREAS**, pursuant to the Prior Joint Powers Agreements, Moorhead had approximately one-third and Fargo had two-thirds of the combined fleet of buses and other transit vehicles, which the cities agree was a reasonable basis for determining allocation of ownership of a jointly owned maintenance and storage building; and,

**WHEREAS**, the cities of Fargo and Moorhead desire to create a Master Operating Agreement to allow for the equitable cost share and coordination of several operational facets of MAT, and further agree and intend that this Joint Powers Agreement/Master Operating Agreement shall amend, replace, and supersede all prior Joint Powers Agreements between the parties, dated and referenced above;

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, the parties hereby agree as follows:

## **Article One General Provisions**

### 1.1 Purpose.

The purpose of this agreement is to set forth the terms and conditions associated with delivery of public mass transportation in the Metro Area, including allocation of related costs. The parties hereby agree to cooperate in the joint operation of all matters related to providing public mass transportation in the metro area. Specifically, this agreement outlines the parties’ financial and operational responsibilities for the following components of the Metro Area Transit program, hereinafter referred to as “MAT”:

- Metro Transit Garage (MTG)
- Vehicle Maintenance
- MAT Fixed Route Transit
- MAT Paratransit
- Ground Transportation Center (GTC)
- Marketing, Revenue and Programming
- Administration and Staffing
- Insurance, Licensing, and Safety Considerations for property and vehicles
- MAT Non-revenue Vehicles

### 1.2 Term and Notice to Terminate.

This agreement shall continue in full force and effect for a term beginning the effective date hereof and ending December 31, 2037, from the terms of which may be reviewed annually by the parties. This agreement shall otherwise automatically continue thereafter for successive one year terms unless either party notifies the other in writing of the party's intent to terminate this agreement twelve (12) months prior to the end of a contract period. Upon receipt of such written notice, the parties shall continue with discussions concerning future ownership of the MTG building as outlined in section 2.4.

### 1.3 Annual Budget Review: Cost Allocation Formulas.

The parties agree to jointly prepare an annual budget for the all aspects of MAT, including the following:

- Metro Transit Garage (MTG)
- Vehicle Maintenance
- MAT Fixed Route Transit
- MAT Paratransit
- MAT Non-revenue Vehicles
- Ground Transportation Center (GTC)
- Marketing, Revenue and Programming
- Administration and Staffing
- Insurance, Licensing, and Safety Considerations for property and vehicles

The annual budget for each item listed above shall clearly identify estimated costs for each city in providing the identified transit services. MAT Non-Revenue Vehicles shall mean vehicles used to support revenue vehicle operations and that are not used to carry transit passengers. Types of MAT Non-revenue Vehicles include tow trucks, supervisor vans, transit police cars, staff cars and maintenance vehicles for maintaining passenger facilities and rights-of-way (e.g. rail stations, bus shelters and track).

### 1.4 Federal Clauses

The parties agree to adopt and incorporate by reference into this agreement, applicable federal rules and regulations and any amendments thereto. A copy of current applicable rules is attached hereto as Exhibit 1.

### 1.5 Amendment

Except as set forth in paragraph 5.7, amendment of the terms and conditions of this agreement shall be in writing, approved by motion or resolution of the governing bodies of the parties.

### 1.6 Governing Law

This agreement shall be subject to, governed by, and construed according to the laws of the state of North Dakota.

### 1.7 Dispute Resolution

In the event of any default of the terms or provisions of this agreement, the party alleging the default shall give written notice thereof to the other party setting forth the facts and circumstances supporting the alleged default. Thereafter, the parties agree to discuss such

disputes between them in good faith. In the event that the default is not remedied within thirty (30) days from the date of the notice of such default, the parties agree that the notifying party shall, at its option, submit the alleged default to mediation before a mutually acceptable mediator. The parties agree that during any period of mediation, each party will continue to comply with all provisions of this agreement to avoid interruption of transit services. Costs of the mediator shall be shared equally by the parties. The mediator shall determine whether the default constitutes a material and significant breach of this agreement. In the event of such determination, the non-defaulting party shall have the option to terminate the agreement. In the event that the agreement is terminated, the parties agree to continue to perform the terms of this agreement for one hundred-eight (180) days beyond the mediator's decision so the parties can make necessary arrangements to ensure continued operation of transit services.

## 1.8 Insurance

1.8.1 Property and Casualty coverage. Fargo will obtain and keep in force during the terms of this agreement, property and casualty coverage for the Ground Transportation Center (GTC) and Metro Transit Garage (MTG), Fargo and Moorhead will be listed as named insureds or additional insureds as the case may be. Currently, costs for such insurance coverage shall be paid one-third by Moorhead and two-thirds by Fargo, however, such cost allocation may be revised as circumstances require upon agreement of Fargo and Moorhead.

1.8.2 Vehicle coverage. Except for MAT Paratransit, and MAT Non-revenue Vehicles leased by Fargo from Moorhead, each party will obtain casualty, liability, bodily injury, collision and comprehensive insurance for buses and equipment owned by each party in the MAT fleet.

1.8.3 MAT Paratransit and MAT Non-revenue Vehicles. Fargo shall obtain liability and property damage insurance and/or self-insurance coverage for claims or injuries in connection with MAT Paratransit and MAT Non-revenue Vehicles.

1.8.4 Said vehicle insurance coverage on self-insurance coverage will be arranged so that such coverage will apply whether the vehicles are driven by Fargo or Moorhead employees or contractors.

1.8.5 Minimum coverage limits. Each party will obtain and keep in force, through self-insurance or otherwise, liability insurance coverage in amounts sufficient to meet the maximum limits of liability established by each city's limits of liability under state law. As to vehicles that are leased by Fargo from Moorhead, and vice versa, the party responsible for insuring such vehicle shall obtain insurance coverage in an amount equal to or greater than the municipal tort caps in North Dakota or Minnesota, whichever is greater.

## 1.9 Indemnification and Liability

1.9.1 Fargo agrees to indemnify and hold harmless Moorhead from and against all claims or demands of every nature on account of injury to or death of persons or

damage to or loss of property, caused by or resulting in any manner from any acts or omission of Fargo, its subcontractors, its agents or employees, in performing or failing to perform any of the services, duties or operations to be performed by Fargo under this agreement.

1.9.2 Moorhead agrees to indemnify and hold harmless Fargo from and against all claims or demands of every nature on account of injury to or death of persons or damage to or loss of property, caused by or resulting in any manner from any acts or omission of Moorhead, its subcontractors, its agents or employees, in performing or failing to perform any of the services, duties or operations to be performed by Moorhead under this agreement.

1.9.3 The obligation of one city to indemnify and hold harmless the other city does not constitute a waiver by any party to this Agreement of the limitations on liability provided under relevant municipal tort caps or any other liability limitation statutes.

## **Article Two Metro Transit Garage (MTG)**

2.1 Metro Transit Garage (MTG).

The MTG is the primary storage area for the entire MAT Fleet. The MTG is also the administration headquarters for the Transit Departments of Fargo and Moorhead. The MTG is located at 650 23<sup>rd</sup> Street North, Fargo, ND 58102, and is more fully described as follows:

All of Lots One (1) through Four (4) and all of Lots Eleven (11) through Fifteen (15), the North Twenty (20) Feet of Lot Five (5) and the adjacent vacated alley and All of Lots Sixteen (16) through Twenty (20), all in Block Seven (7), Tylers Addition to the City of Fargo, according to the certified plat thereof.

2.2 Ownership of MTG.

The parties have established ownership of the MTG as tenants in common with Moorhead owning an undivided one-third interest and Fargo owning an undivided two-thirds interest.

2.3 Operation of MTG and Allocation of Costs.

The MTG shall be maintained in accordance with the Facility Maintenance Plan as agreed upon by Fargo and Moorhead, which may be amended from time-to-time by mutual agreement. The parties shall jointly prepare an annual budget which describes estimated operating costs for MTG. Fargo shall operate the MTG and bill Moorhead for its share of the operational and structural costs and expenses on a monthly basis. Such costs are specifically described as:

### 2.3.1 Structural Costs.

The parties recognize there are costs associated with ownership of the MTG, including building and site maintenance repairs and insurance costs. Costs associated with building maintenance staff are considered structural costs. Structural costs for MTG shall be paid by the parties according to a formula, which is based on each party's ownership interest in the facility. Specifically, Fargo shall pay two-thirds (2/3) of the structural costs and Moorhead shall pay one-third (1/3) of such costs.

### 2.3.2 Operational Costs.

2.3.2.1 In addition to sharing ownership of the building, the parties will occupy and utilize space within the MTG for transit operations. The parties agree to share operational costs for the MTG according to a proportionate number of buses or "vehicle units" stored and maintained in the MTG. Such costs may include those related to supervising mechanics, costs of vehicle repair equipment, communications expenses, office supplies, utilities, including water, sewer, garbage and building heat, and costs of uniform.

2.3.2.2. The current vehicle units stored at the MTG are listed in Exhibit 2. The parties agree that costs for repairs performed on transit vehicles at the MTG, including an hourly charge for mechanics' services, costs of vehicle parts, and vehicle fuel shall be invoiced directly to each city based on actual charges incurred.

2.3.2.3 The vehicle unit stored formula is based on the number of MAT Paratransit Vehicles and MAT Fixed Route Buses. Operational costs of the MTG associated with fixed route operations shall be paid by the parties according to the percentage of MAT Fixed Route vehicle units stored at MTG by each city as illustrated in Exhibit 2. Operational costs of the MTG associated with MAT Paratransit operations shall be paid by the parties according to the percentage of MAT Paratransit vehicle units stored at MTG by each city as illustrated in Exhibit 3.

### 2.3.3 Indirect Operational Costs.

Indirect costs associated with operations of the MTG, including MAT Non-revenue Vehicles, shall be paid by each party according to the vehicle stored formula illustrated in Exhibit 3, as amended, with said costs split between MAT Fixed Route and MAT Paratransit. Miscellaneous revenues from the operations of the MTG such as warranty claims, return of parts, insurance proceeds for damage claims on jointly-owned property and revenues from certain repair services shall also be split according to said vehicle formula.

## 2.4 Sale of MTG.

Either party may terminate this agreement upon twelve (12) months, written notice to the other city, as described herein. Upon receipt of such written notice, the parties shall discuss and negotiate ownership of the MTG. If the parties agree that the MTG building should be sold, then the parties agree to take such steps as are necessary to complete the sale in a timely manner.



Proceeds from the sale of the MTG property shall be allocated to the parties according to each party's ownership interest. Repayment or recoupment of Federal or state grants shall be shared by the parties in the same manner as such grant money was received.

2.4.1 In the event the parties do not agree to a sale of the MTG, then the city wishing to retain ownership [the "Buyer"] may purchase the other city's ownership interest [the "Seller"] in the property for a purchase price which shall be the lesser of the following amount:

a. The amount contributed or paid by the Seller in "local share" funds toward the original acquisition of land and construction of improvements for the MTG, plus a rate of return of three percent (3%) per annum, compounded annually.

b. The Seller's percentage ownership interest in the MTG multiplied by the appraised value of the Subject Property determined by a process of appraisals as follows: The Seller shall select a qualified real estate appraiser to conduct an appraisal of the MTG. The appraised value resulting from said appraisal shall be made known to the Buyer. If the Buyer disagrees with the said appraised value, then in that event, the Buyer shall select a second qualified real estate appraiser to conduct an appraisal of the MTG. The first and second such selected appraisers shall then agree upon a third qualified real estate appraiser to conduct an appraisal of the MTG. Of the three appraisals, the appraised value of the MTG most distant from the other two appraised values shall be discarded, and the average taken of the two remaining appraised values to determine the fair market value of the MTG.

2.4.2 Delivery of Quit Claim Deed.

Upon agreement of the purchase price, Seller shall provide a Quit Claim Deed to Buyer, transferring all of Seller's ownership interest in the MTG to Buyer for the purchase price, free and clear of any and all liens and encumbrances except special assessments, and all easements or covenants of record, if any.

2.4.3 Repayment of federal or state grants and compliance with FTA or other federal rules.

Seller shall be responsible for repayment of any federal or state grants that may be caused by such sale or transfer. The parties will comply with FTA or other federal rules for disposition of property as part of the sale.

2.5 Sublease of MTG.

To the extent current space is available for use by other entities, such space may be leased to those other entities, provided each party consents and approves the lease agreement in writing. The approval of any leases of space in the building to other transit providers or transportation entities shall be contingent upon approval by the Federal Transit Administration,

where applicable. Revenues generated through the lease of space in the MTG shall be allocated based upon the ownership interests of Fargo and Moorhead in the MTG.

#### 2.5.1 Maintenance to Other Entities.

Maintenance provided at the MTG to other entities shall be billed to the entity and revenue generated shall be allocated to Moorhead and Fargo using the indirect cost formula (see section 3.4.3).

#### 2.6 Allocation of costs for Equipment, Tools, and Support Machinery.

The parties shall share the cost of the equipment, tools, and support machinery associated with the operation of the MTG. The parties shall consult each other concerning any purchase of equipment, tools or other items which exceed \$5000.00. The costs shall be allocated between Fargo and Moorhead according to their ownership interest. Any proceeds resulting from the sale of equipment, tools, and support machinery shall also be divided between the parties based upon ownership interest in such equipment. Fargo or Moorhead may choose to buy specialized equipment and retain ownership and inventory and keep proceeds from the sale based on percentage of ownership of such equipment.

2.7 In carrying out transit operations and services pursuant to this Joint Powers Agreement, Fargo and Moorhead agree to comply with applicable federal regulations, circulars, certifications, clauses and agreements, including any amendments thereto, in connection with transit funding and procurement of transit goods or services. A list of current applicable clauses is attached hereto as Exhibit 1.

#### 2.8 Allocation of Vending Revenue at MTG.

Revenue from vending machines, advertising, and rents received from the MTG shall be collected by Fargo and distributed to Moorhead on a quarterly basis, one-third to Moorhead and two-thirds to Fargo.

### **Article Three Vehicle Repair, Maintenance, Licensing, and Insurance**

#### 3.1. Vehicle Repair and maintenance.

Fargo shall be solely responsible for performing repairs and maintenance of all MAT Fixed Route, MAT Paratransit and MAT Non-revenue Vehicles including vehicle components, such as an electronic fare collection system, security camera system, public address system, Automatic Vehicle Location (AVL) system, radio, Automatic Vehicle Announcement (AVA) system Automatic Passenger Counters (APC) and bike rack. All vehicles shall be maintained by Fargo in accordance with the manufacturer's specifications and warranty provisions and/or in accordance with MAT's Vehicle Maintenance Standards as agreed by Fargo and Moorhead, and which may be amended by the parties through mutual agreement. If multiple standards apply, Fargo will maintain vehicles according to the stricter standards. In the case of accidents or large repairs over \$5,000 involving MAT vehicles, the owners shall be responsible for determining the best course of action for repair or disposal, etc.

3.2 Intentionally omitted.

3.3 Vehicle repair records.

Fargo will properly document and record information related to vehicle repairs and provide such information to Moorhead on a monthly basis. Fargo will retain all service records for all vehicles and make such records available to Moorhead for inspection upon request. Records shall include, but are not limited to, the unit number, nature of repair, list of all parts and part numbers used, source of the parts purchased, and the number of labor hours. Fargo shall record labor and part costs on a per vehicle basis. Labor and parts costs shall also be recorded separately for the MAT paratransit and MAT Non-revenue Vehicles fleet.

3.4 Payment of vehicle repair and maintenance costs.

Vehicle maintenance and repair costs shall be paid by the parties as follows:

3.4.1. Fixed Route Vehicles Direct Costs

Fargo will pay for costs associated for maintenance, parts, and labor for Fixed Route vehicles and will bill Moorhead for such.

3.4.2. MAT Paratransit Vehicles Direct Costs

Maintenance, parts, and labor costs associated with the MAT Paratransit fleet shall be paid by each City according to each city's monthly share of MAT Paratransit ridership. Costs will be paid by Fargo and then billed to Moorhead.

3.4.3 Indirect Maintenance Costs

Costs which are considered indirect in nature shall be paid by each City according to the vehicle units stored formula, with said costs split between MAT Fixed Route and MAT Paratransit, as illustrated in Exhibit 3.

3.4.4 Direct costs are assignable to a specific vehicle. Indirect costs are all other expenses related to operations of the MTG. Example of indirect costs are bus cleaning office supplies, telephone charges and MAT Non-revenue Vehicle repairs, maintenance and fuel.

3.5 Payment of Fuel costs

Fuel costs shall be billed directly to each city based on the actual usage. In the case of MAT Paratransit, fuel costs shall be paid by the cities according to ridership. Costs will be initially paid by Fargo and then billed to Moorhead.

3.6 Vehicle Licensing

Each city shall be responsible for properly licensing any vehicles it owns which operate in the MAT transit fleet and for the payment of applicable license fees.

3.7 Intentionally omitted.

## **Article Four Fixed Route Transit Operations**

### 4.1 MAT Fixed Route Transit Operations

Each city will be responsible for providing the day-to-day operation and administration of MAT Fixed Route services. Services may be provided through a contract operator. Fargo and Moorhead agree to jointly solicit and select the same contract operator.

### 4.2 Fixed Route Costs

Costs associated with operation of the MAT Fixed Route system will be billed directly to each city according to the terms of each city's agreement with the contract operator.

### 4.3 MAT Fixed Route Dispatch Services

Fargo will provide MAT Fixed Route dispatch services through the contract operator selected in accordance with paragraph 4.1, above. MAT Fixed Route dispatch costs will be paid by Fargo with one third of such cost billed to, and paid by Moorhead, with such cost allocation to be revised as circumstances require upon agreement of Fargo and Moorhead.

## **Article Five MAT Paratransit**

### 5.1 MAT Paratransit Services.

Fargo and Moorhead have developed a transportation system for residents of the metro area with disabilities who are ADA Paratransit eligible, known as MAT Paratransit. Fargo and Moorhead agree to continue their relationship in carrying out management and fiscal activities for the MAT Paratransit system, including preparation and issuance of request for proposals for a contract operator, preparation of budget, operating guidelines, and development of a capital improvement plan. Fargo, either individually or through a written agreement with the contract operator, shall be responsible for day-to-day operations and management of MAT Paratransit services. Moorhead will work with the contract operator concerning complaints, service disputes, statistical record keeping and other matters.

### 5.2 Independent Contractor-Agreement.

Fargo may provide MAT Paratransit services through written agreement with a contract operator. Moorhead shall have the right to review and provide comment on Fargo's agreement with the contract operator. Subsequent contract operator agreements shall be jointly reviewed by Fargo and Moorhead. Fargo will consult with Moorhead concerning the terms and conditions related to dispatch and driver services for Paratransit services.

### 5.3 Operating Costs.

Operating costs associated with MAT Paratransit shall be paid by the parties based on pro rata ridership of MAT Paratransit. Operating expenses include, without limitation, payment to the contract operator, dispatch/reservationists wages and benefits, software, vehicle repairs, motor fuel, driver uniforms, marketing, printing of coupon books and brochures. Operating costs shall not include administrative or support salaries from Fargo or Moorhead personnel except

where approved by mutual agreement and except when the support staff is performing the duties of the MAT Paratransit Reservationist.

#### 5.4 Payment of Costs and Expenses for Ride Service.

Fargo shall collect all fare revenue, pay all costs and expenses for Paratransit services and bill Moorhead on a monthly basis for its pro rata share based on actual ridership. Fargo shall also credit Moorhead monthly for the fare charged per eligible passengers and guests. Individuals whose applications for eligibility for MAT Paratransit service have been approved will be given an identification number beginning with “M” for Moorhead, “D” for Dilworth, “F” for Fargo and “W” for West Fargo. Individuals who move their residence between the communities shall be reassigned an identification number for the city to which they have moved. Fargo will charge Moorhead for rides given to those eligible individuals with “M” or “D” identification numbers with Fargo being responsible for those eligible riders with “F” or “W” identification numbers. Rides given to visitors to the community who have not been given an identification number shall be charged to the city based upon the temporary visiting residence, those visitors having been issued an identification number beginning with “TEMP”. Each such city, Moorhead or Fargo, shall also be charged for accompanying Personal Care Attendants or guests of said eligible citizen/visitor. Regarding unbudgeted capital costs in excess of \$5,000 associated with MAT Paratransit services, Fargo and Moorhead will confer and agree upon such costs before they are incurred.

#### 5.5 Intentionally omitted.

#### 5.6 Prepaid Rides.

Fargo agrees to provide sale of ride coupons for MAT Paratransit services and Fargo will collect all revenues from said sales. Should service be discontinued, Fargo shall reimburse passengers for any outstanding coupons returned within 30 days following end of service.

#### 5.7 Operational Guidelines for MAT Paratransit.

Services for MAT Paratransit will be provided according to the operating guidelines agreed upon between the Fargo Transit Director and the Moorhead Transit Manager, who are also authorized to amend the operating guidelines from time to time.

#### 5.8 Scheduling of Rides.

Service for riders will be scheduled on a first-come, first-served basis. Neither the residents of Fargo or Moorhead will receive preferential treatment regarding the schedule of transit rides and the same would apply to the residents of Dilworth and West Fargo.

#### 5.9 Certification of Eligibility.

Certification of eligibility shall be the responsibility of each city following the regulations under the Americans with Disabilities Act, said responsibility having been delegated by the cities to a single mobility manager. Applications for eligibility, special user cards, and the assignment of identification numbers will be coordinated in a similar format. Fargo, Moorhead and the contract operator shall hold all records, to the extent provided by law, confidential.

5.10 Advertising revenue.

Revenue received from advertising on the interior or exterior of the MAT Paratransit vehicles shall be retained by the owner of the vehicle.

5.11 Vehicle Acquisition.

Vehicle replacement will be the responsibility of the vehicle owner. Determination of vehicle type and size shall be based on actual demand at the time of replacement and determined cooperatively by Fargo and Moorhead. Additional vehicles added to the fleet to meet growing demand will be purchased by the respective city whose ridership requires the additional vehicle as determined cooperatively by Fargo and Moorhead. Fargo and Moorhead shall provide enough vehicles to the meet the demand within each city's service area.

5.12 Vehicle Lease

Moorhead shall lease to Fargo for use of the MAT Paratransit program the appropriate number of vehicles.

5.13 Vehicle Inspections.

Paratransit vehicles shall be inspected by Fargo and Moorhead representatives prior to being placed into service. Vehicles that fail an inspection will not be placed into service until the reason for failure is corrected. Moorhead reserves the right to ensure that vehicles are being maintained properly and are in safe operating condition, and Moorhead is authorized to inspect vehicles at any time. Fargo shall keep accurate records concerning inspections performed on MAT Paratransit vehicles.

5.14 Intentionally omitted.

5.15 Records.

Fargo, and any contract operator, shall retain all financial, operational, administrative and maintenance records pertaining to MAT Paratransit services for six (6) years from expiration of the contract. Fargo recognizes that Moorhead is required to collect and retain certain reports and information according to applicable regulations. Fargo agrees to collect and provide such reports and information, on a monthly basis and in a format approved by Moorhead. Fargo agrees to provide such reports to Moorhead within twenty (20) days following the end of the month for which the report is made. At a minimum, Fargo, and/or its contract operator, shall prepare the following reports:

- a. Accounting/Recordkeeping. Accounting procedures used by Fargo shall comply with Federal Transit Administration National Transit Database requirements and regulations of the State of Minnesota Department of Transportation.
- b. Ridership/Capacity Reports. Fargo shall submit to Moorhead monthly ridership reports including number of passengers, passenger type, passenger miles, denials, no shows, cancellations, lengthy trips, missed trips, complaints and other statistics requested by Moorhead and shall include data required by Federal Transit for the National Transit Database report.

- c. Accident Reports. Fargo shall notify Moorhead immediately of any accident or incident involving a Moorhead vehicle or equipment. Any accident report forms relating to the incident will be forwarded to Moorhead.
- d. Finance Reports. Fargo shall provide Moorhead with a detailed listing of expenditures for the joint operation of the Paratransit system.

## **Article Six Marketing, Revenue, and Programming**

6.1 In the course of providing metro transit services as described in this agreement, the parties agree to coordinate, both formally and informally, a number of ancillary programs and devices as described herein. The parties agree to allocate costs for such ancillary programs and devices as follows:

### 6.1.1 Revenue from Pass Sales.

Revenue from pass sales shall be collected by Fargo. Revenue from pass sales shall be shared by the parties based on the percentage of pass ridership on each system. This formula shall also apply to the sale of transit media.

### 6.1.2 Advertising and Marketing

MAT will establish an annual budget for advertising and marketing plans. Advertising and marketing plans will be developed separately for Fargo and Moorhead, with each city responsible for paying its own advertising and marketing costs. The program shall split costs into three categories: one for Fargo and one for Moorhead with efforts unique to each city and each city then pays 100% of those costs, respectively and a third separate plan will be developed to cover the joint marketing and advertising efforts of MAT with such costs for joint advertising and marketing efforts to be shared by the parties and agreed to by both cities.

### 6.2 U-Pass Program

The U-Pass program allows area educational institutions, to have unlimited use of MAT System services based upon an amount specified in a written agreement with the respective city. Such services will be provided according to a written agreement between the educational institution and the respective city for a specified compensation amount. Revenues received pursuant to any U-Pass agreement will not be shared, rather they will be solely collected and received by the city that is the party to the agreement.

## **Article Seven Ground Transportation Center (GTC)**

7.1 The Ground Transportation Center (GTC) is the central transit hub in the Metro Area located at 502 N.P. Avenue, Fargo. The GTC was constructed pursuant to an agreement between the parties and was partially funded as a federal transportation project known as Urban Mass Transportation Administration (UMTA) Project No. ND-03-0007. Fargo owns all GTC related property and improvements, subject to the interest of the United States Government for

grant funding provided by UMTA Project No. ND-03-0007. Moorhead utilizes the GTC in providing transit services. The parties agree to allocate costs associated with operation and maintenance of the GTC as set forth herein

#### 7.2. Operational costs.

Operational costs of the GTC shall be paid one-third by Moorhead and two-thirds by Fargo; however, this cost-share formula may be reviewed on an annual basis, or more often if necessary. Such costs may include utilities, maintenance costs and the cost of fixed route dispatch services. Operational costs for the GTC shall not include costs associated with office space used by Fargo for non-transit use, i.e. utilities, phone, etc., which shall be paid solely by Fargo. Operational expenses do not include expenses for capital expenditures, which shall be paid exclusively by Fargo.

#### 7.3. Operation and Management Policies.

Fargo is responsible for day-to-day operations and management of the GTC. The parties have jointly developed programs and policies for operation and management of the GTC. Such policies and procedures shall be reviewed annually. Changes or amendments to the operating and management policies of the GTC shall be mutually agreed upon.

#### 7.4 Budget.

Fargo will prepare and submit an annual budget for the GTC in conjunction with preparing budgets for other aspects of the transit system as discussed herein. Fargo and Moorhead will review the budget and make recommendations. The budget shall include accurate accounts of total operating expenses and total operating revenue of the GTC. If Fargo anticipates the need to amend the GTC budget at any time once approved, Fargo shall consult with Moorhead prior to making the adjustment. Fargo shall present any major structural changes or improvements planned for the GTC to Moorhead for review and recommendation. Fargo agrees to consult with Moorhead concerning the design of any addition to or renovation of the GTC.

#### 7.5 Structural Costs.

Fargo shall be responsible for paying 100% of structural and capital costs associated with the GTC, including the following:

- a. Expenditures related to the design of additions to or renovations of the GTC;
- b. Expenditures necessary for the relocation or demolition of the GTC; and
- c. Capital expenditures related to the structural components of the GTC.

#### 7.6 Sale of GTC.

Sale of the GTC shall only be upon the consent of both Fargo and Moorhead. Proceeds from the sale of GTC shall be distributed to each city in the following priority:

- a. Current operational liabilities;
- b. Direct payment to Fargo in an amount equal to its original local match share investment in the GTC pursuant to UMTA Project NO. ND-03-0007; and
- c. Any remaining proceeds remaining after payment is allocated to items a and b shall be distributed to Fargo.



If applicable, distribution of revenue or distribution of proceeds from the sale of the GTC shall be as follows:

- d. Subject to the interest of the United States Government pursuant to UMTA Project No. ND-03-0007; and,
- e. Utilized and expended in a manner consistent with FTA Regulations.

7.7 Allocation of other revenue.

Revenue from vending machines, advertising, and rents received from the GTC shall be collected by Fargo and distributed to Moorhead on a quarterly basis, in accordance with the cost-share formula for operational costs as described in paragraph 7.2.

## **Article Eight Administration and Staff**

8.1 Planning and Administration.

Fargo and Moorhead shall provide for their own administrative, planning, and administrative support staff. Costs of special studies or external planning activities undertaken jointly or in cooperation with Metro COG, or through a third party contractor, shall be paid by the parties based on two-thirds to Fargo and one-third to Moorhead. Costs associated with special studies or external planning activities performed independently by either city shall be paid 100% by that city.

8.2 Staff Coordination.

The parties recognize that staff from Fargo and Moorhead will jointly contribute to the operation of MAT. As such, the staff from both cities will endeavor to work on efforts collaboratively without regard to system boundary or delineations, as appropriate. If there is a need to replace a staff person or if a new position is created, the parties agree to explore the possibility of whether it is appropriate to jointly hire management and staff. Fargo and Moorhead may agree to share personnel costs.

8.3 Staff Assistance.

The parties agree to share staff as needed. Staff persons shall be paid on an hourly basis at the actual cost per staff person according to the staff person's wages, including the cost of applicable benefits. Either Fargo or Moorhead can ask for assistance from the staff of either City.

## **Article Nine Amendment and Effective Date**

9.1 Prior Joint Powers Agreements--Repeal, Replace and Amend in Entirety. Fargo and Moorhead hereby acknowledge and agree that the Prior Joint Powers Agreements are hereby repealed, replaced, and amended in their entirety with the terms and conditions of this Agreement. The terms and conditions of this Agreement shall be in full force and effect as of the effective date hereof.

9.2 Continuity of Agreements, Obligations. Fargo and Moorhead agree and acknowledge that prior obligations of one or both parties established pursuant to the Prior Joint Powers Agreements shall continue and be in full force and effect under this Agreement.

9.3 Effective Date. This Agreement shall be effective as of the date last approved and executed by the parties.

**IN WITNESS WHEREOF**, the parties have hereunto set their signatures the day and year below stated.

CITY OF FARGO  
a North Dakota municipal corporation

DATE: \_\_\_\_\_

By \_\_\_\_\_  
Timothy J. Mahoney, M.D., Mayor

ATTEST:

\_\_\_\_\_  
Steven Sprague, City Auditor

CITY OF MOORHEAD  
a Minnesota municipal corporation

DATE: \_\_\_\_\_

By \_\_\_\_\_  
Del Rae Williams, Mayor

ATTEST:

\_\_\_\_\_  
Christina M. Volkers, City Manager

**Exhibit 1 - Federal Clauses**

**Exhibit 2 - Listing of Vehicles Stored at Metro Transit Garage**

**Exhibit 3 - Metro Transit Garage Cost Allocation Plan**

# Attachment 7

## Memorandum

**To:** MAT Coordinating Board

**From:** Lori Van Beek, Moorhead Transit Manager  
Julie Bommelman, Fargo Transit Director

**Date:** November 13, 2017

**RE:** *Snow Removal Services*



Currently, Fargo's contract for shelter snow removal expires on 12.31.2017. Moorhead has utilized Moorhead Park Maintenance staff for snow removal in the past, but that arrangement will also end on 12.31.2017. In the interest of securing a new contract, Fargo and Moorhead issued a joint Request for Proposals (RFP) on 9.11.2017. The deadline for submission of proposals was 11.6.2017.

Eleven businesses received the RFP, with two businesses submitting proposals. Of those two, the proposal from J.T. Lawn Service was non-compliant with the instructions. The only acceptable bid was from Valley Green & Associates, and their bid was lower than the budgeted cost. Total costs were calculated with the assumption of 10 snow events per winter, with snow event being defined as 2" snowfall accumulation or more. The analysis is below:

Moorhead						
Contract Year	Yearly Cost	Cost per Shelter per Snow Event	Number of Shelters	Cost per Hub per Snow Event	Number of Hubs	Yearly Cost of Weekly Hub Inspections
1	\$6,890	\$20	29	\$65	1	\$440
2	\$6,890	\$20	29	\$65	1	\$440
3	\$6,890	\$20	29	\$65	1	\$440
4	\$6,890	\$20	29	\$65	1	\$440
5	\$6,890	\$20	29	\$65	1	\$440
Cost for Contract Life	\$34,450					

Fargo					
Contract Year	Yearly Cost	Cost per Shelter per Snow Event	Number of Shelters	Cost per Hub per Snow Event	Number of Hubs
1	\$17,800	\$20	74	\$300	1
2	\$17,800	\$20	74	\$300	1
3	\$17,800	\$20	74	\$300	1
4	\$17,800	\$20	74	\$300	1
5	\$17,800	\$20	74	\$300	1
Cost for Contract Life	\$89,000				

The difference in price per hub for Moorhead versus Fargo is the fact that Fargo's hub is the Ground Transportation Center (GTC), which has an entire parking lot which needs to be cleared in addition to walkways. This is compared to Moorhead's hub, the Marriott, which only requires sidewalks to be cleared. The significantly higher price for Fargo's hub is reasonable.

**Recommended Motion:** Recommend to the Fargo City Commission and Moorhead City Council to reject the non-compliant bid from J.T. Lawn Service, and to award the snow removal contract to Valley Green & Associates.



## Memorandum

**To:** MAT Coordinating Board

**From:** Julie Bommelman, Fargo Transit Director  
Lori Van Beek, Moorhead Transit Manager

**Date:** November 13, 2017

**RE:** *MAT Coordinating Board Proposed 2018 Schedule*

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The attached schedule for 2018 is proposed by staff for the MAT Coordinating Board.

In the interest of consistency, staff members feel it would be more productive to identify dates for the upcoming MAT Coordinating Board meetings and topics throughout the year for each meeting. Please note, as additional unforeseen topics come up during the year requiring the input of the MAT Coordinating Board, staff will add those items to the regular agendas.

There are several major projects scheduled in 2018 for Transit which will impact the long-term direction and goals of the overall system. It is critical we have input from the Board during these projects to assist with the vision in 10, 20 and 30 years for the transit system. Projects include exploring the next steps for implementation of a Transit Authority, completion of the Transit Facility and Hub Analysis Study, the Metro Senior Ride study, the Triennial Review and the Moorhead ADA Plan.

**Requested motion:** Approve the attached MAT Coordination Board Proposed 2018 schedule.

**MAT COORDINATING BOARD  
 PROPOSED MEETING DATES FOR 2018  
 THIRD WEDNESDAY AT 8:00 AM**

**January 17, 2018**

Annual Marketing Plan  
 Annual Ridership Report  
 Annual Operations Report

Annual Achievements Report  
 Federal Triennial Compliance Review 2018  
 Procurement Manual Updates  
 Federal 5307 Program of Projects (Fargo)

**March 21, 2018**

Capital Improvement Plans  
 MN Capital Grant Contracts  
 ND Federal 5310 & 5339 Grant Applications

Title VI Plan Update - Moorhead  
 Driver Services RFP

**May 16, 2018**

Fare Changes (Effective July 1)  
 Route Changes (Effective July 1)  
 U-Pass Contracts - Proposed Rates

Preliminary Budget Discussion

**July 18, 2018**

State Grant Applications  
 Federal 5307 Grant Projects (Moorhead)  
 Updated Schedules and Maps  
 Approve College Contracts: U-Pass,  
 Advertising, Joint Powers

**September 19, 2018**

Final Budget Review  
 Grant Updates and Funding Analysis

**November 21, 2018**

Fare Changes (Effective January 1)  
 Route Changes (Effective January 1)  
 JPA Moorhead, Dilworth and Valley Senior Ride

Dilworth Transit Service Contract  
 Review State Grants Received  
 ND TA Grant Application  
 West Fargo Transit Service Contract

**Monthly:**

Operations Report  
 Ridership Reports  
 Marketing Activities  
 Updates on Planning Studies: Transit Facility and Hub Analysis, Moorhead ADA Plan, Metro Senior Ride System Analysis, Transit Authority Study & Analysis  
 RFPs or Awards for Contracts/Purchases  
 Mobility Management Updates

**Five-years:**

Transit Development Plan (2016, 2020)  
 Shelter Window Cleaning (2017, 2022)  
 Shelter Snow Removal (2017, 2022)  
 Janitorial Services at GTC and MTG (2017, 2022)  
 Security Services (2015, 2019)  
 Vending Machines

**Three-years:**

DBE Goals (2016, 2019)  
 Title VI Plan (Fargo 2016, Mhd 2017)  
 RFP for Driver Services (2015, 2018)  
 Federal Triennial Compliance Review (2015, 2018)