

MATBUS Transit Authority Study

Executive Summary

September 2020



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Metro COG and its partners studied the reorganization of MATBUS to meet current and future needs for coordinating and providing transit service, and to improve decision-making processes for MATBUS. The metropolitan area will transition to a Transportation Management Area (TMA) following the 2020 Census, which will change the category of federal transit funding formulas and rules applicable to Fargo – Moorhead. This will significantly impact MATBUS operations and capital project funding.

Organizational Challenges

From the rider perspective, MATBUS operates as a unified entity making use of a single branding approach; however, transit service is ultimately governed and funded by the individual city governments of Fargo and Moorhead. The existing governance structure of MATBUS consists of a myriad of agreements between governments and local partners, and leads to indecision and miscommunication, including:

- Being functionally managed by two different municipalities with, at times, different goals can impede the ability to have a cohesive vision for transit service
- A conflict resolution process supported by the cities and MATBUS administrative staff is needed to provide staff with the tools to facilitate establishing equitable and durable decisions supporting efficient service provision.
- A lack of dialog in capital planning and decision processes contributes to funding partners occasionally having conflicting goals and offer numerous opportunities for miscommunications among agency officials

Table 1. Overall SWOT Results

Strengths	Weaknesses
<ul style="list-style-type: none"> • Branding and regional identity – Single identity for customer • Product that allows for cross-border, regional travel • Local partnerships (intergovernmental, NDSU, etc.) • Embracing new technologies • Positive aspects of MATBUS service • Technology • Cooperative purchasing 	<ul style="list-style-type: none"> • Most are on the same page that there are issues with the current organizational structure • Lack of coordination in budgeting and financial planning • Oversight processes from multiple boards, councils, etc., leads to indecision • Funding disparities • Communication • The operating environment/land use pattern makes providing effective service challenging
Opportunities	Threats
<ul style="list-style-type: none"> • Developing a new, equitable funding formula • New demographics and technologies • Engagement of community leaders • Strength of economy, investment in transit supportive areas 	<ul style="list-style-type: none"> • State imposed mill-levy cap (Fargo) • Low income populations living far from job opportunities. • Decrease in funding resources, competition for funding at all levels • Inability to invest in new forms of transportation • Duplicative and/or siloed services

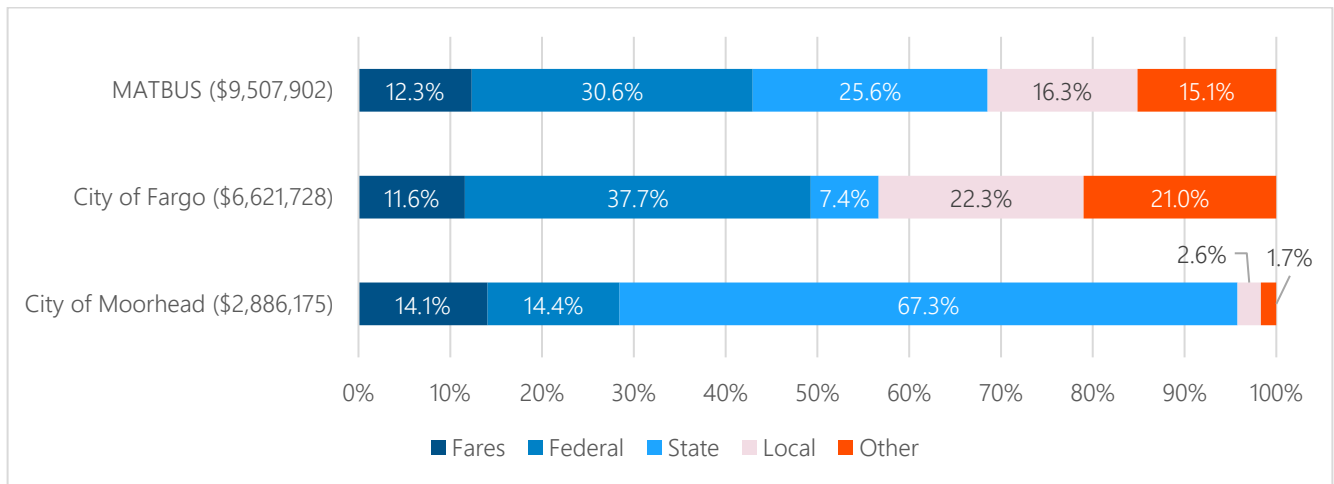
Funding Challenges

Following the 2020 Census, the Fargo – Moorhead urbanized area (UZA) population is expected to surpass 200,000, a critical threshold in many federal transportation programs. Under Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) rules, Fargo-Moorhead will then be designated as a Transportation Management Area (TMA). The Fargo-Moorhead UZA will be subject to new Section 5307 Urban Area Formula Program formulas and rules, significantly impacting how MATBUS operations and capital projects are funded.

- The **Fargo-Moorhead UZA will become less competitive for Section 5307 Program funds**, relative to other larger metropolitan areas up to 1,000,000 residents in its funding pool.
- The **FY 2023 Section 5307 Program apportionment** to the Fargo-Moorhead UZA is estimated to be nearly \$794,000 less than it was in FY 2019, a **22 percent decrease**.
- Under the existing organizational and regulatory structure, the **City of Moorhead is not projected to experience significant change in the combined federal and state funds allocated for operating expenses as a result of the transition to a TMA**; this is due to the Minnesota Department of Transportation’s (MnDOT) funding formula structure, in which MnDOT agrees to fill the gap. Future increases or decreases in the Minnesota state transportation budget may change the state funding formula allocations to Moorhead.
- Best estimates indicate that the City of Fargo, and the Fargo-Moorhead UZA as a whole, will experience an **annual operations funding gap of \$1,206,000 from the loss of Section 5307 Program funds in FY 2023, compared to FY 2019**

Figure 1. Funding Sources Spent on Operations, 2018: MATBUS and Cities of Fargo and Moorhead

Total operating expenses for 2018 shown in parentheses; MATBUS expenses are the sum of the cities’ values. Other sources could include revenue from advertising, negotiated purchased transportation agreements and fare agreements.



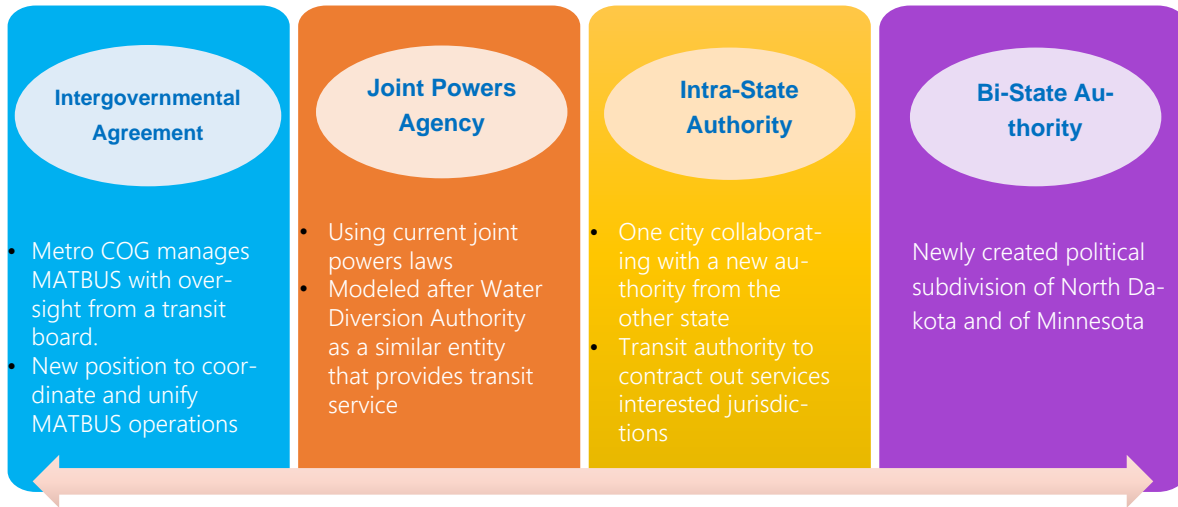
Source: City of Fargo, 2018 actual values; City of Moorhead, 2018 actual values.
 Note: Excludes contra expenses; the City of Moorhead reimbursed the City of Fargo \$1,278,998 in fiscal year 2018, in accordance with the master operating agreement.

Alternatives Analysis

Governance

Governance alternatives were developed based on the SWOT input received from stakeholders and case studies of similar bi-state transit operating environs across the country. Alternatives were analyzed based on their ability to address the funding challenge and the needs identified in the SWOT exercise. The preferred governance alternative must address communication issues, financial equity, decision making equity, streamlining the decision-making process, options for dedicated funding, and options to close the TMA funding gap.

Figure 2. Comprehensive Governance Alternatives Overview



Funding

Each enhanced or new revenue source was examined for revenue potential, ease of implementation, and whether there is the need for legislative action. Revenue sources will need to be reliable, including during economic downturns when the need for transit service may grow. An equitable burden between jurisdictions will also need to be a consideration.

Another important consideration is whether enhanced or new revenue sources can raise the amount of additional revenue necessary to support the preferred medium growth alternative described in the *2018 MATBUS Facilities Report*, which includes an anticipated 21 percent increase in service by 2027 and a 43 percent increase in service by 2037, both compared to 2017 service levels.

Table 2. Fixed Route Revenue Miles and Vehicles by Year, Medium Growth Preferred Alternative

	2017 (Base)	2022	2027	2032	2037
Revenue Miles	1,468,699	1,624,961	1,781,224	1,937,486	2,093,749
Vehicles	42	47	53	58	63
Staffing Level	127	139	160	-	185

Source: MATBUS Transit Facility Study, 2018, Chapter 2, page 3 and page 10: http://www.fmmetrocog.org/application/files/5515/4774/9112/MATBUS_facilities_Report_1-19Landscape_r.1.pdf

Table 3. Operating Budget Implications – Medium Growth Preferred Alternative

	2018	2027	2037
Operating Budget	\$10,786,900	\$13,082,248	\$15,377,597
Percent Change from 2018		21%	43%

Table 4. Overview of Fargo Funding Enhancements or Alternatives

	Annual Revenue Potential	Covers Funding Gap? Additional Service?	Ease of Implementation	Need for Local or State Legislative Action?	Jurisdictional Equity	Economic Risk
Fares	\$148,000 to \$296,000	No No	Within MATBUS control	Local Action	Would raise fares in both MN and ND	Loss of customers due to higher fare for similar product
Property Tax	Up to \$7.7 million (13 mills) in Fargo tax capacity, a fraction could be used for transit	Yes Yes	Fargo City Commission – looks to decrease property tax burden, however.	No need to change ordinances	Would close funding gap. If expanding service, would need additional funding from MN and ND local partners too	Stable source of revenue in economically challenging times
Transit Assessment District	Depends on district size	No No	Fargo City Commission	Special assessment benefit district	Would need to provide a clear benefit to the transit district	Stable source of revenue in economically challenging times
Local Sales Tax	Up to \$27 million (1% sales tax) in Fargo, a fraction could be used for transit.	Yes Yes	Citywide vote	Would fund transportation operations instead of capital project	Would close funding gap. If expanding service, would need additional funding from MN and ND local partners too	Revenues can rise and drop rapidly with economic changes. Regressive.
App-Based TNC Fee	\$25,000 to \$125,000	No No	Fargo City Commission. Additional sales tax collection mechanism.	Yes – new fee	Would generate a small increase in funds. Could be implemented in jurisdictions separately.	TNC ridership is relatively stable
Community and Business Partnerships	Limited	No No	Within MATBUS control	No	N/A	Varies
Utility Fee	Flat monthly fee for all 53,850 Fargo households	Yes No	Fargo City Commission – must make case for transit as a utility	Addition to utility bill. Establish enterprise fund.	Would generate a small increase in funds. Could be implemented in jurisdictions separately.	Stable source of revenue in economically challenging times. Regressive.
County Income Tax	Unknown	Likely	Difficult	Would require state enabling legislation	Could be done at county level, upon state approval	Revenues can rise and drop rapidly with economic changes

Preferred Governance Structure

Interim – Metro COG Transit Director

Metro COG would lead the transition from the current structure to a North Dakota based transit authority. This process would begin by appointing a single Transit Director for the system in charge of leading the process to transition to a transit authority. The new director would work at the MATBUS facilities on a day-to-day basis. The purpose of placing MATBUS under the COG's structure is to provide independence for the transit agency and advocate for pro-active regional transit planning. Metro COG transit management provides an opportunity for MATBUS to have some independence from the governing cities, streamline its communication and decision-making process, and limit conflicts.

This option also places MATBUS directly under the Metro COG organizational structure, reporting to the policy board. The key objective in proceeding with this option is for the municipalities to enter into an agreement modifying the Metro COG Articles of Association in accordance with the resolution of the essential issues; this could be accomplished entirely within the Articles of Association or in a separate, coordinated agreement.

The Transit Director would work in coordination with the existing Moorhead Transit Manager and Fargo Transit Director. The proposed Transit Director would be an employee of Metro COG and report to either the Metro COG Policy Board or a new Transit Board with amended powers, so that its contribution goes beyond advisory. As an employee of the Metro COG, the Transit Director would have the following responsibilities:

- Lead and advocate the process to establish a transit authority in North Dakota
- Pro-actively establish transit needs and planning priorities
- Serve as a single point of contact for approvals and proposals
- Lead and develop a cohesive vision for MATBUS, advocating for a unified approach to capital and service planning
- Facilitate internal agreement by coordinating with both cities on MATBUS operations
- Make hiring decisions regarding MATBUS staff
- Make first recommendations on career and compensation decisions for MATBUS staff

Metro COG staff would have the responsibility for long-term visioning and planning for MATBUS through consensus with appropriate stakeholders as it transitions into an authority. However, political leadership for the authority implementation steps will have to come from local stakeholders.

This interim step offers the benefit of addressing the communication issue at the agency and streamlines the decision-making process without the need for state enabling legislation. However, it does not address the funding shortfall and MATBUS is still dependent on local allocations from the cities of Fargo and Moorhead. There could be an opportunity for the intergovernmental agreement to specify a more consistent contribution from the municipalities. Current staff would still be employed separately by the cities of Fargo and Moorhead, just as transit assets would still be owned separately by the cities. Metro COG would lead the administration and planning.

Long Term Recommendation

Stakeholders preferred forming a transit authority in North Dakota, and contracting transit service with other interested jurisdictions, mainly in Minnesota. It does require new legislation and a likely public vote to levy a potential tax. The North Dakota cities would have to initiate the long-term effort of gaining adequate support toward implementation.

The distinguishing advantage of forming a new authority is the potential to develop a reliable independent source of funding, specifically of local funding. Such sustained funding is essential for the planning, development, and operation of such complex systems as multi-modal transportation services and resources. Forming an authority in

Fargo and West Fargo would require new North Dakota enabling legislation, both for its governance and its taxation powers. The final taxation mechanism will ultimately be decided by enabling legislation in the North Dakota legislature.

This recommendation will also allow for the Minnesota side of the system to join as a bi-state authority in the future, which would create an even more integrated system and streamlined decision making process. This process could be started once the North Dakota-based authority is in full operation, and would require additional legislative action in Minnesota and potentially North Dakota.

The final taxation mechanism of a transit authority will ultimately be decided by enabling legislation in the North Dakota legislature. The most likely funding mechanism tied to a transit authority are a transit assessment district, a regional property tax, or a sales tax. If a transit authority becomes infeasible, the following options could be implemented at the local level: fare increases, local property tax increases, a local TNC fee, or a transit utility fee.

Implementation Roadmap

The preferred alternatives must be implemented through adoption of this plan and subsequent steps by the city councils of Fargo and Moorhead, as well through state enabling legislation for the transit authority and its taxing powers by the state of North Dakota. Staff at Metro COG will be guiding this process. The interim phase of appointing a transit director under Metro COG will start in the fall/winter of 2020.

Steps towards the implementation of the interim governance phase are as follows:

1. Metro COG approves preferred alternatives for MATBUS governance and funding (Fall 2020)
2. Adoption of the transit authority study by the city councils of Fargo and Moorhead (Fall 2020)
3. Metro COG adds a transit mission to its operations and incorporates the new manager position in its organizational structure (Fall/Winter 2020)
4. Metro COG approval of Transit Director position, to be funded through the same federal, state, and local contributions currently funding the transit director and manager in Fargo and Moorhead. This process will also redefine the roles of the three management positions at MATBUS. Followed by the hiring process and appointment of single MATBUS transit director. (Spring 2021)

Transit Authority Formation

A new North Dakota Transit Authority would require much effort from the municipalities involved and concerted public engagement and support. Moorhead would potentially benefit more from the opportunity to purchase contracted transit service and the associated reduction in administrative burden. New staff will participate in a new benefits program, while it should be goal to extend existing salary and benefit packages to existing staff.

The North Dakota cities under the MATBUS umbrella would proceed with the effort of passing resolutions to enable the authority's formation. General experience is that this requires an individual champion of the legislation who enjoys enough public trust or influence to facilitate the momentum necessary; often, citizen committees or exploratory committees are also formed to build acceptance. Once finalized, discussions of contract service provision or board representation would then follow. Some considerations before starting the transit authority process include:

- **Board Representation and Decision Equity:** Ultimately, board representation would be determined by the state legislature albeit with input from the general-purpose government units. Also, because board representation could be a point of conflict or disagreement among stakeholders, experience cautions against pre-mature discussions that could hinder the progress of passing state legislation. Ideally, the composition of board should be held off until enough support is garnered for the effort. The final transit board should be formed to provide equity by reflecting the sources of local funding. Consider a seat for Moorhead on the board.
- **Transfer of Assets and Facility Ownership:** The City of Fargo could transfer the assets to the new authority. Both MATBUS operations in Fargo and Moorhead would have to transfer their assets to the new authority.

This includes vehicles, equipment and the facility. Details of the transfer would be agreed upon by the respective city councils and stated in the intergovernmental agreement. The new authority could also purchase Moorhead's share of asset ownership and charge back the capital cost as an element of the service contract charges or continue an undivided joint ownership arrangement. Federal interests can be transferred to another or new grantee.

- Funding: With its own taxation powers, the authority would be provided with an opportunity to secure stable source of long-term funding. A levy could be placed on either property or sales tax, or a utility fee.

The Metro COG Transit Director will need to provide the documentation and support for policy makers to implement a transit authority. These policy development steps include the following local actions, to be completed in the fall and winter of 2020:

- 1) Drafting a transit authority strategic plan that will help identify objective, consensus issues to be implemented during the interim phase and during the establishment of the transit authority. It must also revisit funding splits for shared capital purchases and state of good repair investments relative to decision responsibility and benefits.
- 2) Drafting an operating agreement between Moorhead, Dilworth, and the transit authority
 - a. Drafting a new operating contract between the authority and transit operations contractors for fixed route and paratransit services
 - b. May need to draft operating agreements with West Fargo and Horace too if these communities are not included within the transit authority jurisdiction.
- 3) Drafting asset transfer agreements from cities to the authority, including clauses on insurance and liability.
- 4) Confirming the authority purchase Moorhead's local share of ownership, and charge back the capital cost as an element of the new operating agreement.
- 5) Drafting an organizational structure and board composition.
 - a. Must decide on criteria for representation and qualifications, by jurisdiction, at-large, or funding share, and whether the positions are appointed or elected. Ultimately will be up to the legislature.
 - b. Draft human resource, employment, compensation and benefits policies of transit authority staff. Provide grandfathered provisions for current staff to retain existing benefits.
- 6) Finalize preferred financial alternative implementation plan for revenue collection.
- 7) Draft backup policies in the event the North Dakota legislature is unwilling to pass authority enabling legislation; Metro COG will need to consider becoming the permanent owner and operator of MATBUS through an intergovernmental agreement.

Once these local decisions are finalized, the Metro COG staff will need to work with local stakeholders to draft enabling legislation for the North Dakota legislature. One of the local partner cities may lead the lobbying effort at the state capitol, as Metro COG is prohibited from doing so. A legislator willing to sponsor the legislation will need to be identified as well, preferably one from the Fargo-West Fargo area in a leadership position of one of the two legislative chambers. The legislation will need to address the governance structure and the (taxation) powers of the transit authority through the following items:

- Option to start with one political subdivision and have new members join over time
- Ability to collect taxes to provide a reliable and independent funding source
 - An authority would need to fill the funding gap, have the potential to expand revenue for expanded service and must replace the Fargo and West Fargo general fund contributions to transit.
- Ability to create an authority Board of Directors for representation of multiple communities
- Ability to construct, operate and maintain transit and transit assets
- Ability to acquire or condemn property independently
- Ability to accept gifts, grants, loans or other property
- Ability to provide service outside of transit area by contractual agreement
- Authority to issue negotiable revenue bonds independently
- Ability to independently borrow money

Once the North Dakota legislature passes the enabling legislation in 2021 or 2023, Metro COG will lead the implementation of the draft policies and transfer management to the new transit authority. These steps include:

- 1) Organizing the authority and finalize board composition, preferably with Moorhead representation (summer of 2021 or 2023)
- 2) Appoint/elect the transit authority board of directors
- 3) Adoption of the authority strategic plan, operating agreement, and transit asset transfer agreement
- 4) Assign the transit authority as FTA recipient for the Fargo-Moorhead metro area
- 5) Board appoints a transit director (most likely the transit director housed at Metro COG, but subject to the new board's approval)
- 6) Start collecting authorized taxation (property tax levy/sales tax/utility fee)
- 7) Select transit operating contractor
- 8) Transfer assets from cities to the transit authority
- 9) Transfer transit staff from Fargo and Moorhead to new authority
- 10) Start operations under a new operating contract between the authority and the selected transit operations contractor

Legal Guidance

At the conclusion of the Transit Authority Study, there were several questions brought forth by key stakeholders about the recommendations that would benefit from legal guidance. The consultant team partnered with a local municipal lawyer with experience in both Minnesota and North Dakota policy environments to provide this guidance. The following section paraphrases responses to the questions brought forward by the study advisory committees.

- None of the provisions of the organization's Articles of Association expressly authorize the Metro COG to manage, oversee or operate a MATBUS transit system. Consequently, if the Metro COG seeks to manage, oversee and operate a MATBUS transit system, it is recommended that the Articles of Association be amended to expressly and specifically include such activities within their authorized scope of functions and powers.
- If the Metro COG is seeking to hire employees, other than those identified in Section 7.08 or Section 8.01 of its Articles of Association for purposes of managing, overseeing or operating a MATBUS transit system, it is recommended that the Articles of Association be amended to specifically provide for the recruitment, hiring, and management of staff for transit purposes.
- The ability to levy real estate taxes or sales taxes would fall on municipal governments or an authority with the statutory authority to perform this action.
- In reviewing the Metro COG Articles of Association, the organization is set up for the purposes of planning but does not have the explicit ability to carry out or implement transportation projects. Therefore the Articles of Association would need to be amended to include this ability and carry out the Interim Recommendation of the study preferred alternative. This is accomplished through approval of each local and county government represented by the Metro COG Policy Board.
- The State of North Dakota does not offer statutory authority to form a transit authority. That being said an interim organization could be formed using the authorities enabled by the Joint Powers Act to form an inter-agency board that would oversee transit operations. This entity would require specific legislation to incorporate a dedicated funding source for transit investments.
- The most analogous entity in North Dakota to a Transit Authority is an Airport Authority. Legislation could be modeled after this type of organization to develop a regional transit authority in North Dakota

Legislative efforts and the specific construction of a transit authority will be led by the legal staff of the Cities of Fargo and West Fargo and private legal counsel will be retained at a future date if necessary. Both communities have the technical capacity and dedicated lobbying efforts to construct draft legislation to form a Transit Authority or Joint Powers Authority that accomplishes the goals of this study.