

## MID-REGION TRANSIT DISTRICT GOVERNMENTAL UNIT CONTRACT

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WHEREAS, pursuant to the Regional Transit District Act, N.M. Statutes, Chapter 73, Article 25 [Sections 73-25-1 to 73-25-18 NMSA 1978], governmental units may create a regional transit district by contract. This district is authorized to exercise the functions conferred by the provisions of the Act including the establishment of a regional transit system that is compatible with established state and local transportation plans that transports or conveys passengers within a region by means of a high-occupancy vehicle, including an automobile, truck, bus, van or railcar;

WHEREAS, the purpose of a regional transit district is to:

A. Serve the public by providing for the creation of regional networks of safe and efficient public transit services;

B. Allow multijurisdictional public transit systems to reduce the congestion of single-occupant motor vehicle traffic by providing transportation options for residents;

C. Decrease automobile accidents by reducing traffic congestion on freeways and streets;

D. Reduce noise and air pollution produced by motor vehicles;

E. Prolong and extend the life of New Mexico's existing roadways by easing the traffic burden;

F. Provide residents with a choice of transportation alternatives so that seniors, youth, low-income and mobility-impaired residents and others unable to drive or afford motor vehicles continue to have full access to the goods, services, jobs and activities of the community;

G. Improve the New Mexico economy by increasing workforce and citizen access to education and higher paying jobs;

H. Prolong and extend petroleum resources; and

WHEREAS, upon the signing of this Contract by two or more governmental units and upon the issuance by the New Mexico Transportation Commission of a certificate stating that the district has been duly organized according to the provisions of the Act, the district shall constitute a separate political subdivision of the state and shall have all the duties, privileges, immunities, rights, liabilities and disabilities of a political subdivision.

NOW, THEREFORE, for and in consideration of the mutual covenants set forth below, the initial signatories hereby agree as follows:

## SECTION 1 - DEFINITIONS

“Act” means the Regional Transit District Act;

“Alternate Director” means any person appointed as the designee of a Director pursuant to Section 3C hereof;

“Board” means the board of directors of the District;

“Board Chair” means the Director who is confirmed by majority vote of the Board Membership to serve as chairperson of the Board;

“Board Member” means a Director;

“Board Membership” means all Directors of the Board;

“Bond” means a revenue bond;

“Commission” means the state transportation commission;

“Director” means any person appointed as a Director pursuant to Section 3C of this Contract;

“District” means the Mid Region Transit District which is created by this Contract as a political subdivision of the state pursuant to the Act;

“Financial Plan” means a document for a multi-year period, covering the district’s operating and capital programs, which provides information regarding the recent financial condition of the district; describes the district’s current financial status; and provides information on costs, revenues, funding sources, and financing mechanisms;

“Governmental Unit” means the state, a county or a municipality of the state or an Indian nation, tribe or pueblo located within the boundaries of the state;

“Initial Service Plan” means the first “Service Plan” (see definition below) that is approved by the Board;

“Non-revenue Vehicle” means vehicles not normally used for the provision of revenue service for passengers;

“Officer” means the Board Chair, Vice Chair or Chief Executive Officer, and any subordinate officer or agent appointed and designated as an officer of the District by the Board;

“Ordinance” means a rule established by a governing body, in the form of a permanent rule of action, law or regulation;

“Regional Transit System” means a property, improvement or system designed to be compatible with established state and local transportation plans that transports or conveys passengers within a region by means of a high-occupancy vehicle, including an automobile, truck, bus, van or railcar;

“Resolution” means a course of action determined or decided on by the Board;

“Revenue” means tolls, fees, rates, charges, assessments, grants, contributions or other income and revenues received by the District;

“Revenue Vehicle” means the floating and rolling stock used to provide revenue service for passengers;

“Service Plan” means a document for a multi-year period that describes the district’s operating and capital plans; this plan shall state the district’s goals and objectives, how document elements contribute to meeting the transportation needs of the region, prioritization of projects, and the district’s financial ability to provide the services and projects;

“User of Public Transportation Services” means an individual who on average uses the public transportation system a minimum of two times per week.

## SECTION 2 – NAME AND PURPOSE OF THE DISTRICT AND THE REGIONAL TRANSIT SYSTEMS TO BE PROVIDED

A. The regional transit district created by this Contract shall be called the “Mid-Region Transit District” until such time as the Board may change the name by a two-thirds vote of the Board Membership.

B. The purpose of the District is to carry out the powers, privileges and duties vested in or imposed upon the District by the Act.

C. The District shall provide regional transit services that are compatible with established state and local transportation plans that call for transporting or conveying passengers within a region by means of a high-occupancy vehicle, including an automobile, truck, bus, van or railcar.

## SECTION 3 – ESTABLISHMENT AND ORGANIZATION OF THE BOARD OF DIRECTORS

A. The Board shall be composed of at least one Director from each governmental unit that is a member of the District. The number of directors for each of these governmental units shall be determined in the manner detailed below, except that a

governmental unit shall not have a majority of membership on the Board, unless there are three or fewer governmental units that are signatories to this Contract. The Board shall be reconstituted in the year following each official federal census.

1. Population under – 50,000 – One Director
2. Population 50,001 – 100,000 – Two Directors
3. Population 100,001 – 150,000 – Three Directors
4. Population 150,001 – 300,000 – Four Directors
5. Population 300,001 – 450,000 – Five Directors
6. Population 450,001 – 600,000 – Six Directors
7. Population 600,001 – 750,000 – Seven Directors

B. The Board shall be organized according to Bylaws.

C. Manner of the Appointment of Directors and Alternate Directors, Their Term of Service and Qualifications and Procedure for Filling Vacancies.

1. Appointment. Each governmental unit that is a signatory to this Contract shall appoint, in a manner to be determined by each governmental unit, an elected official(s) of the governmental unit as a Director and may also appoint a designee(s) for this elected official(s) as an Alternate Director.

2. Term of Service and Qualifications. The term of service for each Director and Alternate Director, if any, shall commence with the first meeting of the Board following his or her appointment, shall be for a minimum of one year, and shall continue until:

- a. The date on which a successor is duly appointed; or
- b. The date on which he or she ceases to be an elected official of the appointing governmental unit; or
- c. The date on which he or she is removed from the Board by the governmental entity.

3. Filling Vacancies.

a. Resignation. Any Director or Alternate Director may resign at any time, effective upon receipt by the Board Chair of a written notice of resignation. The resignation by the Board Chair is effective upon receipt by the Board Vice-Chair of a written notice of resignation. A resignation by the Board Vice-Chair when the Board Chair position is vacant is effective upon receipt by the Chief Executive Officer of a written notice of resignation.

b. Vacancies. Vacancies in the office of any Director or Alternate Director shall be filled pursuant to Section 3C1.

D. Alternate Director. In the event a Director is absent from a Board meeting, the Alternate Director appointed by the governmental unit that appointed the Director shall act for the Director for all purposes, except in the following instances, when only an elected official may cast a vote:

1. Ratification of acquisition of land by negotiated sale; and
2. Issuance of bonds.

E. Officers of the Board, the Manner of their Appointment and their Duties.

1. Board Chair.

a. Powers, Authority and Duties. The Board Chair shall have the power to call and chair meetings of the Board and such other powers as may be prescribed from time to time by the Board. The Board Chair shall have such additional authority, powers and duties as are appropriate and customary for the office of the chair of the board of directors of entities such as the District, and as the Board may otherwise prescribe.

b. Selection of Board Chair. The names of those nominated shall be voted upon by successive ballots until a nominee receives a majority vote of the Directors in attendance. At the conclusion of each ballot when no nominee has received a majority vote, the nominee receiving the lowest vote total shall be eliminated from successive ballots.

2. Board Vice-Chair.

a. Powers, Authority and Duties. The Vice-Chair shall be the Officer next in seniority after the Board Chair and, upon the death, absence or disability of the Board Chair shall have the authority, powers and duties of the Board Chair. The Board Vice-Chair shall have additional authority, powers and duties as are prescribed by the Board.

b. Selection of Board Vice-Chair. The names of those nominated shall be voted upon by successive ballots until a nominee receives a majority vote of the Directors in attendance. At the conclusion of each ballot when no nominee has received a majority vote, the nominee receiving the lowest vote total shall be eliminated from successive ballots.

3. Removal of Board Chair and/or Board Vice-Chair. The Board Chair and Board Vice-Chair may be removed from office by an affirmative vote of a majority of the Board Membership. A motion made at a regular meeting shall initiate such action, but the vote shall not be called for until the next regular meeting or at a special meeting called for the purpose of considering such motion. The Chief Executive Officer shall cause to be delivered or shall mail a copy of the resolution to remove the Board Chair and/or Board

Vice-Chair to the affected individual(s) at least seven calendar days prior to the meeting at which the motion is to be considered.

F. Vacancies. Vacancies in the office of Board Chair and/or Board Vice-Chair shall be filled pursuant to Section 3 E.

G. Delegation of Power. Subject to the provisions of the Act, this Contract, and the Bylaws, the Board may delegate its powers by resolution to an officer or agent of the Board.

#### SECTION 4 – VOTING REQUIREMENTS FOR ACTION BY THE BOARD

A. Resolutions and Voting. All actions of the Board shall be by written resolution or ordinance. Decisions of the Board shall be adopted upon the affirmative vote of a majority of the Directors in attendance except as otherwise provided in the Act, in this Contract, or in the Bylaws.

B. Adoption of Bylaws. The Board acting by resolution shall adopt Bylaws by a two-thirds affirmative vote of the Board Membership provided that notice of the proposed Bylaws shall have been delivered or mailed to each Director not less than seven calendar days prior to the meeting at which the Bylaws are to be considered.

C. Amending of Bylaws. The Board acting by resolution may amend the Bylaws by a two-thirds affirmative vote of the Board Membership provided that notice of the proposed amendment(s) shall have been delivered or mailed to each Director not less than seven calendar days prior to the meeting at which the amendments are to be considered.

#### SECTION 5 – CHIEF EXECUTIVE OFFICER

A. Powers, Authority and Duties. The Chief Executive Officer shall be the chief executive officer of the District, shall supervise the day-to-day activities of the District; shall hire, fire, or transfer District employees according to policies and procedures approved by the Board; be responsible for the maintenance of all records and files and the preparation and filing of reports to governmental agencies; shall give, or cause to be given, notice of all meetings (including special meetings) of the Board; keep minutes of such meetings; have charge of the District's seal; have authority to impress or affix the District's seal to any instrument (and, when so impressed or affixed, it may be attested by his or her signature); shall see that all policies, directions and orders of the Board are carried out; and shall, under the supervision of the Board, have such other authority, powers or duties as may be prescribed by the Board. Unless the Board has authorized such exercise of authority, decisions or instructions of individual Board members or committees shall not be binding on the Chief Executive Officer.

B. Selection of Chief Executive Officer. The selection of the Chief Executive Officer shall be approved by a majority of the Directors in attendance. The names of

those nominated shall be voted upon by successive ballots until a nominee receives a majority vote of the Directors in attendance. At the conclusion of each ballot when no nominee has received a majority vote, the nominee receiving the lowest vote total shall be eliminated from successive ballots.

C. Removal of Chief Executive Officer. The Chief Executive Officer may be removed from office by a two-thirds affirmative vote of the Board Membership. A motion made at a regular meeting shall initiate such action, but the vote shall not be called for until the next regular meeting or at a special meeting called for the purpose of considering such motion. The Board Chair shall cause to be delivered or shall mail a copy of the resolution to remove the Chief Executive Officer to the affected individual at least seven calendar days prior to the meeting at which the motion is to be considered.

D. Vacancy: A vacancy in the Chief Executive Officer position shall be filled pursuant to Section 5B.

E. Interim Chief Executive Officer: When a vacancy in the Chief Executive Officer position occurs, the Board, by majority vote, shall appoint an interim Chief Executive Officer, who shall serve in this position until the Chief Executive Officer position is filled.

## SECTION 6 – PROVISIONS FOR THE DISTRIBUTIONS, DISPOSITION OR DIVISION OF THE ASSETS OF THE DISTRICT

If the District is ever dissolved, the assets of the District shall be distributed in the following manner, according to the conditions that existed on the date that the successful vote to dissolve the District was taken. As used in this Section, the term “per capita” means the number of individuals living within the governmental unit within the District service area.

A. Revenue Vehicles. Revenue vehicles shall be distributed to the respective governmental units in the following manner:

1. Each governmental unit shall receive the number of vehicles that was required to provide the peak weekday level of service in that governmental unit.
2. After the available revenue vehicles are distributed according to Section A 1 above, the remaining revenue vehicles shall be distributed to each governmental unit on a per capita basis.

B. Non-Revenue Vehicles. Non-revenue vehicles shall be distributed to the governmental units on a per capita basis. Vehicles used to service, tow, or maintain vehicles, facilities, or other assets of the Regional Transit District are considered to be maintenance equipment.

C. Maintenance Facilities and Maintenance Equipment. Any maintenance facility and maintenance equipment shall revert to the governmental unit in which it is located.

D. Non-Maintenance Facilities shall revert to the governmental unit in which it is located.

E. Cash Balances and Accounts Receivables. The cash balance and accounts receivable shall be distributed to each governmental entity of the District on a per capita basis.

F. Land. Land owned by the District shall revert to the governmental unit in which it is located.

## SECTION 7 – BOUNDARIES OF THE DISTRICT

The boundaries of the District shall be the boundaries of the governmental units that are signatories of this Contract and that provide financing to the District. The boundaries of the District shall be modified, as needed, pursuant to Section 11 of this Contract.

## SECTION 8 – SERVICE SECTORS

A. Purpose. The Board understands that the District has a need for public transportation services that address both local and regional needs. In order to provide public transportation services that address these needs and as a means to allow maximum local community input, the District will organize service sector councils to assist in developing service plans, assist in monitoring operational performance, and provide input on local and regional public transportation needs.

B. Organization. A service sector council will be organized within each county in which a governmental unit that is a member of the District is located. A service sector council will also be organized for commuter rail service within the District. The service sectors may be adjusted from time to time by the Board as circumstances within the District or within service sectors dictate.

C. Membership. Each Service Sector Council, except for the Commuter Rail Service Sector shall have a maximum of eight (8) members.

D. Appointment of Members – Except Commuter Rail Service Sector Council. Each governmental unit that is a member of the District shall appoint a member(s) to the Service Sector Council of the county in which the governmental unit is located; the governmental unit may also appoint an alternate(s). The governmental units that appoint members to a Service Sector Council shall determine among themselves the number of members that each governmental unit may appoint to that Service Sector Council. Governmental units may determine that each governmental unit shall individually appoint members to the Service Sector Council or that two or more governmental units shall jointly appoint members to the Service Sector Council or any combination of individual and joint appointment of members. If there are three or more governmental units in a

service sector, then no one governmental unit shall appoint a majority of the members to the Service Sector Council. If there are two governmental units in a service sector, then the governmental unit having the largest population shall appoint five members to the Service Sector Council.

E. Appointment of Members – Commuter Rail Service Sector Council. Each governmental unit that is a member of the District shall appoint a member to the Commuter Rail Service Sector Council; the governmental unit may also appoint an alternate.

F. Term of Office. The term of office of Service Sector Council members shall be three years which shall be staggered among members. At the initial meeting of Service Sector Councils, the members shall determine which members shall have a one-year term, which members shall have a two-year term and which members shall have a three year term. Members can serve for two consecutive terms and then cannot be reappointed until a time period of three years has passed.

F. Eligibility. Service Sector Council members shall represent a broad spectrum of interests and geographic areas of their Service Sector. Members must reside or work within the Service Sector boundaries, and may not be a member of the Mid Region Transit District Board of Directors or an employee of the Mid Region Transit District. Within three years of the beginning of public transportation service by the Mid Region Transit District, at least 50% of the Service Sector Council members must be users of public transportation services.

G. Transferability and Assignability. Service Sector Council membership is not transferable or assignable.

H. Code of Conduct. Service Sector Council members shall adhere to the Mid Region Transit District Code of Conduct and relevant local, state, and federal regulations and laws.

I. Attendance. If a Service Sector Council member has more than four absences in a row or in a six-month period, without being excused by the Council Chair, the Council Chair may declare this member inactive and request that the governmental unit that the Council member represents appoint a new member and that the current member be removed.

J. Resignation. A member of a Service Sector Council may render his/her resignation by sending a letter to the Chair of the Service Sector Council, with a copy to the Chief Executive Officer.

K. Removal. Any member of a Service Sector Council may be removed if the Service Sector Council deems this is in the best interests of the Service Sector Council. A motion made at a regular meeting shall initiate such action, but the vote shall not be called for until the next regular meeting or at a special meeting called for the purpose of

considering such motion. The Chair of the Service Sector Council shall cause to be delivered or mailed a copy of the resolution to remove the Council member to the affected individual(s) at least seven (7) calendar days prior to the meeting at which the motion is to be considered. Removal requires a two-thirds vote of those Service Sector Council members present at the meeting and confirmation by the Regional Transit District Board of Directors.

L. Bylaws. Each Service Sector Council shall be governed by Bylaws. The Bylaws shall be approved by the Board by a majority vote of the Directors in attendance.

M. Vacancies: Vacancies in Service Sector Councils shall be filled in the same manner as appointments of members are made.

## SECTION 9 – TERM OF THE CONTRACT

A. This Contract shall not be terminated or rescinded so long as the District has bonds outstanding.

B. If no bonds are outstanding, the Board by resolution and by a three-quarters affirmative vote of the Board Membership, provided that notice of the intent to terminate or rescind shall have been delivered or mailed to each Board member not less than seven calendar days prior to the meeting at which such action is considered, may determine to terminate or rescind this Contract.

C. If the Board votes to terminate or rescind this Contract, the effective date of this action shall be no sooner than six months from the effective date of the resolution.

## SECTION 10 – AMENDMENT OF THE CONTRACT

This Contract may be amended by a two-thirds affirmative vote of the Board Membership provided that notice of the proposed amendment(s) shall have been delivered or mailed to each Director not less than seven calendar days prior to the meeting at which such amendment(s) are considered.

## SECTION 11 – ADDING OR WITHDRAWAL OF PARTIES TO THE CONTRACT

A. Adding. After the creation of the District, a governmental unit adjacent to but not part of the District may join the District and determine the territorial area to become a part of the District and the effective date of membership. A two-thirds affirmative vote of the Board Membership shall be required before the governmental unit may join the District.

B. Withdrawal.

1. Within Sixty (60) – days of the Board’s Approval of the Initial Service Plan. After the initial formation of the Mid-Region Transit District and after the Board's approval of the initial service plan and associated financial plan, each governmental entity that is a member of the Mid-Region Transit District has 60-days to determine if it wants to unconditionally withdrawal from this transit district. If a member wishes to unconditionally withdraw from this transit district, it needs to adopt a resolution to withdraw within the 60-days and send this resolution to the Chairperson of the Board of Directors. The Board of Directors shall formally and unconditionally accept this withdraw within 30-days of its receipt by the Chairperson and transmit its approval of the withdrawal to the Transportation Commission.

2. After Sixty (60)-days of the Board’s Approval of the Initial Service Plan. A governmental unit that is a member of the District may withdraw from the District by adopting a resolution to withdraw. The governmental unit shall withdraw its representative(s) from the Board. Real property owned by the District within the boundaries of the withdrawing governmental unit shall remain the property of the District. The provisions of withdrawal shall be negotiated and agreed to by the Board, the governmental unit and the Commission.

3. Financial Obligations. Withdrawal from the District, however, shall not terminate the governmental unit’s responsibility for fulfillment of bond or other obligations. The withdrawing governmental unit’s financial commitment to the District shall continue until the District has collected a financial amount equal to the withdrawing governmental unit’s pro-rata share of the District’s financial obligations that existed at the time of withdrawal. The withdrawing governmental unit’s financial obligation to the District shall equal its share of the total amount of the following:

- a. Outstanding obligations under contract and authorized in the District’s current budget;
- b. Outstanding contractual obligations for capital and other expenditures payable from sources other than proceeds of notes, bonds or other obligations;
- c. Payments due or to become due in all subsequent years on notes, bonds or other securities or obligations for debt issued by the District;
- d. Required reserves for all years to comply with financial covenants made with lenders, note or bond holders or other creditors or contractors; and
- e. The amount necessary for the full and timely payment of the District’s existing obligations, to avoid a default or impairment of those obligations, including known contingent liabilities.

f. Any of the District's financial obligations that specifically relate to the withdrawing governmental unit will be allocated completely to the governmental unit.

4. Approval of Withdrawal. If the governmental unit's withdrawal is approved, the governmental unit shall withdraw its representative(s) from the Board, real property owned by the District within the boundaries of the withdrawing governmental unit shall remain the property of the District, the governmental unit after the approved date of its withdrawal shall have no responsibility for District debt issued after the effective date of withdrawal, and all public transportation services provided by the District to and within the withdrawing governmental unit shall cease on the effective date of withdrawal.

### SECTION 13 – ACCOUNTABILITY AND LIABILITY

A. The District shall insure and defend each Director, the Chief Executive Officer, each Service Sector Council member, member of a committee and employee of the District in connection with any claim or actual or threatened suit, action or proceeding (civil, criminal or other, including appeals), in which he or she may be involved in his or her official capacity, or by reason of any action or omission by him or her in such capacity.

B. The District shall insure each Director, the Chief Executive Officer, each Service Sector Council member, member of a committee and employee of the District against all liability, costs and expenses arising from any such claim, suit or action, except any liability arising from criminal offenses with willful misconduct or gross negligence. The District's obligations pursuant to this Section shall be limited to funds of the District available for such purposes, including but not necessarily limited to insurance proceeds. The Board may establish specific rules and procedures for the implementation of this Section.

### SECTION 14 – POWERS, DUTIES AND AUTHORITY OF THE BOARD

#### A. Property

1. Acquisition and Distribution. On behalf of the District, the Board may acquire by grant, purchase, gift, devise, lease or otherwise, and may hold, use, sell, lease or dispose of, real and personal property of every kind and nature whatsoever, and licenses, patents, rights and interests necessary, convenient or useful for the full exercise of any of its powers pursuant to the provisions of the powers of the Board.

2. Leases and Dispositions. On behalf of the District, the Board may sell, lease, convey or otherwise dispose of any of its rights, interests or properties which are not needed for, or, in the case of leases, which are not consistent with, the efficient operation and maintenance of the system. It may sell, lease or otherwise dispose of, at any time, any surplus materials or personal or real property not needed for its requirements or for the purpose of carrying out its power to lease the system or any part

thereof to, or contract for the use or operation of the system or any part thereof by any operator.

**B. Joint Use and Service Agreements**

On behalf of the District, the Board shall have the power to enter into agreements with any other public utility, private utility, communication systems, common carrier, or transportation system for the joint use of their respective facilities, installations and properties of whatever kind and character within the District boundaries and to establish agreements for through routes, joint fares or transfer of passengers. The District may contract with any person, firm, corporation, non-profit corporation, city, county or other political subdivision for the District to provide public transportation services to any area outside the boundaries of the District on such terms and conditions as may be agreed to by the parties.

**C. Fares, Charges and Tolls**

1. Generally. On behalf of the District, the Board may promulgate rules regarding the collection of fees, charges and tolls. The Board may also enter into traffic and toll enforcement agreements.

2. Revenues. On behalf of the District, the Board shall establish and maintain rates, fares, tolls, charges, rents, or other compensation for the use of the facilities of the system acquired, constructed, operated or maintained by the District which shall be reasonable and nondiscriminatory and which, together with receipts collected by the District, shall be sufficient to produce revenues adequate to:

a. Pay all expenses necessary to the operation and maintenance of the properties and facilities of the District;

b. Pay the interest on and principal of all bonds issued by the District which are payable in whole or in part from such revenues, when and as the same shall become due and payable;

c. Pay all sinking fund and reserve fund payments agreed to be made in respect of any such bonds, and payable out of such taxes and revenues when and as the same shall become due and payable; and

d. Fulfill the terms of any agreements made with the holders of such bonds or with any person in their behalf.