NORTH CENTRAL REGIONAL TRANSIT DISTRICT
FINANCE SUBCOMMITTEE

Friday, March 23, 2018
9:00 A.M. - 11:00 A.M.

Executive Conference Room
1237 N. Riverside Drive
Española, NM 87532

CALL TO ORDER

ROLL CALL

ITEMS FOR DISCUSSION/RECOMMENDATION

A. **Amended Procurement Regulations**
   Sponsors: Hector Ordoñez, Finance Director and Peter Dwyer, Attorney
   Attachment

B. **Amended Personnel Rules and Regulations**
   Sponsors: Dora Anaya, Human Resources Director and Peter Dwyer, Attorney
   Attachment

C. **Investment Advisory Services – New Mexico Bank and Trust and Los Alamos National Bank**
   Sponsor: Hector Ordoñez, Finance Director
   Attachment

D. **Input for Revised Financial Report**
   Sponsor: Hector Ordoñez, Finance Director
   Attachment

E. **Minutes from January 26, 2018**
   Draft Minutes

MATTERS FROM THE SUBCOMMITTEE

ADJOURN

If you are an individual with a disability who is in need of a reader, amplifier, qualified Sign Language interpreter or any other form of auxiliary aid or service to attend or participate in the hearing of the meeting, please contact the NCRTD Executive Assistant at 505-629-4702 at least one week prior to the meeting, or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats.
Memorandum

To: Finance Committee
From: Hector E. Ordonez, Finance Director; Peter Dwyer, Legal Counsel
Thru: Anthony J. Mortillaro, Executive Director
Date: March 23, 2018
Re: Revised Procurement Policy

Background:

The existing Procurement Policies were adopted on February 3, 2017 by Board Resolution 2017-06. Aligned with the District’s effort to constantly enhance our documents and make sure that our policies and regulations are reliable, consistent, and up to date with State and Federal law requirements the organization decided to review and revise the current procurement policy this year. The proposed revisions provide clarification and enhancement from the policy adopted in 2017, this was accomplished by adding a table of contents, updating cross-references, adding terms in our definitions segment, reformatting the document significantly and making substantive changes.

Analysis:

The substantive changes are as follows:

1. Added exemption for Cable Television, Radio and Internet services;
2. Added definition of Gross Receipts Tax (identical with state definition);
3. Revised exemption for software purchases to include all new software as well as upgrades;
4. Clarification of the process for sole source procurements;
5. Revisions to the rules requiring fees and refunds for bid packets;
6. Inclusion of an "E-commerce" option for purchasing;
7. Changes to reflect that the District’s counsel should review and approve all District contracts and that the district should strive for certain provisions to be included in all District contracts that reflect state and federal requirements and best practices;

Please note that the District may always choose to use competitive bidding, proposal or qualification processes even on exempt items such as software and intends to do so where competitive offerors are available. However, the modern technology industry often makes the selection of products and services challenging because the initial selection of a product or platform limits the options for additions, modification, or maintenance to compatible products and service providers. Likewise, the contract terms may not always be fully negotiable and District legal counsel may have to agree to terms that normally would not be acceptable in contracts conforming to District standards where the vendor is the only practicable provider of the good or service.
**Recommendation:**

It is recommended that the Finance Committee review and discuss the proposed changes and address any committee recommendations prior to forwarding the attached Procurement Policy to the Board for consideration at their April 6, 2018 meeting.

**Attachments:**

- Red-lined version of the Procurement Policy as proposed from Finance
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North Central Regional Transit District

Procurement Policy Regulations

Amended and Adopted by Resolution No. 2018-06 on February 3, April 6, 2018

Section 1. Purchasing Procedures

ARTICLE I. PROCUREMENT

1. PURPOSE

The purpose of this Procurement Policy (hereinafter the District’s “Procurement Policy”) is to provide for the fair and equitable treatment of all persons involved in public purchasing by the North Central Regional Transit District (hereinafter referred to as the “District”), to maximize the purchasing value of public funds in procurement and to provide safeguards for maintaining a procurement system of quality and integrity. The District has independent statutory authority pursuant to NMSA 1978, Section 73-25-6 (A) (3) and (7) to purchase property and therefore the District’s purchases are generally “exempt from the Procurement Code as otherwise provided by law” pursuant to NMSA 1978, Section 13-1-98 (HH). Pursuant to NMSA 1978, Section 73-25-5 (G) has limited authority to adopt procurement policies regarding methods for handling claims and demands regarding procurement disputes but no such similar restriction has been imposed on the District’s general procurement authority. To that end, this article shall govern all purchasing transactions of the District and shall serve to exempt the District from all provisions of the New Mexico Procurement Code, Secs. 13-1-28 through -199 NMSA 1978 excepting only the provisions relating to bid protests. Notwithstanding the District’s general exemption, this Procurement Policy is intended to be, and shall be interpreted in a manner consistent with, all relevant state and federal procurement statutes, rules and regulations and their common goals and objectives regarding the efficient and judicious use of tax-payer money. The District wishes to engage in best practices at both the state and federal level and shall seek to comply with both state and federal best practices wherever, in the Chief Procurement Officer’s opinion, compliance can be achieved with the highest standards for public procurements.

2. APPLICABILITY OF PROCUREMENT REQUIREMENTS

This article applies to the procurement of goods, services or construction, entered into by the District after the effective date of the adopting resolution. The article shall apply to the expenditure of public funds for public purchasing irrespective of the source of the funds.

Notwithstanding any other provision of this Procurement Policy to the contrary, all purchases with federal funds shall be subject to all relevant federal restrictions including but not limited to the federal practices and restriction listed in Article 11-13 XI. When the procurement requires the expenditure of federal assistance or contract funds, the procurement shall be conducted in accordance with any mandatory applicable federal law.

1 The full text of NMSA 1978, Section 73-25-5 (G) (7) is as follows: “the board may …(7) prescribe, in accordance with the Procurement Code (73-25-1 to 73-25-38 NMSA 1978), methods for auditing and allowing or rejecting claims and demands for: (a) the awarding of contracts for the construction of improvements, works or structures; (b) the acquisition of equipment; or (c) the performance or furnishing of labor, materials or supplies as may be required for carrying out the purposes of the Regional Transit District Act (73-25-1 to 73-25-38 NMSA 1978)”
and regulations. When the funding source for the procurement requires that the State Procurement Code and other State purchasing requirements be followed, then the District will follow such regulations as required.

In the event of any inconsistency between the terms and conditions of this Procurement Policy and those of a valid and enforceable governmental contract, the latter will govern. The District may comply with the terms and conditions of any grant, gift or bequest that is consistent with law. The provisions of this Procurement Policy shall apply to all employees or other users authorized to make purchases on behalf of the District and all parties whose bid, offer or contract subjects them to these provisions. Purchasing for private or personal use, or use of the procurement process for such purpose, is prohibited.

All managers, authorized users, and their supervisors are responsible for knowing, understanding, and adhering to the provisions of this Procurement Policy.

Any person having knowledge of a deviation from these provisions shall report such to the Executive Director.

Criminal violations can result in prosecution or penalties.

3. **EXEMPTIONS**

   (a) No provisions of the Procurement Policy except Article II, Section 8, Article 9 and Article 10 shall apply to the following purchases:

   (1) Advertising;

   (2) Bond payments and debt service fees along with the issuance, sale and delivery of public securities pursuant to the applicable authorizing statute, with the exception of bond attorneys and general financial consultants;

   (3) Books, periodicals, publications and subscriptions;

   (4) Credit or procurement card (“p-card”) purchases covered under a separate policy;

   (5) Employee work-related travel allowances and expenses;

   (6) Freight and delivery charges;

   (7) Instruction/education/training, any and all related fees;

   (8) Insurance premiums;

   (9) Legal and related costs incurred by the District, including expert witness costs and interpreters' fees, printing/duplicating costs, arbitrator/mediator, process server, court reporter, transcriptions, and settlements, and hearing officer(s), but not including attorney contracts;

   (10) Medical services and emergency/incidental medical services for and incidental to utilizing licensed medical professionals, but not including routine medical and psychological exams or lab tests pursuant to drug testing, pre-hire examinations or examinations related to reasonable accommodation;
(11) Memberships and dues;

(12) Travel or shipping by common carrier or by private conveyance or to meals and lodging;

(13) Office supply, equipment repair and maintenance contracts;

(14) Postage or meter refills;

(15) Real property;

(16) Information Technology Maintenance Services;

(17) Employment Agreements or Contracts;

(18) Collective Bargaining Agreements or Contracts;

(19) Software and firmware acquisitions, updates and/or upgrades, minor;

(20) Purchases of parts and labor for equipment or machinery where a breakdown of this equipment or machinery could cause an emergency or costly condition to exist and where the machinery or equipment is in immediate danger of failure;

(21) Purchases of parts and labor or maintenance agreements to repair disabled equipment or machinery if the equipment or machinery is repaired by a franchised dealer or by a factory authorized repair shop;

(22) Agreements for the services of lobbyists;

(23) Taxes, licenses and filing fees;

(24) Purchases of publicly provided or publicly regulated gas, electricity, water, sewer and refuse collection systems, cable television, radio, internet and telecommunications services;

(25) Intergovernmental agreements;

(26) Procurement of goods or services from a federal or state agency or other public entity;

(27) Procurement of goods, services, or construction items under existing contracts and that are procured under any of the following conditions:

(i) At a price equal to or less than the contractor's current federal contract price (GSA, FSS), providing the contractor has indicated in writing a willingness to extend such contractor pricing, terms and conditions to the District; or

(ii) With a person that has a current contract with the state Chief Procurement Officer or any other New Mexico governmental entity, for the item, services or construction meeting the same standards and specifications as the items to be procured; or
iii. With a person that has a current contract issued under a cooperative purchasing agreement with another public entity; or

e.
With a person that has an existing contract, that was subject to competitive solicitation, with another government or agency thereof.

iv. (28) - Purchases of motor fuels and compressed fuel gases where deemed necessary prudent
and authorized by the Chief Procurement Officer.

(29) Works of art for public display.

(30) Goods for resale.

(31) Unscheduled repairs which necessitate disassembly diagnostics.

(32) Contracts for televising or documenting public meetings.

(33) Contracts for retirement and other benefits.

(34) Contracts and purchases for towing services to move disabled District vehicles.

(35) Any other purchases exempted under relevant state or federal laws.

(b) The Chief Procurement Officer shall retain the documentation relied upon to procure goods, services or construction without seeking competitive bids or proposals for public inspection and auditing purposes in accordance with established District records retention standards.

4. DEFINITIONS.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Architectural services means services which require a valid state license related to the art and science of designing and building structures for human habitation or use and may including planning, providing preliminary studies, design, specifications, working drawings and providing for general administration of construction contracts.

Authorized User means an employee who has been approved by management, and has received mandatory training in procurement, to conduct departmental purchasing.

Bid means a formal quote with a pre-determined set of specifications to which a bidder must answer or comply, which details the goods or construction, and the price of the items solicited.
**Blind trust** means an independently managed trust in which the employee-beneficiary has no management rights subject to the trust.

**Brand name or equal specification** means a specification limited to one or more items by manufacturers' names or catalogue numbers to describe the standard of quality, performance and other significant characteristics needed to meet District requirements, and which provides for the submission of equivalent products.

**Brand name specification** means a specification limited to one or more items by manufacturers' name or catalogue number.

**Change order** means a written order to the contractor authorizing an addition, deletion; or revision in the work within the scope of the contract documents; or authorizing an adjustment in the contract price or contract time.

**Chief Procurement Officer** means the District staff member duly trained, qualified and assigned to oversee all procurements on behalf of the District.

**Confidential information** means any information which is available to an employee only because of the employee's status as an employee of the District and is not a matter of public knowledge or available to the public on request.

**Construction** means the process of building, altering, repairing, installing, improving or demolishing any public structure or building, or other public or private improvements of any kind to any public real property. It does not include the routine operation or routine maintenance of existing structures, buildings or real property.

**Construction management services** means services related to the process of management applied to a construction project for any duration, from conception to completion of the project, to controlling the time, cost and quality of such. The following activities by the construction manager a person whose activities include but are not limited to: monitoring and coordinating the work, schedules, personnel, equipment and materials of contractors with the activities of the District; developing and monitoring project costs, change orders and pay requests; insuring compliance with all contract documents and applicable laws, rules and regulations.

**Contract** means any type of District agreement, regardless of its title, for the procurement of goods, services, or construction. This term shall not include employment agreements or collective bargaining agreements.

**Contract modification (bilateral change)** means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity or other provisions of any contract accomplished by mutual action of the parties to the contract.

**Contractor** means any person as defined below who has a contract with the District.

**Cooperative purchasing** means the use of a properly executed purchasing agreement with one or more additional public agencies to execute procurement.

**Cost analysis** means the evaluation of factual information concerning the cost of labor, material, overhead and other cost elements including profit which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.
Cost-reimbursement contract means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of the procurement code, and a fee or profit, other than a fee based upon a percentage of cost, if any.

District means the North Central Regional Transit District.

Definite quantity contract means a contract which requires the contractor to furnish a specified quantity of goods, services, or construction at or within specified time.

Direct or indirect participation means involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity.

Dollar levels mean United States currency, and all amounts shall be considered without New Mexico gross receipts tax (NMGRT).

Employee means an individual drawing a salary or wages from the District, whether appointed or not; any non-compensated individual performing services for the District or any department, or entity established by the executive or legislative branch of the District; any non-compensated individual serving as an Director or Official Designee of the District.

Engineering services means any service or creative work, the adequate performance of which requires a valid state license and engineering education, training and experience in the application of special knowledge of the mathematical, physical and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems, engineering studies and the review of construction for the purpose of assuring substantial compliance with drawings and specifications; any of which embrace such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, chemical, pneumatic or thermal nature, insofar as they involve safeguarding life, health or property, and including such other professional services as may be necessary to the planning, progress and completion of any engineering services. Such practice may include but is not limited to the performance of architectural work incidental to the practice of engineering. Engineering services does not include responsibility for construction management services, site conditions, operations, equipment, personnel or the maintenance of safety in the work place.

Evaluation committee means a committee appointed for the purpose of evaluating responses to bids or proposals and to determine, in writing, which is the most advantageous to the District based on the evaluation factors set forth. The evaluation committee members will remain constant through award. Except as specified in Section 38 (b) of this Procurement Policy, the evaluation committee shall be appointed by the department manager for whose department the goods, services or construction are to be purchased.

Financial interest means (1):

(1) Holding a position in a business as officer, director, trustee, or partner, or holding any position in management, or ownership of more than five percent interest in a business; or (2)

(2) Any interest which may yield, directly or indirectly, any material benefit to an employee or to the employee’s immediate family any interest other than an interest in a mutual fund or one held in a blind trust.

Goods means all tangible items, other than real property or construction, having a physical existence including, but not limited to, supplies, parts, equipment, materials, and printed materials.
Gratuity or Kickback means a payment, loan, subscription, advance, and deposit of money, service or anything of more than a nominal value, present or promised, unless consideration of substantially equal or greater value is received.

Immediate family means a spouse, children, parents, brothers and sisters, parent in-law, grandparent, grandchild, and step-relatives in a like relationship.

Indefinite delivery/Indefinite quantity (or IDIQ) contract means a contract which requires the contractor to furnish an indeterminate quantity of specified goods, services, or construction during a prescribed period of time at a definite unit price or at a specified discount or similar pricing structure from list or catalog prices.

Inventory means goods purchased, accepted, stored for storage, issued, and to ready use by users of the District.

Invitation for bBids (or IFB) means all documents, whether attached or incorporated by reference, utilized for soliciting competitive sealed bids.

Multiple source award means an award to more than one bidder or offeror of a contract for one or more similar goods, services, or construction.

New Mexico Gross Tax Receipts (NMGRT) means the total amount of money or other consideration received from selling, leasing or licensing property, granting a right to use a franchise, performing services or selling research and development services in New Mexico. The gross receipts tax rate varies throughout the state from 5.125% to 8.6875% depending on the location of the business.

Person means any natural person, corporation, partnership, sole proprietorship, joint stock company, joint venture, private legal entity, or any federal, state or local political subdivision or entity thereof.

Price or Pricing structure means a pre-determined method, such as percentage charged for a category of items; or dollar amount as an itemized price listing, or as related to quantity, unit pack, or similar distinction, for which a vendor is willing to provide the District goods, services, or construction.

Price agreement means a form of IDIQ contract which requires the contractor to furnish specified items/services within the limitations of the contract, if any.

Price analysis means the evaluation of price data, without analysis of the separate cost components and profit as in cost analysis, which may assist in determining prices to be paid and costs to be reimbursed.

Pricing data means factual information concerning prices for items substantially similar to those being procured. Prices in this definition refer to offered or proposed selling prices, historical selling prices and current selling prices. The definition refers to data relevant to both prime and subcontract prices.

Procurement means (1) the buying, purchasing, renting, leasing, or otherwise acquiring acquisition of any goods, licenses, services or construction; or (2) It also includes all functions that pertain to the procurement process, including description of requirement, solicitation of sources, qualification or disqualification of sources, preparation and award of contract and/or contract administration.

Professional services means the services of practitioners in a field requiring a state license, or an advanced degree, or a highly specialized education, or a nationally recognized certification; or person providing such services. This term shall not include services provided by an employment agreements or contracts or collective bargaining agreements or contracts.
**Project** means an activity with an explicit goal, that has a defined beginning and an end, that has with at least one concrete deliverable, that has a logical sequence of activities, that produce the deliverable(s), and that is not a repetition of an activity that has been previously planned and performed.

**Project Manager** means the person assigned the responsibility for overall supervision of a Project. The responsibility includes, but is not limited to, budget monitoring, change order control, project schedule, quality control, approving progress payments, and insuring that work progresses in accordance with requirements set forth in the contract documents.

**Proposal** means a quote which may include open-ended, substantially bidder-determined specifications for how the bidder will provide the item(s), or different weights on different factors for evaluation; which details the goods, services, or construction, and the price of the items solicited.

**Public agency or entity** means a public entity subject to or created by any federal, state, or local governmental body.

**Purchase order (or PO)** means the legally binding document issued by the Finance Office, which has been appropriately approved before submission to a vendor, that authorizes a contractor or vendor to deliver goods, services or construction. There are two types:

1. Regular purchase order means a purchase order with a (fixed amount and cost) – one which is used to procure a predetermined quantity at a predetermined price;
2. Open or Blanket Purchase Order means a purchase order – one which is used for anticipated numerous or recurring small purchases at a predetermined price or pricing structure for up to one year. It is a type of IDIQ contract.

**Qualified products list** means an approved list of goods, services or construction items described by model or catalogue numbers which, prior to competitive solicitation, the Chief Procurement Officer has determined will meet the applicable specification requirements.

**Quote** means a binding, good-faith statement of the price at which a vendor is willing to provide to the District required goods, services, or construction.

**Request for Information / Interest (or RFI)** means all documents, whether attached or incorporated by reference, utilized for gauging interest in a future solicitation or for soliciting information to be used to develop in developing specifications or a scope of work for services for an IFB, RFP, or RFQ, or for gauging interest in a future solicitation.

**Request for Proposals (or RFP)** means all documents, whether attached or incorporated by reference, utilized for soliciting proposals for goods, services or construction.

**Request for Qualifications (or RFQ)** means all documents, whether attached or incorporated by reference, utilized for soliciting Statements of Qualifications for professional services.
Responsible bidder or offeror means a person who has been determined by the Chief Procurement Officer or evaluating committee to have the capability in all respects to perform fully the contract requirements, including financial resources, personnel, service reputation and experience, capacity, production or service facilities, equipment and credit which will ensure satisfactory delivery of the goods, services or construction described in the IFB or RFP.

Responsive bidder means a person who has submitted a bid that conforms in all material respects to the requirements set forth in the IFB. Material respects of a bid may include but are not limited to, price, quality, quantity, and delivery requirements.

Responsive offeror means a person who has submitted an offer that conforms in all material respects to the requirements set forth in the RFP.

Rough order of magnitude estimate means an approximation without detailed data backup; has a range of accuracy equal to -25% to +75%.

Services means the furnishing of labor, time or effort, by contractors other than those providing professional services, services of employees of a state agency or local public body, or construction.

Software or firmware update or upgrade means new software or an improvement to the functionality or security of existing computer software. There are two basic types:

(a) Minor—one in which the underlying software remains the same, and is usually identified by an incremental number change, such as “.1” or “.02”.

(b) Major—one in which the software itself changes, either to a new operating system or as a new version, typically identified such as “Version 8” or “Name 2012”.

Sole source selection means a one-time procurement contract that does not go through the competitive bids or proposals process after the Chief Procurement Officer has determined in writing that which is subject to the following conditions:

(a) There is only one source for the required service, construction or item of tangible property; or

(b) Other Services, goods, items cannot meet the intended purpose; and

(4)(c) A good-faith review and a Letter or Memo of Justification is provided to the Chief Procurement Officer and Executive Director stating that an analysis of available sources has been conducted, and

(2)(d) A Letter or Memo of Justification is provided to the Finance Manager and Executive Director detailing the reason(s) why the source is the only one in the USA that provides the good(s) or service(s).

Specification means any description of the physical or functional characteristics or of the nature of a good, service or construction item. It may include a description, any requirement for inspecting, testing or preparing a good, service or construction item for delivery.

Statement of Qualifications (or SOQ) means a formal documentation of experience or expertise for the purpose of obtaining information to permit the evaluation of the person most highly qualified to provide the required services.
Surveying services means any service or work, the substantial performance of which involves the application by a state-licensed surveyor of the principles of mathematics and the related physical and applied sciences.

Task order or Job order means a discrete assignment of a specific set of tasks under an Indefinite Delivery/Indefinite Quantity contract, each order capped at a not-to-exceed amount.

ARTICLE II.

ROLES AND AUTHORITY OF THE CHIEF PROCUREMENT OFFICER AND EXECUTIVE DIRECTOR

5. ESTABLISHMENT

The responsibility for administration of the provisions of this policy shall be under the Executive Director but all responsibilities may be delegated to a Chief Procurement Officer who is duly trained and qualified to perform purchasing functions on behalf of the District. The Chief Procurement Officer shall have the responsibility and authority to ensure that all provisions of law and this Procurement Policy are followed and shall be authorized to issue any supplemental regulations consistent with this policy deemed necessary to administer, manage or clarify this policy. Supplements issued by the Chief Procurement Officer shall require prior written approval of the Executive Director and shall be attached to and made a part of this Policy. The Chief Procurement Officer shall be responsible for having the knowledge to ensure that all provisions of this Policy and all other purchasing concerns and activities of the District are appropriate and consistent with the most current, generally accepted purchasing techniques, and all provisions of the law.

6. CHIEF PROCUREMENT OFFICER AUTHORITY AND DUTIES

(a) Principal public purchasing official. Except as otherwise provided in this Article, the Chief Procurement Officer shall serve as the principal public purchasing official for the District and shall be responsible for conducting or supervising the procurement of goods, services or construction in accordance with this Article, as well as the disposal of surplus goods.

(b) Duties. In accordance with this article, and subject to the supervision of the Executive Director or his designee, the Chief Procurement Officer shall:

1. Award purchase orders for procurement of all goods, services or construction needed by the District, upon approval of departments or the Executive Director as required consistent with operational procedures;

2. Develop procedures to sell, trade, or otherwise dispose of surplus goods belonging to the District;

i. Establish and maintain programs for specifications development, contract administration and inspection and acceptance, in cooperation with the public agencies using the goods, services or construction;

3.
Conduct mandatory training sessions for new authorized users, and periodic training for all current authorized users;

Review all procurement requests for correctness, appropriateness, and compliance with this Policy; and

Establish and administer a District Procurement Card program.

(c) Operational procedures. Consistent with this article, the Chief Procurement Officer may adopt operational procedures relating to the execution of his or her duties.

7. DELEGATIONS TO OTHER DISTRICT OFFICIALS

The Chief Procurement Officer may delegate authority to purchase certain goods, services or construction items to other District officials, if he or she deems such delegation necessary for the effective procurement of those items. This delegation will be in writing describing the authority granted. Notwithstanding the provisions of Section 6, procurement authority with respect to certain goods, services or construction may be delegated to other District officials by the Executive Director. This delegation will be in writing describing the authority granted.

8. AUTHORITY TO EXECUTE CONTRACTS.

(a) Purchase orders. The District Board hereby delegates to the Executive Director the authority to execute purchase orders and bind the District in contracts as follows.

(b) Contracts.

(1) For contracts the District Board hereby delegates to the Executive Director or designee the authority to execute the following contracts and bind the District:

   a.i. Contracts other than purchase orders as provided in this Section, in the amount of $100,000.00 or less;

   b.ii. Any contract for the purchase of goods or construction in any amount less than or equal to the funding budgeted and specifically appropriated by the District Board for the acquisition or project;

   e.iii. Change orders or contract modifications to existing contracts, provided that the total amount after execution of the change order or contract modification does not exceed the funds budgeted or the adjusted budget and specifically appropriated for the project.

(2) The authority granted in Subsections (b)(1) is subject to the following conditions:

   a. The goods, services, or construction was procured in accordance with this Procurement Policy as determined by the Chief Procurement Officer;
(1) The contract is in a form acceptable to the District’s Legal Counsel;

(2) There is no local, state or federal requirement that the chief elected official or other official must sign the contract;

(3) Approval by the District Board if the purchase is in excess of $100,000.00.

(3) The Executive Directors power to delegate authority to execute contracts is limited to the contract amount of $100,000.00, exclusive of NMGRT, or less.

(4) All other contracts must be approved by the District Board prior to execution by the Executive Director, as appropriate.

(5) Multiple signatures, verifications, and other fiscal controls may be required to ensure all District contracts receive proper review and approval prior to the expenditure or commitment of District funds. Supplemental policies to this Procurement Policy regarding the form, execution, and limits on signature authority of the District staff are hereby authorized and integrated by reference.

ARTICLE III.

SOURCE SELECTION METHODS

9. Competitive Sealed Bids

The Chief Procurement Officer shall be responsible for developing procedures for processing, recording and securing all documents for bids and proposals. Confidential information shall be identified as such by the bidder, and subject to state laws regarding its handling. The user department manager shall appoint the bid evaluation committee and committee chairperson.

(a) Conditions for use. Contracts of the District shall generally be awarded by competitive sealed bidding except as otherwise provided herein. Exempt purchases under Section 3, purchases requiring Requests for Proposals under Section 110, purchases requiring Requests for Qualifications under Section 124, small purchases under Section 132, sole source purchases under Section 143, and emergency procurements under Section 164 and purchases under a valid existing contract by another procuring governmental entity shall not be subject to this general requirement.

(b) Invitation for bids. An IFB shall be issued and shall include specifications and a sample of the standard contractual terms and conditions applicable to the procurement.

(c) Public notice. Adequate public notice of the IFB shall be given a reasonable time, but not less than 15 calendar days prior to the date set for opening of the bids. Re-solicitations shall be given public notice for a minimum of 10 days prior to the date set for opening of the bids. The publication of such notice shall be in a newspaper of general circulation within the District. Such public notice shall state the title, place, date and time of bid opening.
(d) **Bidders list.** The Chief Procurement Officer shall send copies of the IFBs to include, but not be limited to, those persons that have formally requested from the District the IFB documents for submitting bids for particular categories of goods, or construction, and which have paid in advance any required fees. The Chief Procurement Officer may set fees or deposits for different IFBs. The District may provide electronic copies of documents, free of charge in its sole discretion, but will generally charge fees for copies of plat and pan documents and hard copies of all other documents. Such fees shall be related to the actual direct cost of furnishing copies of the IFBs to the prospective bidders. Any deposit, less delivery charges, shall be refunded if the documents for bid are returned in usable condition within the time specified in the documents for bid, which time limits shall be no less than ten calendar days after the date of the bid opening. All forfeited deposits shall be credited to the District.

(e) **Bid opening.** Bids shall be opened publicly in the presence of two or more District employees and any public present, including bidders, at the time and place designated in the IFB. The names of the witnesses will be made a part of the record, and any public presence, including bidders or offerors, will be given the option to record their names. The amount of each bid and such other relevant information as the Chief Procurement Officer deems appropriate consistent with the Inspection of Public Records Act, § 14-2-1 et seq., NMSA 1978, together with the name of each bidder, shall be recorded. The record and each bid shall be open to public inspection in accordance with the Inspection of Public Records Act.

(f) **Bid acceptance and bid evaluation.** Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Article. Bids shall be evaluated based on the requirements set forth in the IFB, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total of life cycle costs. The IFB shall set forth the evaluation criteria to be used. Only criteria that are set forth in the IFB may be used in bid evaluation. Interviews are to be used only for the purpose of clarification. The final evaluation results shall be forwarded to the Chief Procurement Officer.

(g) **Withdrawal of bids and cancellation of awards.** Bidder may withdraw its bid by written notice and received by Chief Procurement Officer prior to bid opening. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interests of the District or fair competition shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if: (1) The mistake is clearly evident on the face of the bid document; or (2) The bidder submits evidence which clearly and convincingly demonstrates that a mistake was made.

(h) **Negotiations.** If the low responsive and responsible bid for a construction project exceeds available funds as certified by the Finance Manager and such bid does not exceed such funds by more than ten percent (10%), the Chief Procurement Officer is authorized, when time or economic considerations preclude re-solicitation of work of a reduced scope, to negotiate an adjustment of the bid price with the low responsive and responsible bidder in order to bring the bid within the amount of available funds. Should negotiation fail to reduce the cost, the Chief Procurement Officer may then negotiate with the next lowest bidder; Should negotiation again fail bidder to reduce the cost, the Chief Procurement Officer may then negotiate with the next lowest or cancel the bid.
(i) **Award.** The contract shall be awarded with reasonable promptness by appropriate written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the IFB. An award may be made on an all-or-nothing or multiple source basis, consistent with Section 19(b), whichever is the most advantageous to the District.

(j) **Multistep sealed bidding.** When it is considered impractical to prepare initially a purchase description to support an award based on price, an IFB may be issued requesting the submission of unpriced offers, which may include a separate sealed price proposal, or may be followed by an IFB limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.

(k) **Identical bids.** When competitive sealed bids are used and two or more of the bids submitted are identical in price and are the low bid, the Chief Procurement Officer may:

1. Award pursuant to the multiple source award provision; of section 19(b);
2. Award by lottery or game of chance of the Chief Procurement Officer’s choosing to one of the identical low bidders; or
3. Reject all bids and re-solicit bids for the required goods, services, or construction.

10. **COMPETITIVE SEALED PROPOSALS REQUESTS FOR PROPOSALS (RFPS) AND REQUEST FOR QUALIFICATIONS (RFQS).**

The Chief Procurement Officer shall be responsible for developing procedures for processing, recording and securing all documents for RFPS and RFQS. Confidential information shall be identified as such by the proposer, and subject to state laws regarding its handling. The user department director shall appoint the bid evaluation committee and committee chairperson.

11. **CONDITIONS FOR USE OF RFPS.**

When the Chief Procurement Officer determines that, based on written justification provided by the user department, the use of competitive sealed bidding is either not practical or not advantageous in seeking the best value to the District, a contract may be entered into by use of RFPS.

(a) **Issuing the RFP.** Proposals shall be solicited through an RFP which shall be issued and shall include the specifications for the goods, services or construction, a sample copy of the proposed contract terms applicable to the procurement unless waived by the Purchasing Agent, additional requirements specific to a particular procurement as may be in the best interest of the District, the location where proposals are to be received, the date, time and place and time where proposals are to be received.

(b) **Multistep RFPS.** When, because of the unique set of qualifications needed the Chief Procurement Officer considers it impractical to prepare initially a solicitation which includes price, an RFP may be issued requesting the submission of Statement of Qualifications (SOQs) which include a separate sealed price proposal, or may be followed by an RFP limited to those --offerors whose
offers have been determined by the evaluation committee to be qualified under the criteria set forth in the first solicitation.

(b)

(c) Public notice. Adequate public notice of the RFP shall be given in the same manner as provided in Section 9 (c).

(d) Offerors list. The Chief Procurement Officer shall send copies of each RFP to at least those persons that have formally requested from the purchasing office the documents for submitting a proposal. Registration fees or deposits may be required as provided in Section 9 (d).

(e) Receipt of proposals. Proposals shall be handled so as to prevent disclosure of the identity of any offeror or the contents of any proposal to competing offerors during the process of negotiation. A register of proposals shall be prepared containing the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the item offered. The register of proposals shall be open for public inspection only after contract award.

(f) Evaluation factors. The RFP shall state the relative weight of price and other evaluation factors.

(g) Evaluation of the RFP. Interviews are only for the purpose of clarification, and may be used for adjusting the initial score. The final evaluation results shall be forwarded to the Purchasing Agent.

(h) Discussion with responsible offerors and revisions to proposals. As provided in the RFP, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably likely to be selected for award for the purpose of clarification to ensure full understanding and conformation with the solicitation requirements for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by finalist offerors.
Award shall be made to the responsible offeror whose proposal is determined in writing by the evaluating committee to be the most advantageous to the District, taking into consideration the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the written basis on which the award is made.

12. Conditions for use of RFQs

When the Chief Procurement Officer determines in writing, based on written justification provided by the user department that the use of an IFB or RFP is either not practical or not advantageous to the District in soliciting professional services, a contract may be entered into by use of competitive sealed RFQs. The Chief Procurement Officer shall publicly issue an RFQ for professional service providers to submit a Statement of Qualifications and to negotiate such contracts on the basis of demonstrated competence and qualifications and performance date.

(a) Issuing and processing the RFQ. The RFQ will be handled in the same manner as in Section 11(a) through (e) subsections (1) through (7) of Section 10(a) above except for a price proposal, which is not used.

(b) Selection process. The evaluation committee shall select, ranked in the order of their qualifications, the person(s) deemed to be the most highly qualified to perform the required services, after considering the following criteria:

(1) Specialized design or technical competence of the person regarding the type of services required;

(2) Capacity and capability of the person, including any consultants, their representatives, qualifications, and locations, to perform the work, within the time limitations;

(3) Past record of performance on contract with government agencies or private industry with respect to such factors as control of costs, quality of work and ability to meet schedules; and/or

(4) Any other criteria as deemed necessary.

(a) Negotiation. Upon selection of the finalist(s), the Chief Procurement Officer or designee shall negotiate a contract with the person considered to be the most qualified for the required services at compensation which the Chief Procurement Officer or designee determines in writing to be fair and reasonable to the District. In making this decision, the Chief Procurement Officer or designee shall take into account the estimated value, the scope, the complexity and the professional nature of the services to be rendered. Should the Chief Procurement Officer or designee be unable to negotiate a contract at a fair and reasonable price with the selected person, the valuation committee shall select additional persons in order of their competence and qualifications, and the Chief Procurement Officer or designee shall continue negotiations with the additional persons in the order of their competence and qualifications in accordance with this section until an agreement is reached.

13. Small purchases

Small purchases shall be made to the responsible offeror whose proposal is determined in writing by the evaluating committee to be the most advantageous to the District, taking into consideration the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the written basis on which the award is made.
A. (a) Generally—Any purchase may be made in accordance with the small purchase procedures authorized in this Section if the total amount of the contract to be awarded, calculated over the full term of the contract, does not exceed $60,000.00. A purchase shall not be artificially divided so as to constitute a small purchase under this Section. Professional services not exceeding $60,000.00 may be but are not required to be conducted by competitive written proposal.

B. (b) Federally funded purchases not exceeding $3,500.00, exclusive of applicable gross receipts tax—The Chief Procurement Officer shall adopt operational procedures for making small purchases not exceeding $3,500.00. Such operational procedures shall comply with federal best practices for small purchases and shall provide for federally required documentation of small purchases.

C. (c) Purchases under $20,000.00, exclusive of applicable gross receipts tax—Small purchase under $20,000 shall only be required to meet the minimum standards established by the State of New Mexico for small purchases.

D. (d) Purchases exceeding $20,000.00, exclusive of applicable gross receipts tax—Small purchases of $20,001 to $60,000 shall comply with minimum standards established by the State of New Mexico.

14. SOLE SOURCE PROCUREMENT

A contract may be awarded without competition when the Chief Procurement Officer determines in writing, after conducting a good faith review of available sources, that there is only one source for the required goods, service or construction item in the USA. A sole source selection may also result when there is only one respondent to an RFI as in Section 363(c)(2). The Chief Procurement Officer or designee shall conduct negotiations, as appropriate, as to price, delivery and terms. A record of these procurements shall be maintained as a public record and shall list each contractor's name, the amount and type of each contract, a listing of the items procured under each contract, a letter or memo of justification documenting the reason for the selection of the source, and the identification number of each contract file. Notice publication of proposed sole source contracts shall be listed on the District's website for 30 days prior to award of any sole source contract exceeding $20,000 in value.

15. E-COMMERCE

E-commerce is an allowable mean to conduct procurements, when utilized, full and open competition must be addressed in compliance with the New Mexico Procurement Code, Secs. 13-1-28 through 199 NMSA 1978. A written explanation must be required provide by the person selecting E-commerce and documented when using of E-Commerce. Please call the Chief Procurement Officer prior to use of this alternative.

14.16. Emergency procurements

The Chief Procurement Officer may make or authorize others to make emergency procurements of goods, services or construction items when there exists a threat to public health, welfare or safety, provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. As soon as practicable, a record of each emergency procurement shall be made and shall set
forth the contractor's name, the amount and type of the contract, a listing of the items procured under the contract and the identification number of the contract file.

ARTICLE IV.

ACTIONS PRIOR TO AWARDING CONTRACTS

15.17. CANCELLATION OF SOLICITATION

Cancellation of solicitations.

An IFB, an RFP or other solicitation may be canceled, or any or all bids or proposals may be rejected when it is in the best interests of the District. Each solicitation issued by the District shall state that the solicitation may be canceled and that any bid or proposal may be rejected in whole or in part when in the best interest of the District. Notice of cancellation shall be sent to all respondents. The notice shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurements of similar items. Reasons for rejection shall be provided upon request by unsuccessful bidders or offerors.

16.18. RESPONSIBILITY OF BIDDERS AND OFFERORS

Responsibility of bidders and offerors.

Determination of non-responsibility. If a bidder or offeror is found to be non-responsible, the Chief Procurement Officer shall prepare a written determination of non-responsibility setting forth the basis of the finding. The unreasonable failure of a bidder or offeror to supply information promptly in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such bidder or offeror. The final determination shall be made part of the contract file and be made public record.

The Chief Procurement Officer shall verify the responsibility of bidders and offers to the extent reasonably practicable and necessary. Criteria for determining the responsibility of bidders and proposers shall include but not be limited to the following:

(a) For federally funded procurements over $25,000.00 the Chief Procurement Officer will search SAM.gov;
(b) The business has not been debarred or suspended under New Mexico laws (NMSA 1978, Section 13-1-179 and 180);
(c) The business is solvent;
(d) The business is duly incorporated;
(e) The business is authorized to conduct business and in good standing with all state and local registration requirements including current business registrations, and business licenses;
(f) The business has or will be obtain applicable insurance;
(g) The business meets any relevant bonding requirements;
The business principle officers are not currently under indictment or investigation for fraud, breach of fiduciary duty or similar crimes that would potentially subject the District to unnecessary financial risks.

197. --MINOR IRREGULARITIES IN BIDS, PROPOSALS AND OFFERS

The Chief Procurement Officer shall be responsible for reviewing bids and proposals and determining if any portion of a bid or proposal contains minor irregularities, typographical errors, or ambiguous words, terms and phrases that require clarification prior to the award of a contract. If the Chief Procurement Officer deems material in question to be minor, immaterial, typographical or otherwise not detrimental to the interests of the District or the fairness of the award process he/she shall be authorized to proceed with the selection and award of the procurement without further action.

If the Chief Procurement Officer receives a written request for clarification regarding any portion of a bid, proposal or other submission the Chief Procurement Officer shall give a written determination to any interested party including competing bidders or offerors of his/her determination regarding the materiality of the irregularities, errors or ambiguous language. If the Chief Procurement Officer deems the material in question to be material substantial to the determination of responsibility under Section 16 above or to be potentially detrimental to the interests of the District or the fairness of the award process the Chief Procurement Officer may elect to deem the bid, proposal or offer non-responsive to the solicitation and shall give written notice to all interested persons or businesses of his/her determination.

1208. --COST OR PRICING DATA

(a) Required submissions relating to the award of contracts. A prospective contractor shall submit cost or pricing data when the contract is expected to exceed $500,000.00 and is to be awarded by competitive sealed proposals (Section 910) or by sole source procurement (Section 142). The submission of cost or pricing data relating to the award of a contract is not required when:

(1) The contract price is based on competitive bid;

(2) The contract price is based on established catalog prices or market prices;

(3) The contract price is set by law or regulations;

(4) The contract is for professional services;

(5) The contract is awarded pursuant to the Public Building Energy Efficiency Act;

(6) The Chief Procurement Officer determines in writing that the requirements of this Section may be waived, and the determination states the reasons for such waiver.

(b) Required submissions relating to change orders or contract modifications. A contractor shall submit cost or pricing data prior to the pricing of any change order or contract modification,
including adjustment to contracts awarded by competitive sealed bidding, whether or not cost or pricing data was required in connection with the initial pricing of the contract, when the change or modification involves aggregate increases or aggregate decreases in cost, plus applicable profits, that are expected to exceed ten percent (10%) of original contract price. The submission of cost or pricing data relating to the pricing of a change order or contract modification is not required when:

(b) An unrelated and separately priced adjustment for which cost or pricing data would not be required are consolidated for administrative convenience; or

(2) The Chief Procurement Officer determines in writing that the requirements of this Section may be waived, and the determination states the reasons for such waiver.

(c) Certification requirements. A contractor, actual or prospective, required to submit cost or pricing data in accordance with this Section, shall certify that, to the best of his or her knowledge and belief, the cost of pricing data submitted was accurate, complete and current as of a mutually specified date prior to the award of the contract or the pricing of the change order or contract modification.

(d) Price adjustment provision required. Any contract award, change order or contract modification under which the submission and certification of cost or pricing data are required shall contain a provision stating that the price to the District, including profit or fee, shall be adjusted to exclude any significant sums by which the District finds that such price was increased because the contractor-furnished cost or pricing data was inaccurate, incomplete or not current as of the date agreed upon between the District and the contractor.

2149. COST OR PRICE ANALYSIS

A cost analysis or price analysis, as appropriate, shall be conducted by the evaluation committee or Project Manager prior to award of the contract when required under section 16. A written record of such analysis shall be made part of the contract file.

(a) Cost analysis: includes the appropriate verification of cost or pricing data, and the use of this data, as well as any available historical comparative data, to evaluate:

(1) Specific elements of costs;

(2) The necessity of certain costs;

(3) The reasonableness of amounts estimated for the necessary cost;

(4) The reasonableness of allowances for contingencies;

(5) The basis used for allocation of indirect costs;

(6) The appropriateness of particular indirect costs to the proposed contract; and

(7) The reasonableness of the total cost or price.
The reasonableness of the total cost or price.

(b) Price analysis: shall be made upon the following criteria for the same or similar items or services:

(1) Price submissions of prospective bidders or offerors in the current procurement;

(2) Prior price quotations and contract prices charged by the bidder, offeror or contractor;

(3) Prices published in catalogues or price list;

(4) Prices available on the open market; or

(5) In-house estimates of cost.

17. Bid and performance bonds on goods or service contracts.

Bid performance and payment bonds or other security may be requested for goods and/or service contracts as the Chief Procurement Officer or department manager deems advisable to protect the District’s interests. Any such bonding requirements shall be set forth in the solicitation. Bid or performance bonds shall not be used as a substitute for determination of a bidder's or offeror's responsibility. The District shall not require bid or performance bonds where the cost of said bonds would, in the opinion of the Chief Procurement Officer, drive up the cost of the goods or services to be procured in an amount that exceeds the District’s risk from not having a bond. However, all contracts of over $250,000 shall require bonds due to the large amount of District resources involved.

ARTICLE V.

CONTRACTS

230. Types of contracts.

General authority. Subject to the limitations of this Section, any type of contract which is appropriate to the procurement and which will promote the best interests of the District will be used, provided that the use of a cost-plus-a-percentage-of-cost contract is prohibited. A cost reimbursement contract may be used only when a determination is made by the Chief Procurement Officer that such a contract is likely to be less costly to the District than any other type or that it is impracticable to obtain the goods, service or construction item required except under such a contract.

(a) Multi-term contracts.

(1) Specified period. A contract can be for multiple fiscal periods, as needed. Unless otherwise provided by law, a contract for goods or services may be entered into for any period up to four years, subject to the following provisions:

(i) That the term of the contract and conditions of renewal or extension, if any, are included in the solicitation;

(ii) Renewals or extensions may be for up to three consecutive one-year periods;
b.iii. Funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds thereof;

d.iv. A multi-term contract that exceeds the Executive Director’s purchasing authority as provided in Section 8 of these regulations over the cumulative time period of a multi-year contract shall be brought to the District Board for approval;

e.v. Construction contracts are exempt from the limit.

(2) Determination prior to use. Prior to the utilization of a multi-term contract, the Chief Procurement Officer shall determine that:

a.i. Estimated requirements cover the period of the contract and are reasonably firm and continuing; and

b.ii. Such a contract will serve the best interests of the District by encouraging effective competition or otherwise promoting economies in District procurement.

(3) Cancellation due to unavailability of funds in succeeding fiscal periods. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled, and the contractor shall be reimbursed for the reasonable value of any nonrecurring cost incurred but not amortized in the price of the goods or services delivered under the contract. Such cost of cancellation may be paid only from any appropriations available for such purposes.

(b) Multiple source contracting.

(1) Generally, a multiple source award is an award of a contract for one or more similar goods or services to more than one bidder or offeror. The obligation to order the District’s actual requirements is limited by the provision of the Uniform Commercial Code, NMSA 1978, § 55-1-101 et seq.

(2) Limitations on use. A multiple source award may be made when an award to two or more bidders or offerors for similar products is necessary for adequate delivery, service or product compatibility. Any multiple source awards shall be made in accordance with the provisions of Sections 9 through -124, and 13, as applicable. Multiple source awards shall not be made when a single award will meet the District’s needs without sacrifice of economy or service. Awards shall not be made for the purpose of dividing business, making available product or supplier selection to allow for user preference unrelated to utility or economy, or avoiding the resolution of the bids. Any such awards shall be limited to the least number of suppliers necessary to meet valid requirements.

(3) Contract and solicitation provisions. All eligible users of the contract shall be named in the solicitation, and it shall be mandatory that the actual requirements of such users that can be met under the contract be obtained in accordance with the contract; provided, however, that:

a.i. The District shall reserve the right to take bids separately if a particular quantity requirement arises which exceeds its normal requirement or an amount specified in the contract; or
The District shall reserve the right to take bids separately if the Chief Procurement Officer approves a finding that the goods or service available under the contract will not meet a special need of the District.

(4) Intent to use. The District shall, in the solicitation document, reserve the right to make such an award.

(5) Determination required. The Chief Procurement Officer shall make a written determination setting forth the reasons for a multiple source award, which shall be made a part of the procurement file.

(c) Price agreements.

(1) Generally. A price agreement is an award of an Indefinite Delivery/Indefinite Quantity contract for one or more similar goods or services to one or more bidder(s) or offeror(s). It is used for anticipated numerous or recurring purchases at a predetermined price or pricing structure over an extended time period. Task orders, once initiated within the contract term, will continue until the completion of the specific task without regard to term of the basic contract unless otherwise stipulated. Since a Price Agreement does not have specific delivery of goods or services required at inception, individual task orders or purchases shall be approved by the appropriate person in accordance with the approval levels in Section 8.

   a. Limitations on Use. A price agreement may be awarded subject to the provisions in Sections 9 through 132 and 2019(b).

   b. Intent to use. The District shall, in the solicitation document, reserve the right to make such an award.

(d) Administrative Grouping of Requirements for Inventory

(1) Generally. Administrative grouping of requirements for inventory recognizes that inventory replenishments or purchases are actually an aggregate of multiple discreet requirements. With this administrative grouping, each purchase order line stands on its own with respect to approval levels in Section 8.

   (2) Limitations on use. This method only pertains to items of inventory.


(a) Contract clauses. All District contracts for goods, service or construction shall be in writing and signed by an authorized agent of the District. District contracts shall include provisions necessary to define the responsibilities and rights of the parties to the contract and shall be reviewed and approved by legal counsel for the District prior to execution. The District's legal counsel shall have the authority to require such contract provisions as deemed reasonably necessary to protect the interests of the District. When using non-District contracts or forms the legal counsel for the District shall seek to obtain specific contract provisions listed below to the maximum extent practicable but may vary from the strict requirements of this Procurement Policy to the extent permitted by law and when necessary in order to obtain a good or service on a negotiated basis. District Contracts shall generally include
the following provisions: The Chief Procurement Officer, after consultation with the District Legal Counsel, may issue clauses appropriate for goods, service or construction contracts, addressing among others the following subjects:

(1) The unilateral right of the District to order, in writing, changes in the work within the scope of the contract;

(2) The unilateral right of the District to order, in writing, temporary stoppage of the work or delaying performance that does not alter the scope of the contract;

(3) Variations occurring between estimated quantities or work in contract and actual quantities;

(4) Defective pricing;

(5) Liquidated damages;

(6) Specified excuses for delay or nonperformance;

(7) Termination of the contract for default;

(8) Termination of the contract in whole or in part for the convenience of the District;

(9) Suspension of work on a construction project ordered by the District;

(10) Site conditions differing from those indicated in the contract or ordinarily encountered, except that a differing site conditions clause need not be included in a contract when:

   a-i. The contract is negotiated; or

   b-ii. The contractor provides the site or design; or

   e-iii. The parties have otherwise agreed with respect to the risk of differing site conditions; or

   iv. Insurance;

(11) federally required contract clauses;

(12) Appropriations clauses;

(13) Such insurance requirements as the executive Director deems reasonably necessary.
(b) **Price adjustments.** Adjustments in price resulting from the use of contract clauses by Subsection (a) of this section shall be computed in one or more of the following ways:

1. By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
2. By unit prices specified in the contract or subsequently agreed upon;
3. By the costs attributable to the events or situations under such clauses with adjustments of profit or fee, all as specified in the contracts or subsequently agreed upon;
4. In such other manner as the contracting parties may mutually agree upon;
5. In the absence of agreement by the parties, a unilateral determination by the Board of the costs attributable to the events or situations under such clauses with adjustment of profit or fee as computed by the Board, as accounted for in accordance with generally accepted cost accounting principles and subject to the provisions of Article VII of this Chapter.
6. A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of Section 20196.

(c) **Standard clauses and their modification.** The Chief Procurement Officer, after consultation with the Board’s Legal Counsel, may establish standard contract clauses for use in the Board contracts. If the Chief Procurement Officer establishes any standard clauses addressing the subjects set forth in Subsection (a) of this section, such clauses may be varied, provided that any variations are supported by a written determination stating the circumstances justifying such variations.

18. **Cost reimbursement provisions.**

Cost reimbursement contracts funded by federal agencies shall satisfy the requirements of 41 CFR 1-15.

19. **Right to inspect plant.**

The District may, at reasonable times, inspect the part of the plant, place of business or worksite of a contractor or subcontractor at any tier which is pertinent to the performance of any contract awarded or to be awarded by the District.

20. **Right to audit records.**

(a) **Audit of cost or pricing data.** The District may, at reasonable times and places, with written notice, audit the records of any contractor who has submitted cost or pricing data pursuant to Section 20196, to the extent that such records are pertinent to such cost or pricing data. Any person who receives a contract, change order, or contract modification for which cost or pricing data is required shall maintain such records that are pertinent to such cost or pricing data for six years from the date of final payment under the contract.

(b) **Contract audit.** The District shall be entitled to audit the records of a contractor or a subcontractor at any tier under negotiated contract or subcontract to the extent that such records are pertinent to the
performance of such contract or subcontract. Such records shall be maintained by the contractor and subcontractor(s) for a period of six years from the date of final payment under the prime contract.


When for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the District’s Legal Counsel for forwarding to the state attorney general.

21.29. District procurement records.

(a) Public access to procurement information. Procurement information shall be public record to the extent provided in the Inspection of Public Records Act.

(b) Contract file. All determinations and other written records pertaining to the solicitation, award or performance of a contract shall be maintained for the District in a contract file by the Chief Procurement Officer. The documents attached to this policy are illustrative only and are subject to modification and change at the discretion of the Chief Procurement Officer.

(c) Retention of procurement records. All procurement records shall be recorded and maintained in accordance with established District records retention standards. All federal contracts shall be maintained for three years after the closeout date of the contract.

ARTICLE VI.

SPECIFICATIONS

30. Maximum practicable competition.

All specifications shall be drafted so as to promote overall economy for the purposes intended and encourage competition in satisfying the District’s needs, and shall not be unduly restrictive. The policy enunciated in this section applies to all specifications including, but not limited to, those prepared for the District by architects, engineers, designers and draftsmen.

31. Qualified products list.

The Chief Procurement Officer may develop a qualified products list, in accordance with Article V of this Chapter. Should any product be available only from a sole source, the using department and purchasing office must review specifications at least annually and make a written determination as to the sole source status. The qualified products list status shall in no way be used to limit competition.

24.32. Brand name or equal specifications.

(a) Use. Brand name or equal specifications may be used when the Chief Procurement Officer determines in writing that:

(1) No other design or performance specification or qualified products list is available;
(2) Time does not permit the preparation of another form or purchase description not including a brand name specification;

(3) The nature of the product or the nature of the District’s requirements makes use of a brand name or equal specification suitable for the procurement; or

(4) Use of a brand name or equal specifications is in the District’s best interests.

(b) **Designation of several brand names.** Brand name or equal specifications shall seek to designate brands as are practicable as "or equal" references and shall further state that substantially equivalent products to those designated will be considered for award.

(c) **Required characteristics.** Unless the Chief Procurement Officer determines that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specification shall include a description of the particular design, functional or performance characteristics which are required.

(d) **Nonrestrictive use of brand name or equal specifications.** Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard quality, performance and characteristics desired and is not intended to limit or restrict competition.

(e) **Exemption.** Small purchases described in Section 113(b) are exempt from this provision.

### 25.33. Brand name specification

(a) **Use.** Since use of a brand name specification is restrictive of product competition, it may be used only when the purchaser has justified, and the Chief Procurement Officer makes a written determination and explaining why, that only the identified brand name item will satisfy the District’s needs must be made and documented by the Chief Procurement Officer.

(b) **Competition.** The Chief Procurement Officer shall seek to identify sources from which the designated brand name item can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under Section 142.

(c) **Exemption.** Small purchases described in Section 113(b) are exempt from this provision.

### 26.34. Item life-cycle specification

The District may use item life-cycle specifications in evaluating bids if such method is required in the IFB. Life-cycle specifications shall use criteria to take into consideration the initial purchase price, life, output, maintenance or consumption, disposal value, complexity of operation, required training and other factors contributing to the overall cost of an item.

### 35. Total cost specification

The District may use total cost specifications in evaluating bids if such method is required in the IFB. Total cost specifications criteria is the same as life-cycle specifications, except the disposal value has been predetermined and is included in the contract as an option. This option is to trade in at this predetermined fixed price, or sell at the District’s option.
36. **Complex specifications REQUEST FOR INFORMATION.**

In the event a department develops a need for goods, service or construction with a complex set of specifications or scope of work and the department desires assistance to develop them, the department shall request in writing that the Chief Procurement Officer issue a Request for Information (RFI) might be issued. A RFI is used to collect additional information about features and specifications of a product or service. The RFI process adds time to the overall solicitation but can be valuable in situations where:

(a) Additional information about a product or service is necessary before a scope of work can be developed for a project; or

(b) Potential suppliers for the goods or services need to be identified.

The process to issue a Request for information is as follows:

(a) The decision to use the RFI process is made by the Chief Procurement Officer through discussions with the requesting department. Since the RFI process does not conclude with a contract award, suppliers are not asked to provide pricing and delivery information.

(b) The Chief Procurement Officer and the department develop a general description of the product or service that is required.

(c) Suppliers are asked to submit full descriptions and specifications of the goods or services they provide.

(d) The RFI is posted for a minimum of two (2) weeks in the District’s website.

(e) The department and Chief Procurement Officer review supplier submissions. RFIs are not scored and evaluation team members are not required to sign Non-Disclosure/Conflict of Interest statements.

(f) Once the submissions are reviewed the Chief Financial Officer and requesting department use the information to develop a scope of work for the subsequent solicitation.

(g) When the RFI process is concluded, the District may or may not issue a solicitation.

The user department shall provide as much information as feasible to the Chief Procurement Officer for development of the RFI;

**The Chief Procurement Officer shall prepare the RFI and process it as in Section 10;**

**Upon receipt of the Information:**

If from multiple sources, the user department shall make a good faith effort to combine the various inputs into a coherent whole; or

(1) If from only one source, the department may use the document as the basis for a sole source justification.

(2) The information assembled in Subsection (c) (1) above shall be used as the basis for an IFB or RFP.
ARTICLE VII.

PROCUREMENT OF CONSTRUCTION MANAGEMENT
AND CONSTRUCTION SERVICES

37. Selection of construction management.

The Project Manager shall have discretion to:

(a) Select the appropriate method of construction management for a particular project. In determining which method to use, the Project Manager shall consider the District’s requirements, its resources, and the potential contractor’s capabilities;

(b) Select which method of solicitation for construction management applies for a particular project, either as a single-step or multi-step RFP as in Section 110, or as an RFQ in Section 12II Article III.

29.38. Bid security.

(a) Requirement. Bid security shall be required for all competitive sealed bidding for construction contracts when the price is estimated by the using agency to exceed $250,000.00. Bid security shall be a bond provided by a surety company authorized to do business in the state, or the equivalent in cash, or otherwise supplied in a form satisfactory to the District. Such bonds on construction contracts under $250,000.00 may be required by the Chief Procurement Officer when the circumstances warrant.

(b) Amount. Bid security shall be in an amount equal to at least five percent (5%) of the total amount of the bid including all options.

(c) Rejection of bids for noncompliance with bid security requirements. When the IFB requires security, noncompliance requires that the bid be rejected unless it is determined the bid fails to comply only in a non-substantial manner with the security requirements.

(d) Withdrawal of bids. If a bidder is permitted to withdraw its bid before award as provided in Article III Section 9 (g) no action shall be taken against the bidder or the bid security.


(a) When required; amounts. When a construction contract is awarded in excess of $250,000.00, the following bonds or security shall be delivered to the District and shall become binding on the parties upon the execution of the contract:

(1) A performance bond satisfactory to the District, executed by a surety company authorized to do business in the state or otherwise secured in a manner satisfactory to the District, in an amount equal to one hundred percent (100%) of the price specified in the contract; and
(2) A payment bond satisfactory to the District, executed by a surety company authorized to do business in the state or otherwise secured in a manner satisfactory to the District, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to 100% of the price specified in the contract.

(b) Authority to require additional bonds. The District retains the authority to require a performance bond or other security in addition to those bonds, or in circumstances other than specified in Subsection (a) of this section.

(c) Suits on payment bonds; right to institute. Unless otherwise authorized by law, any person who has furnished labor or material to the contractor or subcontractors, whether in an expressed or implied contract, for the work provided in the contract, for which a payment bond is furnished under this section, and who has not been paid in full within 90 days from the date on which that person last performed the labor or supplied the material, shall have the right to sue on the payment bond for any amount unpaid at the time the suit is instituted upon giving written notice to the contractor within 90 days from the date on which that person last performed the labor or supplied the material. That person shall state in the notice the amount claimed and the name of the party to whom the material was supplied or for whom the labor was performed. The notice shall be served personally or by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place the contractor maintains an office or conducts business.

(d) Suits on payment bonds; where and when brought. Unless otherwise authorized by law, every suit instituted upon a payment bond shall be brought in a court of competent jurisdiction within the District’s boundaries.


Any person may request and obtain from the District a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution and delivery of the original.

32.41. Architect-engineer and land surveying services.

(a) Source selection. The Chief Procurement Officer shall publicly issue either a multi-step RFP as in Section 10(ba) or an RFQ as in Section 110(b) of Article III for the procurement of architect-engineer and land surveying services.

(b) Selection process. An evaluation committee will be appointed by the Executive Director or his designee for general District departments, requiring architect-engineer or land survey services. The committee shall select, ranked in the order of their qualifications, those firms submitting SOQs deemed to be the most highly qualified to perform the required services, after considering the following criteria:

(1) Specialized design and technical competence of the business regarding the type of services required;

(2) Capacity and capability of the person, including any consultants, their representatives, qualifications, and locations, to perform the work, including any specialized services, within the time limitations;
(3) Past record of performance on contract with government agencies or private industry with respect to such factors as control of costs, quality of work and ability to meet schedules;

(4) Proximity to or familiarity with the area in which the project is located; and

(5) Price may be considered in connection with construction management contracts.

Negotiation. The Chief Procurement Officer or designee shall negotiate a contract with the firm considered to be the most qualified for architect-engineer or land surveying services at compensation which the Chief Procurement Officer or designee determines in writing to be fair and reasonable to the District. In making this decision, the Chief Procurement Officer or designee shall take into account the estimated value, the scope, the complexity and the professional nature of the services to be rendered. Should the Chief Procurement Officer or designee be unable to negotiate a contract at a fair and reasonable price with the selected firm, the selection committee shall select additional firms in order of their competence and qualifications, and the Chief Procurement Officer or designee shall continue negotiations with the additional firms in the order of their competence and qualifications in accordance with this section until an agreement is reached.

CONSTRUCTION PROJECTS

(a) A company except as provided in section 40, a person elected to perform architect-engineer or land surveying services shall not be eligible for consideration for construction projects that result from the person’s design or engineering services obtained separately from construction services.

(b) The successful person is not precluded from providing project management or construction management services for the design or engineering services which it has provided.

Design-build DESIGN-BUILT PROJECTS

(a) A design-build project delivery system may be authorized when the Chief Procurement Officer makes a determination that it is appropriate and in the best interest of the District, to use the system on a specific project. The project may be construed to mean the initial desired outcome including any specific site for construction or alternate site that may be identified after a contract has been awarded. The determination shall be issued only after the Chief Procurement Officer has taken into consideration the following criteria, which shall be used as the minimum basis in determining when to use the design-build process:

1. The extent to which the project requirements and possible options have been, or can be, adequately defined;

2. Time constraints for delivery of the project;

3. The capability and experience of potential teams with the design-build process;

4. The suitability of the project for use of the design-build process as concerns special expertise, time, schedule, costs and/or quality; and


(5) The capability of the District to manage the project, including experienced personnel or outside consultants, and to oversee the project with persons who are familiar with the design-build process.

(b) When a determination has been made by the Chief Procurement Officer that it is appropriate to use a design-build project delivery system, the design-build team shall include, as needed, a state licensed engineer or architect, and a contractor properly licensed in New Mexico for the type of work required.

(c) For each proposed design-build project, a two-phase procedure for awarding design-build contracts shall be adopted and shall include at a minimum the following:

(1) During phase one, an RFQ shall be prepared for an engineer or architect teamed with a New Mexico licensed contractor in accordance with Section 410, the RFQ section 38, and shall include minimum qualifications, a scope of work statement and schedule, documents defining the project requirements, and a description of the phase two requirements and subsequent management needed to bring the project to completion. The qualifications of responding persons shall be evaluated and a maximum of five firms shall be short listed in accordance with technical and qualifications-based criteria; and

(2) During phase two, the short-listed persons shall be invited to submit proposals which include a “rough order of magnitude estimate”, concepts or solutions, and scheduling. Unsuccessful short-listed persons may be paid a stipend as described in a particular RFP. After evaluations of these submissions, selection may be made, and a contract awarded to the highest ranked team for the design and construction of the project upon the site identified in the solicitation or such other site as may be identified by District after award of the contract; and,

(3) The requesting department will establish design-build specifications and requirements for each project that will strive for the delivery of a quality project on time and within budget.

ARTICLE VIII

SUSPENSION OR DEBARMENT

35.44. Authority to suspend or debar.

(a) Suspension. After consultation with the District’s Legal Counsel, the Chief Procurement Officer is authorized to suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity which might lead to debarment. The suspension shall be for a period not to exceed three months.

(b) Debarment. After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Chief Procurement Officer, after consulting with the District’s Legal Counsel, and notice to the Executive Director, is authorized to debar for cause a person from consideration for award of contracts. The debarment shall be for a period of not more than three years. The causes for debarment include the following:

(1) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or the performance or such contract or subcontract;
Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty which currently, seriously and directly affects responsibility as a District contractor;

Conviction under state or federal antitrust statutes arising out of submission of bids or proposals;

Violation of contract provisions within the past three years, as set forth below, of a character which is regarded by the Chief Procurement Officer to be so serious as to justify debarment action;

i. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

ii. A recent record of preventable failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts.

Any other cause the Chief Procurement Officer determines to be so serious and compelling as to affect responsibility as a District contractor, including debarment by another governmental entity for any cause listed in this Article; and

For violation of the ethical standards set forth in Article IX of this Chapter; and,

Failure to disclose any of (1) through (6) the causes listed above in a solicitation, as may be requested.

Decision

The Chief Procurement Officer shall issue a written decision to suspend or debar. The decision shall state the reasons for the action taken and inform the suspended or debarred person involved of his/her rights concerning judicial or administrative review.

Notice of decision

A copy of the decision required by Section 4542 shall be mailed, postage pre-paid certified mail return receipt requested or otherwise furnished immediately to the suspended or debarred person.

Finality of decision

A decision under Section 4432 shall be final and conclusive unless the suspended or debarred person within 15 calendar days after receipt of decision takes an appeal to the District Board.

Appeal

Any appeal to the District Board of an adverse decision shall be made by filing a notice of appeal with the Executive Director’s office within 15 calendar days after the decision has been delivered to the aggrieved person. The proceeding before the District Board shall be de novo. The decision by the District Board under this subsection shall be final. The District Board’s decision may be appealed pursuant to Section 39-3.1.1 and NMRA 1-074 to a court of competent jurisdiction within the District’s boundaries.
ARTICLE IXVII.

PROTESTS, APPEALS AND REMEDIES

49. Authority to resolve protested solicitations and awards.

40. All bid protests and appeals shall be performed in accordance with the New Mexico State Procurement Code. Pursuant to NMSA 1978, Section 73-25-5 (G) the District has limited authority to adopt procurement policies regarding "auditing allowing or rejecting" claims and demands in the context of procurement disputes. Therefore, the following policies are adopted pursuant to, and to the extent consistent with state laws on the topic.

The Chief Procurement Officer is responsible to address, process, and exercise the following:

(a) Protests of bid or RFP specifications or scope of work. Any vendor who is aggrieved in connection with the specifications or scope of work in a solicitation may protest to the Chief Procurement Officer. The protest shall be submitted in writing no later than 7 calendar days prior to the deadline for receipt of the bid or proposal. No protest bond will apply to such protest. The Chief Procurement Officer shall issue a determination in writing within 2 work days of receipt of such protest, and either proceed with the solicitation, modify it, or cancel it.

(b) Right to protest; protest bond. Any actual or prospective bidder, offeror or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Chief Procurement Officer. The protest shall contain all the requirements grounds for such protest, and must be submitted in writing within 15 calendar days after such aggrieved person knows or should have known of the facts giving rise thereto, along with a bond provided by a surety company authorized to do business in the state, or the equivalent in cash, or otherwise supplied in a form satisfactory to the District. The amount of the bond shall not exceed the estimated cost to the District of processing and defending a protest. Only one protest per person per solicitation is permitted.

(c) Authority to resolve protests. The Chief Procurement Officer shall have the authority, prior to the commencement of an action in court concerning the controversy, to settle and resolve a protest of an aggrieved bidder, offeror or contractor, actual or prospective, concerning the solicitation or award of a contract.

(d) Decision. If the protest is not resolved by mutual agreement, the Chief Procurement Officer shall promptly issue a decision in writing stating the reason for the action taken and informing the protestant of its right to appeal the decision to the District Board. A copy of the decision of the Chief Procurement Officer shall be mailed, return receipt requested, or hand-delivered to the protestant or to the address provided in the protest.

(e) Appeal. Any appeal to the District Board of an adverse decision shall be made by filing with the Executive Director’s office within 15 calendar days after the decision has been delivered to the aggrieved person. The proceeding before the Board shall be de novo. The Board shall decide whether the solicitation or award was in accordance with this Policy, procedures, and the terms and conditions of the solicitation.

(f) Decisions final. A decision of the District Board under this Section shall be final and conclusive. The aggrieved person may seek judicial review in the state First Judicial District Court within 30 days of the receipt of notice of the decision of the District Board.
(g) **Stay of procurements during protests.** In the event of a timely protest under subsection (a) of this section, the Chief Procurement Officer shall not proceed further with the solicitation or with the award of the contract unless the Chief Procurement Officer, after consultation with the Executive Director, makes a written determination that the award of the contract without delay is necessary to protect substantial interests of the District.

(h) **Entitlement to costs.**

(1) When a protest is sustained, and the protesting bidder or offeror should have been awarded the contract under the solicitation but was not, then the protesting bidder or offeror shall be entitled, in addition to any other relief, to the reasonable costs incurred in connection with the protest or appeal costs other than attorney’s fees.

(2) Should the protest be denied, the District shall be entitled to recover reasonable costs for processing and adjudicating the protest, and for costs associated with an unreasonable delay of the contract. Recovery of these costs shall not be limited to the proceeds from the protest bond. Excess bond proceeds shall be returned to the person.

41.50. **Contract Claims**

Claims include, without limitation, disputes arising under a contract, and those based upon breach of contract, mistake, misrepresentation or other cause for contract modification or rescission. Within 15 calendar days of the time the contractor knows or should have known of the facts and circumstances giving rise to a claim the following procedure shall apply:

(a) **Notice of claim to the Chief Procurement Officer.** All claims by a contractor against the District relating to a contract except bid protests shall be submitted in writing to the Chief Procurement Officer for decision. The contractor may request a conference with the Chief Procurement Officer on the claim.

(b) **Notice to the contractor of the Chief Procurement Officer's decision.** The decision of the Chief Procurement Officer shall be issued in writing within 15 calendar days of claim notice and immediately mailed, or otherwise furnished, to the contractor. The decision shall state reasons for the decision reached; and shall inform the contractor of its appeal rights under subsection (d) of this section.

(c) **Failure to render timely decision.** If the Chief Procurement Officer does not issue a written decision regarding any contract controversy within 15 days after written request for a final decision, or within such longer period as may be agreed upon between the parties, then the aggrieved party may proceed as if an adverse decision had been received.

(d) **Appeal.** Any appeal to the District Board of an adverse decision shall be made by filing with the Executive Directors office within 15 calendar days after the decision has been received by the aggrieved person. The proceeding before the District Board shall be de novo.

(e) **Decisions by Board final; exception.** A decision of the District Board under this section shall be final and conclusive unless a protestant seeks judicial review in the state First Judicial District Court within 30 days of the receipt of notice of the decision of the District Board.

42.51. **Remedies for solicitations or awards in violation of law.**
Prior to bid opening or closing date for receipt of proposals. If, prior to the bid opening or the closing date for receipt of proposals, the Chief Procurement Officer, after consultation with the District Attorney, determines that a solicitation is in violation of applicable law or regulation then the solicitation shall be canceled by the Chief Procurement Officer or revised to comply with applicable law.

Prior to award. If, after bid opening or the closing date for receipt of proposals, the Chief Procurement Officer, after consultation with the District Legal Counsel, determines that a solicitation or a proposed award of a contract is in violation of applicable law the solicitation or proposed award shall be canceled by the Chief Procurement Officer.

After award. If, after an award, the Chief Procurement Officer, after consultation with the District Legal Counsel, determines that a solicitation or award of a contract was in violation of applicable law, then:

- If neither the purchaser nor the person awarded the contract has acted fraudulently or in bad faith:
  1. The contract or invoice may be ratified and affirmed or approved for payment by the Board for any amount or the Executive Director, as applicable, for amounts under $100,000.00, provided that it is determined that doing so is in the best interests of the District; or
  2. The contract may be terminated and the person awarded the contract shall be compensated for the actual costs reasonably incurred under the contract, plus a reasonable profit, prior to the termination; or

- If either the purchaser or the person awarded the contract has acted fraudulently or in bad faith, the contract may be declared null and void by the Chief Procurement Officer, if such action is in the best interests of the District.

Unauthorized Purchases. Any Purchase which is not legally and appropriately approved within the budget or by other NCRTD action by the District, or which does not substantially comply with the provisions of this policy shall be considered an unauthorized purchase, and thereby not subject to payment by the District. The District hereby declares and establishes that it will assume no responsibility for payment of unauthorized purchases. Furthermore, any individual initiating or otherwise executing any unauthorized purchase is solely responsible for payment and may be subject to disciplinary action up to and including dismissal. All authorized purchases shall be legally budgeted or approved within an appropriate fund or agency account, or within an appropriate line item as approved by the Executive Director. All questionable purchases shall be submitted to the Executive Director for review and a determination shall be made by the Executive Director regarding the purchase being an authorized or unauthorized purchase under the provisions of this policy.

ARTICLE XVIII.

ETHICS IN PUBLIC CONTRACTING

Employee conflict of interest. Unless waived under Section 5764, it shall be unethical and unlawful for any District employee to participate directly or indirectly in any procurement when the District employee knows that:
(1) The District employee or any member of the District employee's immediate family has a financial interest pertaining to the procurement; or

(2) Any other person with whom the District employee or any member of a District employee’s immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement contract.

(b) A District employee or any member of a District employee’s immediate family who holds a financial interest in a disclosed blind trust shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial trust.

45.54. Gratuities and kickbacks

(a) Generally. It shall be unlawful for any person to offer, give or agree to give any District employee or former District employee, or for any District employee or former District employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with:

(1) any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase requisition;

(2) influencing or developing the content or any specifications or procurement standard, except as a result of a published Request for Information;

(3) assisting in rendering of advice, investigation, auditing or in any other advisory capacity in proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal thereof; or

(4) accepting any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor or higher tier subcontractor or any person associated therewith as an inducement for the award of a subcontract or order.

(b) Contract and solicitation clause. The prohibition against gratuities and kickbacks prescribed in this section shall be conspicuously set forth in every contract and solicitation.

46.55. Prohibition against contingent fees

It shall be unethical and unlawful for a person to be retained, or to retain a person, to solicit or secure a District contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

47.56. Contemporaneous employment

It shall be unethical and unlawful for any District employee who is participating directly or indirectly in the procurement process to become or to be, while a District employee, the employee of any person contracting with the governmental body by which the employee is employed.
25. Waivers from contemporaneous employment prohibition and conflicts of interest.

57.

The District Board may grant a waiver from the employee conflict of interest provision (Section 5320) or the contemporaneous employment provision (Section 5653) upon making a written determination that:

(a) The contemporaneous employment or financial interest of the District employee has been publicly disclosed prior to solicitation;

(b) The District employee will be able to perform its procurement functions without actual or apparent bias or favoritism; and

(c) The award will be in the best interests of the District.

48. Use of confidential information.

It shall be unethical and unlawful for any employee or former employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

49. Sanctions.

In addition to any civil or criminal penalties or fines imposed by federal or state law, the following shall apply:

(a) Employees. The Executive Director may impose any one or more of the following sanctions on a District employee for violation of the ethical standards set forth in this division:

(1) Oral or written warning or reprimands;

(2) with or without pay for specified periods of time; or

(3) Termination of employment.

(b) Other Persons. The Chief Procurement Officer may impose any one or more of the following sanctions on a person for violations of the ethical standards:

(1) Written warnings or reprimands;

(2) Termination of contracts; or

(3) Suspension or debarment as provided in Section 4544.

60. Recovery of value.

Recovery of value transferred or received in violation of the Code.
(a) Generally. The District may use any and all legal and equitable remedies to recover the value of anything transferred or received in breach of the ethical standards of this Policy by a District employee or other person.

(b) Recovery of kickbacks by the District. Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount was included in the price of the subcontract or order and ultimately borne by the District and will be recoverable hereunder from the recipient. In addition, that amount may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.

ARTICLE XI. –

FEDERALLY FUNDED PROCUREMENT REQUIREMENTS

61. FEDERAL TRANSIT ADMINISTRATION BEST PRACTICES.

FTA Best Practices Procurement & Lessons Learned Manual was updated in October of 2016 as FTA Circular 44201 F which can be found at:


With regards to the following types of purchases using federal money the District shall endeavor to engage in best practices using the most current guidance of the Federal Transit Administration.

(a) Micro-Purchases;
(b) Small Purchases;
(c) Large Purchases;
(d) Sole Source Purchases; and
(e) Single-Bid Purchases.

The FTA compliant best practices do not apply to:

(a) Employment Contracts;
(b) Real Estate Contracts; and
(c) Intergovernmental Agreements.

59. Contractor records.

If a district contract is being funded in whole or in part by assistance from a federal agency, the contract shall include provisions requiring the contractor and subcontractors at any tier to:
(1) Maintain for three years from the date of final payment under the contract all books, documents, papers, and records pertinent to the contract; and

(2) Provide to the district, the federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives access to such books, documents, papers, and records for the purposes of examining, auditing, and copying them.

60. Patents.
If a district contract involving research and development, experimental, or demonstration work is being funded in whole or in part by assistance from a federal agency, the contract shall include provisions:

(1) Giving notice to the contractor of the applicable grantor agency requirements and regulations concerning reporting of and rights to any discovery or invention arising out of the contract; and

(2) Requiring a contractor to include a similar provision in all subcontracts involving research and development, experimental, or demonstration work.

61. Copyrights and rights in data.
If a district contract is being funded in whole or in part by assistance from a federal agency, the contract shall include a provision giving the contractor notice of the applicable regulations concerning the rights of the United States to any plans, drawings, specifications, computer programs, technical reports, operating manuals, and similar work products developed and paid for under the contract.

62. Notice of federal public policy requirements.
If the district contract is being funded in whole or in part by assistance from a federal agency, and the contract is subject to one or more federal public policy requirements, such as:

(i) equal employment opportunity;
(ii) fair labor standards;
(iii) energy conservation;
(iv) environmental protection; or
(v) other similar socioeconomic programs,
the Chief Procurement Officer shall include contract provisions giving the contractor notice of these requirements and, where appropriate, including in those contract provisions the requirement that the contractor give a similar notice to all of its subcontractors.

63. Buy American requirements.
If a district contract is being funded in whole or in part by assistance from a federal agency, the district shall adhere to the appropriate buy American requirements of the federal agency providing the assistance.

64. Energy conservation.
If a district contract is being funded in whole or in part by assistance from a federal agency, the district's solicitation shall seek to promote energy conservation and shall comply with any mandatory standards and policies which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (PL 94-163).

Small, women-owned and minority business enterprises.

(a) Expand participation. If a district contract is being funded in whole or in part by assistance from a federal agency, the Chief Procurement Officer shall take affirmative steps to ensure that small, women-owned, and minority businesses are utilized when possible as sources of supplies, services, and construction items.

(b) Examples of affirmative steps. Affirmative steps to be taken shall include the following:

(1) Including qualified small, women-owned, and minority businesses on solicitation lists;
(2) Ensuring that small, women-owned, and minority businesses are solicited whenever they are potential sources;
(3) When economically feasible, dividing total requirements into smaller tasks or quantities to permit maximum small, women-owned, and minority business participation;
(4) Where the requirement permits, establishing delivery schedules which will encourage participation by small, women-owned, and minority business; and
(a) (5) Using the services and assistance of the small business administration or the office of minority business enterprise of the department of commerce, as required.
(c) Pass-through to subcontracts. A contractor awarded a federally funded contract shall take the affirmative steps, as linked in subsection (b) of this section, in awarding its subcontracts.
65. Labor surplus area businesses.
If a district contract is being funded in whole or in part by assistance from a federal agency, the Chief Procurement Officer is encouraged to procure supplies, services, and construction items from businesses located in labor surplus areas.

66. Architectural and engineering services
(a) If a district contract is being funded in whole or in part by assistance from a federal agency, the Chief Procurement Officer is encouraged to procure supplies, services, and construction items from businesses located in labor surplus areas.

(b) Architectural and engineering services (a)
If a district contract is being funded in whole or in part by assistance from a federal agency, the district shall use qualifications-based competitive proposal procedures when contracting for Architectural and engineering services as defined in 40 U.S.C. §541 et seq. and 49 U.S.C. §5325(d). Services subject to this requirement include but are not necessarily limited to program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services.

(b) Qualifications-based competitive proposal procedures require that:
(1) An offeror's qualifications be evaluated;
(2) Price be excluded as an evaluation factor;
(3) Negotiations be conducted with only the most qualified offeror; and
(4) Failing agreement on price, negotiations with the next most qualified offeror be conducted until a contract award can be made to the most qualified offeror whose price is fair and reasonable to the district.

(c) These qualifications-based competitive proposal procedures will be used for the procurement of the services listed above. This method of procurement will not be used to obtain other types of services even though a firm that provides architectural and engineering services is also a potential source to perform other types of services.

(d) The district will use article III, source selection and contract information, division 1, professional and technical services procurement to procure architectural and engineering services in accordance with the district's procurement code as amended.

67. Federal Transit Administration Best Practices
FTA Best Practices Procurement & Lessons Learned Manual was updated in October of 2016 as FTA Circular 44201 F which can be found at:

With regards to the following types of purchases using federal money the District shall endeavor to engage in best practices using the most current guidance of the Federal Transit Administration.

- Micro-Purchases,
- Small Purchases,
- Large Purchases,
- Sole Source Purchases, and
- Single-Bid Purchases
The FTA compliant best practices do not apply to:
- Employment Contracts,
- Real Estate Contracts, and
- Intergovernmental Agreements.

6268. Relationship to RELATIONSHIP TO FTA Master Agreement MASTER AGREEMENT.

These polices have been prepared in accordance with the Federal Transit Administration’s (FTA) procurement policies. Please reference the FTA’s Master Agreement for changes, assistance, and clarification. The Master Agreement contains standard terms and conditions governing the administration of a Project supported with Federal assistance awarded by the Federal Transit Administration (FTA) through a Grant Agreement or Cooperative Agreement with the Recipient, or supported through a loan,
loan guarantee, or line of credit provided by FTA. Also, please refer to The FTA's Best Practices Procurement Manual for procurement assistance, contract clauses and provisions.

63. ENSURING MOST EFFICIENT AND ECONOMIC PURCHASE.

Departments, during their annual budget process, should determine the procurement actions necessary to sustain their operations through the fiscal year. A list of these procurement actions should be forwarded to the Chief Procurement Officer annually.

Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase and to avoid purchase of unnecessary or duplicative items. Where appropriate, an analysis will be made of lease versus purchase alternatives and any other appropriate analysis to determine the most economical approach. The District considers various procurement sources to ensure economical purchases including, but not limited to GSA, State of New Mexico, and municipal cooperatives.

64. COST & PRICE ANALYSIS.

Departments must make independent estimates before receiving bids or proposals in connection with every procurement action, including contract modifications. These estimates may be obtained from published competitive prices, results of competitive procurements, historical prices and trends, or by Purchasing Department estimates or outside estimators. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation (FTA Circular 4420.1E Sec.10). The following are examples of instances when cost or price analysis must be conducted:

(a) A cost analysis must be performed when the offeror is required to submit the elements (i.e., Labor Hours, Overhead, Materials, etc.) of the estimated cost, e.g., under professional consulting and architectural and engineering services contracts.

(b) A cost analysis will be necessary when adequate price competition is lacking and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or on the basis of prices set by law or regulation.

(c) A price analysis may be used in all other instances to determine the reasonableness of the proposed contract price.

(d) Departments will negotiate profit as a separate element of the price for each contract in which there is no price competition and, in all cases, where cost analysis is performed.

To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

A “Price and Cost Analysis Form” must be submitted to the Chief Procurement Officer prior to issuing any solicitation. See Exhibit G.

65. FEDERAL COST PRINCIPLES.

Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred, or cost estimates included in negotiated prices are consistent with Federal cost principles.
The Chief Procurement Officer may reference their own cost principles that comply with applicable Federal cost principles.

66. FULL AND OPEN COMPETITION.

The principle of full and open competition has one primary and two secondary purposes. The primary purpose is to obtain the best quality and service at minimum cost. In other words, to get the best buy. The secondary purposes are to guard against favoritism and profiteering at public expense and to provide equal opportunities to participate in public business to every potential offeror.

Departments must conduct all procurement in a manner providing full and open competition. This policy assures that all responsible bidders are permitted to compete for the procurement. In the case of sole or single source procurement, justification for use of the source must be documented on the Noncompetitive Procurement Justification Form (Exhibit F). Also see Sole Source Contracting Section.

67. RESTRICTIVE COMPETITION.

Contracts with a value of more than $100,000 shall be awarded by sealed bid or by the competitive and noncompetitive proposal process unless there is an explicit exception. Departments must refrain from the following practices, which are deemed restrictive of competition:

(a) Unreasonable requirements placed on firms in order for them to qualify to do business;
(b) Unnecessary experience and excessive bonding requirements;
(c) Noncompetitive pricing practices between firms or between affiliated companies;
(d) Noncompetitive awards to any person or firm on retainer contracts;
(e) Organizational conflicts of interest;
(f) Restrictive use of brand names;
(g) Any arbitrary action in the procurement process; and
(h) Geographic preferences.

68. PRE-QUALIFICATION OF BIDDERS.

The procuring department shall ensure that all lists of prequalified persons, firms, or products that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum full and open competition. In addition, the District shall not preclude potential bidders from qualifying during the solicitation period, which is from issuance of the solicitation to its closing date.

69. GEOGRAPHIC PREFERENCES.

Departments shall conduct procurements in a manner that prohibits the use of statutory or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. This does not preempt State licensing laws. However, geographic location may be a selection criterion in
procurements for architectural and engineering (A&E) services, provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

ARTICLE XII.

FEDERALLY FUNDED PROCUREMENT- METHODS

7069. Written Record

The District NCRTD’s Chief Procurement Officer - Purchasing Office shall maintain records detailing the history of each FTA associated procurement. These records shall be placed in the master file and include:

(a) The rationale for the method of procurement (See Exhibit C - Decision Matrix);

(b) Selection of contract type;

(c) Reasons for contractor selection or rejection; and

(d) The basis for the contract price.

713. Procurement documentation

Where appropriate, the file contains:

(a) Purchase request, acquisition planning information, and other pre-solicitation documents;

(b) Evidence of availability of funds;

(c) Rationale for the method of procurement (negotiations, formal advertising);

(d) List of sources solicited;

(e) Independent cost estimate;

(f) Description of work/scope of services;

(g) Copies of published notices of proposed contract action;

(h) Copy of the solicitation, all addenda, and all amendments;

(i) Liquidated damages determination;
An abstract of each offer or quote;

Contractor's contingent fee representation and other certifications and representations;

Source selection documentation if applicable;

Contracting Officer's determination of contractor responsiveness and responsibility;

Cost or pricing data;

Determination that price is fair and reasonable including an analysis of the cost and price data, required internal approvals for award;

Purchase Requisition indicating availability of funding;

Notice of award;

Notice to unsuccessful bidders or offerors and record of any debriefing;

Record of any protest;

Bid, Performance, Payment, or other bond documents, and notices to sureties;

Required insurance documents; and

Notice to proceed


In order to ensure a sound and complete agreement, the Chief Procurement Officer will ensure the Contract/Purchase Order File Index is accurate, complete, and included in the master file. (Exhibit A)

Where appropriate, the file contains:

- Purchasing Department Tracking Sheet
- Executed contract and notice of award
- Bond-related documents
- Insurance documentation
- Post-award correspondence
- Notice to proceed
- Approvals or disapprovals of waivers and deviations

(a) Modifications and changes in the terms or conditions of the contract, including a rationale for the change, determinations regarding their scope, and cost/price analysis of any price increases or decreases.

In order to ensure a sound and complete agreement, the Chief Procurement Officer will ensure the Contract/Purchase Order File Index is accurate, complete, and included in the master file. (Exhibit A)

5. Awards to Responsible Contractors.

The District shall make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed agreement. Consideration shall be given to such
matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. The debarred and suspended list will also be checked. Departments must submit the attached Responsibility Determination Form to the Chief Procurement Officer prior to the issuance of an award. (Exhibit 72-B)

6. Methods of solicitation

The methods of solicitation and selection allowed within the Federal contractual sphere are listed in FTA Circular 44201 F (2016) which can be found at:


The Chief Procurement Officer on behalf of the District may choose:

(a) Micro purchases only for contract amounts less than $1,000; or

(b) Small purchase procedures only for contract amounts less than the simplified acquisition threshold (currently $10,000); or

(c) Best value for contracts which indicate that the best value or the proposal which offers the greatest business value based upon an analysis of a tradeoff of qualitative technical factors and price/cost to derive which proposals represents the “best value” to the District’s procurement; or

(d) Brand Name or Equals; or

(e) Non-competitive Proposals (Sole Source) procurement only if you can justify not soliciting additional competition in the manner explicitly defined in FTA Circular 4420.1E §9f; or

(f) Sealed Bids where:

(1) You have a complete, adequate, and realistic specification or purchase description;

(2) Two or more responsible bidders are willing and able to compete;

(3) The procurement lends itself to a firm fixed price contract and the selection can be made primarily on the basis of price;

(4) No discussion with bidders is needed after receipt of offers;

(g) Competitive procurement that include proposals such as RFP or RFQ, competitive proposals; or noncompetitive proposals (sole source) procurement only if you can justify not soliciting additional competition in the manner explicitly defined in FTA Circular 4420.1E §9f. Best value for contracts which indicate that the best value or the proposal which offers the greatest business value based upon an analysis of a tradeoff of qualitative technical factors and price/cost to derive which proposals represents the "best value" to the District's procurement.
See Section Best Practices Procurement Manual § 1.3.2, "Federal Contractual Sphere."

FTA Circular 4220.1E §9, 49 CFR

Geographic preference is permitted in certain narrow situations, including principally where part of a legal licensing requirement and for architects and engineers; FTA Circular 4220.1E, §8.b.

While the IFB requirements of § 9.c.(2) are good practices for both IFBs and RFPs, the evaluation criteria requirement of § 9.d.(1) is relevant only to RFPs and is discussed in Section 4.5.1, "Solicitation & Receipt of Proposals."

Departments must submit the attached Method of Procurement Decision Matrix Form to the Chief Procurement Officer to begin new procurement actions. The Decision Matrix will be placed in the master file. (Exhibit C)

7. Micro-Purchases.

Procurement by micro-purchases are those purchases under $1,000.00. Purchases below that threshold may be made without obtaining competitive quotations if the grantee determines that the price is fair and reasonable. Such purchases are exempt from Buy America requirements. There should be equitable distribution among qualified suppliers, and no splitting of procurements to avoid competition. The Davis-Bacon Act applies to construction contracts over $2,000.

Minimum documentation required: A determination that the price is fair and reasonable and how this determination was derived must be submitted to the Chief Procurement Officer prior to the issuance of an award. This determination shall be placed in the master file. Please use the Price and Cost Analysis Form (Exhibit G).

74. SMALL PURCHASES.

Small purchase procedures are to be used if the services, supplies, or other property cost between $1,000 and $10,000. If small purchases procedures are used, price or rate quotations shall be obtained from at least three qualified sources and submitted to the Chief Procurement Officer prior to the issuance of an award. These price or rate quotations shall be placed in the master file. Please use the Price / Rate Quotation Form (Exhibit M).

Minimum documentation required: A determination that the price is fair and reasonable and how this determination was derived must be submitted to the Chief Procurement Officer prior to the issuance of an award. This determination shall be placed in the master file. Please use the Price and Cost Analysis Form (Exhibit G).
issuance of an award. These price or rate quotations shall be placed in the master file. Please use the Price / Rate Quotation Form (Exhibit M).

75. BEST VALUE.

Best Value is a selection process in which proposals contain both price and qualitative components, and award is based upon a combination of price and qualitative considerations. Qualitative considerations may include technical design, technical approach, quality of proposed personnel, and /or management plan. The award selection is based upon consideration of a combination of technical and price factors to determine the offer deemed most advantageous and of the greatest value to the District.

76. BRAND NAME OR EQUAL.

Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not contain features unduly restricting competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used.

Departments shall use a "brand name or equal" description only when it cannot provide an adequate specification or more detailed description, without performing an inspection and analysis, in time for the acquisition under consideration. Further, a department wishing to use "brand name or equal" must carefully identify its minimum needs and clearly set forth those salient physical and functional characteristics of the brand name product in the solicitation.

77. NON-COMPETITIVE PROPOSALS (SOLE-SOURCE).

Sole Source procurements are accomplished through solicitation or acceptance of a proposal from only one source, or when competition is determined inadequate or unfeasible. A contract amendment or change order that is not within the scope of the original contract is considered a sole source procurement and it must comply with the requirements of the following subparagraph.

Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and AT LEAST ONE of the following circumstances applies:

(a) The item is available only from a single source;

(b) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(c) FTA authorizes noncompetitive negotiations;

(d) After solicitation of a number of sources, competition determined inadequate; or

(e) The item is an associated capital maintenance item as defined in 49 U.S.C. §5307(a)(1) that is procured directly from the original manufacturer or supplier of the item to be replaced.
The grantee must first certify in writing to FTA that such manufacturer or supplier is the only source for such item and that the price of such item is not higher than the price paid for such item by like customers. Additionally, a cost analysis evaluating the specific elements of costs and profit is required.

789. Sealed Bids

Sealed bid transactions will be conducted in a manner to provide maximum open and free competition consistent with FTA Circular 4220.1F "Third Party Contracting Guidance," and Department of Transportation 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments," Located at:

(http://www.access.gpo.gov/nara/cfr/waisidx_00/49cfr18_00.html)

Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price.

Note: Sealed bids are evaluated by the procuring department for compliance with bid specifications, responsible and responsive bidders, verification of pricing, fund availability, etc. The procuring department transmits an award recommendation to the Purchasing Department, which conditionally awards a contract. In order for sealed bidding to be feasible, the following conditions should be present for a sealed bid to be acceptable:

(a) A complete, adequate, and realistic specification or purchase description is available;

(b) Two or more responsible bidders are willing and able to compete effectively for the business;

(c) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price; and,

(d) No discussion with bidders is needed.

If this procurement method is used, the following requirements apply:

(a) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time to prepare bids prior to the date set for opening the bids;

(b) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services sought in order for the bidder to properly respond;

(c) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(d) The Bid Summary Sheet, Bid Checklist, and Bid Cost Factors Forms (Exhibits K, D & E)-- will be completed by the procuring department and forwarded to the Purchasing Department for review--to be placed in the master file;
A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. When specified in bidding documents, factors such as discounts, transportation costs, and life cycle costs shall be considered in determining which bid is lowest;

Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of.

The Chief Procurement Officer may reject any or all bids, or the procuring department requesting the procurement action, if there is a sound documented business reason. The Chief Procurement Officer or procuring department rejecting lower bids than the bid being accepted for award must provide a detailed written Determination of Findings outlining the reasons for rejection to the Purchasing Department for inclusion in the master file.

The sealed bid method is the preferred method for procuring construction if the conditions in paragraph (1) above apply.

In determining which proposals is most advantageous, grantees may award (if consistent with State law) to the proposer whose proposals offer the greatest business value to the Agency based upon an analysis of a tradeoff of qualitative technical factors and price/cost to derive which proposal represents the “best value” to the Procuring Agency as defined in Section 7546, Definitions. If the grantee elects to use the best value selection method as the basis for award, however, the solicitation must contain language which establishes that an award will be made on a “best value” basis.

The competitive proposal method of procurement is normally conducted with more than one source submitting an offer or proposal. Either a fixed price or cost reimbursement type contract is awarded. This method of procurement is generally used when conditions are not appropriate for the use of sealed bids (i.e. when descriptions of experience, education, expertise, availability of services, etc., are necessary for evaluation). If this procurement method is used the following requirements apply:

Requests for proposals will be publicized;

All evaluation factors will be identified and included along with their relative importance in the RFP. If scores are based on a uniform scale (i.e. 1-10, or 1-100), it is best to define in advance levels of compliance, skills, or proximity to the ideal that each step of the scale represents. (i.e. a bachelor’s degree is worth 25 points, a master’s degree is worth 50 points, and a doctorate is worth 100 points);

Proposals will be solicited from an adequate number of qualified sources;

Departments must have a written method in place for conducting technical evaluations of the proposals received and for selecting awardees. This documentation must be submitted to the Chief Procurement Officer for approval and inclusion in the master file;

Awards will be made to the responsible firm whose proposal is most advantageous to the grantee’s program with price and other factors considered. Other factors may include labor rates,
specifications, labor hours, and delivery schedule. Documentation of the award justification should clearly identify key determination factors. Please use the Award Justification Form (Exhibit L).


The District shall use competitive proposal procedures based on the Brooks Act, paragraph 9-5e, when contracting for A&E services as defined in 40 U.S.C. §541 and 40 U.S.C. §5325(d). The Brooks Act is federal policy relating to the selection of firms, individuals, to perform architectural, engineering, and related services. Other types of services considered A&E services include program management, construction management, feasibility studies, preliminary engineering, design, surveying, mapping, and services which require performance by a registered or licensed architect or engineer.

The Brooks Act requires that:

1. An offeror’s qualifications are evaluated;
2. Price must be excluded as an evaluation factor;
3. Negotiations be conducted with only the most qualified offeror; and
4. Failing agreement on price, negotiations with the next most qualified offeror be conducted until a contract award can be made to the most qualified offeror whose price is fair and reasonable to the grantee. This "qualifications-based procurement method" can only be used for the procurement of A&E services. This method of procurement cannot be used to obtain other types of services even though a firm that provides A&E services is also a potential source to perform other types of services.

National Intelligent Transportation Systems Architecture and Standards. When requesting services for transportation system architecture, the District must ensure all offerors/bidders agree to conform, to the extent applicable, to the Intelligent Transportation System Architecture and Standards under the FHWA final rule, and with FTA Notice, "FTA National (ITS) Architecture Policy on Transit Projects and other subsequent Federal directives that may be issued.

12. Noncompetitive Proposals (Sole Source).

Sole Source procurements are accomplished through solicitation or acceptance of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. A contract amendment or change order that is not within the scope of the original contract is considered a sole source procurement that must comply with this subparagraph.

1. Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies:

   (a) The item is available only from a single source;
   (b) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
   (c) FTA authorizes noncompetitive negotiations;
   (d) After solicitation of a number of sources, competition determined inadequate; or
   (e) The item is an associated capital maintenance item as defined in 49 U.S.C. §5307(a)(1) that is procured directly from the original manufacturer or supplier of the item to be replaced. The grantee must first certify in writing to FTA: (i) that such manufacturer or supplier is the only source for such item; and (ii) that the price of such item is no higher than the price paid for such item by like customers.

2. A cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.

13. Best Value.

Best Value is a selection process in which proposals contain both price and qualitative components, and award is based upon a combination of price and qualitative considerations. Qualitative considerations may include technical design, technical approach, quality of proposed personnel, and/or management plan.
award selection is based upon consideration of a combination of technical and price factors to determine the offer deemed most advantageous and of the greatest value to the District.

80. ARCHITECTURAL AND ENGINEERING SERVICES (A&E).

The District shall use competitive proposal procedures based on the Brooks Act, paragraph 9-5e, when contracting for A&E services as defined in 40 U.S.C. §541 and 40 U.S.C. §5325(d). The Brooks Act applies to the selection of firms/individuals to perform architectural, engineering, and related services such as program management, construction management, feasibility studies, preliminary engineering, design, surveying, mapping, and services which require performance by a registered or licensed architect or engineer. Qualifications-based competitive proposal procedures require requires that:

(a) An offeror's qualifications are evaluated;

(b) Price is NOT an evaluation factor;

(c) Negotiations be conducted with only the most qualified offeror; and

(d) If an agreement on price fails, negotiations with the next most qualified offeror can be conducted until a contract award can be made to the most qualified offeror whose price is fair and reasonable to the grantee.

This qualifications-based procurement method can only be used for the procurement of A&E services and cannot be used to obtain other types of services even if such services are offered through an A&E firm.

81. NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS ARCHITECTURE AND STANDARDS.

When requesting services for transportation system architecture, the District must ensure all offerors/bidders agree to conform, to the extent applicable, to the Intelligent Transportation System Architecture and Standards under the FHWA final rule, and with FTA Notice, "FTA National (ITS) Architecture Policy on Transit Projects and other subsequent Federal directives that may be issued.

8214. THE TRADITIONAL CONSTRUCTION PROCESS- DESIGN/BID/BUILDING.

It has been traditional in the construction industry to employ an architect/engineer (A&E) to complete a detailed design of the entire project before soliciting bids from construction contractors. This traditional approach is known as sequential design and construction. This sequential design/construction approach requires that a detailed design package of the entire project be complete before bids are solicited from construction contractors. Following award of the construction contract, the A&E is often retained by the owner for the construction phase, and acts as the owner's agent, to inspect the construction work to ensure that the structures are built according to the designs and specifications.

Advantages - A major advantage of the sequential design and construction approach is that complex or one-of-a-kind projects can be thoroughly planned and thought through before construction begins. The traditional approach thus produces, in the design phase of the project, the most accurate estimate of final project costs, and this is an advantage of the traditional technique. If problems are encountered with design aspects for the latter stages of the project, the earlier design features or phases can be modified before any construction work has been done, thus avoiding construction contractor claims and delays. Another advantage is that the Agency is given a fixed price for completion of the entire project before construction
begins. There may also be advantages in obtaining the necessary financing and project approvals. Overall management of the project should also be simplified by this approach.

Disadvantages - Sequential design and construction requires a longer time to complete the project than phased design and construction ("fast tracking"). And since time pressures are often the most intense issues confronting the Agency, the sequential method may not be feasible. Alternative contracting approaches have arisen to shorten the project completion time. These include phased design and construction ("fast tracking"), which often involves the use of a construction manager, and turnkey (design-build) contracting.

The Noncompetitive Procurement Justification Form and the Sole Source Cost Analysis Form (Exhibit J) must be completed submitted to the Chief Procurement Officer prior to proceeding with this type of procurement.

83. COST PLUS PERCENTAGE OF COST PROHIBITED. The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

84. ADVERTISING AND PUBLICIZING SOLICITATION.

IFBs and RFPs must be publicly advertised and publicized (respectively) at least fourteen (14) days prior to the solicitation’s due date. A longer time period is suggested for larger, more complex procurements. Outreach efforts must be made using diverse resources such as the Internet and mailing lists coupled with widely circulated publications.

IFBs must be issued with sufficient time to prepare bids prior to the date set for opening the bids. Further, the invitation for bids will include any specifications and pertinent attachments and shall properly define the items or services sought in order for the bidder to properly respond. RFPs must identify all evaluation factors along with their relative importance. The Chief Procurement Officer shall place copies of all advertising and publicized solicitation material in the related master file.

85. PRE-BID AND PRE-PROPOSAL CONFERENCES.

Pre-bid and pre-proposal conferences are generally used in complex acquisitions as a means of briefing prospective offerors and explaining complicated specifications and requirements to them as early as possible after the solicitation has been issued and before offers are received. This is also an open forum for potential respondents to address ambiguities in the solicitation documents that may require clarification. Notice of the conference is included in the solicitation at the time of issuance.

ARTICLE XIII.

FEDERALLY FUNDED PROCUREMENT - SELECTION

15. Protest Procedures.

(a) The procedures established hereunder shall be available to contractors for the purpose of handling and resolving disputes relating to procurements hereunder. A protestor must exhaust all administrative remedies hereunder before pursuing a protest in any court of law. Where applicable, any information received under such procedures shall be disclosed to the Federal Transit Authority ("FTA") and a protestor must exhaust all administrative remedies before pursuing a protest with the FTA.
The term “contractor” means any person, firm, or corporation, which has contracted or seeks to contract (bidder or proposer) with the NCRTD.

The term “hearing officer” shall mean a person, appointed by the Executive Director, to hear and decide allegations made by any contractor relating to procurements hereunder.


(a) Any contractor may file a written protest of the procurement procedures involved herein, with the District’s Chief Procurement Officer, within ten (10) days of the date of the District’s Decision regarding a selection of a contractor with respect to a Bid/RFP/RFQ.

A hearing shall be conducted in accordance with C.G.S. Section 4-176e through 4-18a, as amended, which are incorporated herein. The hearing officer shall issue a written decision within ninety (90) days of the last date of such hearing and state in the decision the reasons for the action taken.

(b) Where applicable, review of protests by FTA will be limited to the District’s failure to have or follow its procedures, or its failure to review a complaint or protest. An appeal to FTA must be received by the cognizant FTA regional or Headquarters Office within five (5) working days of the date the protestor knew or should have known of the violation.

Include the language contained in Appendix I in all Bids/RFP/RFQ.

17. Costing and Pricing.

Ensuring Most Efficient and Economic Purchase

Departments, during their annual budget process, should determine the procurement actions necessary to sustain their operations through the fiscal year. A list of these procurement actions should be forwarded to the Chief Procurement Officer annually.

Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase and to avoid purchase of unnecessary or duplicative items. Where appropriate, an analysis will be made of lease versus purchase alternatives and any other appropriate analysis to determine the most economical approach. The District considers various procurement sources to ensure economical purchases including, but not limited to GSA, State of New Mexico, and municipal cooperatives.


Departments must perform a cost or price analysis in connection with every procurement action, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation (FTA Circular 4420.1E Sec.10). Departments must make independent estimates before receiving bids or proposals. These estimates may be obtained from published competitive prices, results of competitive procurements, historical prices and trends, or by Purchasing Department estimates or outside estimators.

The Price and Cost Analysis Form must be submitted to the Chief Procurement Officer prior to issuing any solicitation. See Exhibit G.

(0) Cost Analysis

- A cost analysis must be performed when the offeror is required to submit the elements (i.e., Labor Hours, Overhead, Materials, etc.) of the estimated cost, e.g., under professional consulting and architectural and engineering services contracts.

- A cost analysis will be necessary when adequate price competition is lacking and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or on the basis of prices set by law or regulation.

(0) Price Analysis

- A price analysis may be used in all other instances to determine the reasonableness of the proposed contract price.

(0) Profit
Departments will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed.

To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles. The Chief Procurement Officer may reference their own cost principles that comply with applicable Federal cost principles.

The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

Full and Open Competition
The principle of full and open competition has one primary and two secondary purposes. The primary purpose is to obtain the best quality and service at minimum cost. In other words, to get the best buy. The secondary purposes are to guard against favoritism and profiteering at public expense and to provide equal opportunities to participate in public business to every potential offeror.

Departments must conduct all procurement in a manner providing full and open competition. This policy assures that all responsible bidders are permitted to compete for the procurement. In the case of sole or single source procurement, justification for use of the source must be documented on the Noncompetitive Procurement Justification Form (Exhibit F). Also see Sole Source Contracting Section.

Contracts with a value of more than $100,000 shall be awarded by sealed bid or by the competitive and noncompetitive proposal process unless there is an explicit exception. Departments must refrain from the following practices, which are deemed restrictive of competition:

- Unreasonable requirements placed on firms in order for them to qualify to do business;
- Unnecessary experience and excessive bonding requirements;
- Noncompetitive pricing practices between firms or between affiliated companies;
- Noncompetitive awards to any person or firm on retainer contracts;
- Organizational conflicts of interest;
- Restrictive use of brand names;
- Any arbitrary action in the procurement process; and
- Geographic preferences.

All departments must submit all required forms to the Chief Procurement Officer prior to issuance of an award letter.

For those construction or facility improvement contracts or subcontracts exceeding $100,000, FTA may accept the bonding policy and requirements of the grantee, provided FTA determined that the policy and requirements adequately protect the Federal interest. FTA has determined that grantee policies and requirements that meet the following minimum criteria adequately protect the Federal interest. Please refer to the FTA Bonding Requirements paragraph 11, as cited below.

(a) A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified;

(a) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract; and
A payment bond on the part of the contractor. A payment bond is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts determined to adequately protect the federal interest are as follows:

1. Fifty percent of the contract price if the contract price is not more than $1 million;
2. Forty percent of the contract price if the contract price is more than $1 million but not more than $5 million; or
3. Two and a half million dollars if the contract price is more than $5 million.

A Grantee may seek FTA approval of its bonding policy and requirements if they do not comply with these criteria.

22. Brand Name or Equals.
Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not contain features unduly restricting competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equal” description may be used.

Departments shall use a “brand name or equal” description only when it cannot provide an adequate specification or more detailed description, without performing an inspection and analysis, in time for the acquisition under consideration. Further, a department wishing to use “brand name or equal” must carefully identify its minimum needs and clearly set forth those salient physical and functional characteristics of the brand name product in the solicitation.

23. Conflicts of Interest.
Employees, officers, board members, or agents of the NCRTD are prohibited from participating in the selection, award, or administration of contracts or sub-agreements supported by federal funds if a real or apparent conflict of interest exists (See Exhibit H—Disclosure Statement).

The following language must be included in all RFPs for design and evaluation services covered under this section. This statement prohibits contractors from bidding on follow-up (add on) construction work resulting from the design.

“In order to prevent real or apparent conflicts of interest, the District prohibits contractors that have participated in FTA-funded design or evaluation services from bidding on any resulting construction work, services, or capital equipment purchases. All specifications prepared by design consultants must be written in such a manner that any reasonable, competent contractor could understand the requirement and perform the work.”

24. Geographic Preferences.
Departments shall conduct procurements in a manner that prohibits the use of statutory or administratively imposed in State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. This does not preempt State licensing laws. However, geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services, provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

8625. Written Selection Procedures

To ensure all procurements are awarded in a fair and equitable manner, all solicitations shall:

1. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material,
product, or service to be procured and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use.

1. Identify all requirements that offerors must fulfill and all other factors to be used in evaluating bids or proposals.

Evaluators and reviewers must follow the established criteria when rating the proposals.


The procuring department shall ensure that all lists of prequalified persons, firms, or products that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum full and open competition. In addition, the District shall not preclude potential bidders from qualifying during the solicitation period, which is from issuance of the solicitation to its closing date.

87. CONFLICTS OF INTEREST.

Employees, officers, board members, or agents of the District are prohibited from participating in the selection, award, or administration of contracts or sub-agreements supported by federal funds if a real or apparent conflict of interest exists. (See Exhibit H – Disclosure Statement)

The following language must be included in all RFPs for design and evaluation services covered under this section. This statement prohibits contractors from bidding on follow-up (add on) construction work resulting from the design.

“In order to prevent real or apparent conflicts of interest, the District prohibits contractors that have participated in FTA-funded design or evaluation services from bidding on any resulting construction work, services, or capital equipment purchases. All specifications prepared by design consultants must be written in such a manner that any reasonable, competent contractor could understand the requirement and perform the work.”

27. Advertising and Publicizing Solicitation.

IFBs and RFPs must be publicly advertised and publicized (respectively) at least fourteen (14) days prior to the solicitation’s due date. A longer time period is suggested for larger, more complex procurements. Outreach efforts must be made using diverse resources such as the Internet and mailing lists coupled with widely circulated publications.

IFBs must be issued with sufficient time to prepare bids prior to the date set for opening the bids. Further, the invitation for bids will include any specifications and pertinent attachments and shall properly define the items or services sought in order for the bidder to properly respond. RFPs must identify all evaluation factors along with their relative importance. The Chief Procurement Officer shall place copies of all advertising and publicized solicitation material in the related master file.

28. Pre-Bid and Pre-Proposal Conferences.

Pre-bid and pre-proposal conferences are generally used in complex acquisitions as a means of briefing prospective offerors and explaining complicated specifications and requirements to them as early as possible after the solicitation has been issued and before offers are received. This is also an open forum for potential respondents to address ambiguities in the solicitation documents that may require clarification. Notice of the conference is included in the solicitation at the time of issuance.

88. AWARDS TO RESPONSIBLE CONTRACTORS.
The District shall make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed agreement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. The debarred and suspended list will also be checked.

Departments must submit the attached Responsibility Determination Form to the Chief Procurement Officer prior to the issuance of an award. (Exhibit B)

89. EVALUATION OF BID ALTERNATES.

When bid alternates are included in a bid or proposal document, these alternates must be evaluated as part of the overall bid. This evaluation must be in a written narrative detailing the contract award and takes the alternate into account in reaching a procurement decision. This evaluation must be submitted to the Purchasing Department prior to proceeding with the procurement.

90. EXERCISE OF BID ALTERNATES.

Bid Alternates may not be exercised unless it is in accordance with the terms and conditions stated in the initial contract. In addition, the requesting department must have determined that the alternate price is better than the market price or that the option price is more advantageous. Full written documentation supporting this determination must be submitted to the Purchasing Department.

91. BONDING REQUIREMENTS.

For those construction or facility improvement contracts or subcontracts exceeding $100,000, FTA may accept the bonding policy and requirements of the grantee, provided FTA determined that the policy and requirements adequately protect the Federal interest. FTA has determined that grantee policies and requirements that meet the following minimum criteria adequately protect the Federal interest. Please refer to the FTA Bonding Requirements paragraph 11, as cited below.

(a) A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified;

(b) A performance bond on the part of the contractor for hundred (100) percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract; and

(c) A payment bond on the part of the contractor. A payment bond is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts determined to adequately protect the federal interest are as follows:

(1) Fifty (50) percent of the contract price if the contract price is not more than $1 million;

(2) Forty (40) percent of the contract price if the contract price is more than $1 million but not more than $5 million; or

(3) Two and a half million dollars ($2.5 million) if the contract price is more than $5 million.
(d) A Grantee may seek FTA approval of its bonding policy and requirements if they do not comply with the criteria.

29. Evaluations of Bid Alternates.

When bid alternates are included in a bid or proposal document, these alternates must be evaluated as part of the overall bid. This evaluation must be in a written narrative detailing the contract award and takes the alternate into account in reaching a procurement decision. This evaluation must be submitted to the Purchasing Department prior to proceeding with the procurement.

30. Exercise of Bid Alternates.

Bid Alternates may not be exercised unless it is in accordance with the terms and conditions stated in the initial contract. In addition, the requesting department must have made a determination that the alternate price is better than the market price or that the option price is more advantageous. Full written documentation supporting this determination must be submitted to the Purchasing Department.

92. PROTEST PROCEDURES.

(a) The procedures established hereunder shall be available to contractors for the purpose of handling and resolving disputes relating to procurements hereunder. A protestor must exhaust all administrative remedies hereunder before pursuing a protest in any court of law. Where applicable, any information received under such procedures shall be disclosed to the Federal Transit Authority and a protestor must exhaust all administrative remedies before pursuing a protest with the FTA.

(b) The term “contractor” means any person, firm, or corporation, which has contracted or seeks to contract (bidder or proposer) with the District.

(c) The term “hearing officer” shall mean a person, appointed by the Executive Director, to hear and decide allegations made by any contractor relating to procurements hereunder.

93. HEARING PROCEDURE.

(a) Any contractor may file a written protest of the procurement procedures involved herein, with the District’s Chief Procurement Officer, within ten (10) days of the date of the District’s Decision regarding a selection of a contractor with respect to a Bid/RFP/RFQ.

(b) A hearing shall be conducted in accordance with C.G.S. Section 4-176e through 4-18a, as amended, which are incorporated herein. The hearing officer shall issue a written decision within ninety (90) days of the last date of such hearing and state in the decision the reasons for the action taken.

(c) Where applicable, review of protests by FTA will be limited to the District’s failure to have or follow its procedures, or its failure to review a complaint or protest. An appeal to FTA must be received by the cognizant FTA regional or Headquarters Office within five (5) working days of the date the protestor knew or should have known of the violation.

ARTICLE XIV.

FEDERAALLY FUNDED PROCUREMENT- CONTRACTS
94. TYPES OF CONTRACTS.

General- All FTA related procurements must use the Contract/Purchase Order File Index Forms as provided in the appendix. These checklists will be used by the Chief Procurement Officer to ensure contract clauses and federal flow down language are included in each contract as required.

Fixed Price v. Cost Reimbursement- Procurement by the Sealed Bid/Invitation for Bids (IFB) method when certain conditions are present. Among those listed is the condition that:

(a) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(b) Paragraph 9.d of FTA Circular 4420.1E authorizes procurement by the Competitive Proposal/Request for Proposals (RFP) method and either a fixed price or cost reimbursement type contract may be awarded.

(c) Paragraph 7.i of FTA Circular 4420.1E requires that departments must document their reasons for selecting the contract type as a part of the written record of procurement history.

(d) Paragraph 10.e of FTA Circular 4420.1E prohibits the cost plus a percentage of cost method of contracting.

There are two broad categories of contract types: fixed-price contracts and cost-reimbursement contracts. Within these two families of contract types there are a number of subtypes offering differing degrees of incentives. At the extremes are the firm-fixed-price contract, in which the contractor has complete responsibility for the costs of performance and the resulting profit or loss, and the cost-plus-fixed-fee contract, in which the contractor has virtually no risk for performance costs and the fee (profit) is fixed. Between these two extremes are the various incentive-type contracts where the degree of cost risk and profit incentive can be tailored to meet almost any specific program situation.

Fixed-price contracts- These contracts are appropriate for acquiring commercial items, or for supplies or services which can be clearly defined with either performance/functional specifications or design specifications, and where performance uncertainties do not impose unreasonably high risks upon the contractor.

Cost-reimbursement contracts- These contracts are one in which the District does not contract for the performance of a specified amount of work for a predetermined price, but agrees instead to pay the contractor’s reasonable, allocable and allowable costs of performance regardless of whether the work is completed. The District/Department assumes a high risk of incurring cost overruns, while the contractor has almost no risk of financial losses. Cost-type contracts are suitable when (a) you are unable to accurately describe the work to be done, or (b) there is an inability to accurately estimate the costs of performance. If either of these conditions is present, the cost-reimbursement contract is the proper type of contract. Cost-type contracts are ideally suited to complex requirements because the parties can devote their attention to accomplishing the work rather than on the claims process, which will be significant on larger, complex projects.

Time and Materials Contracts- Departments will use time and materials contracts only:

(a) After a determination that no other type of contract is suitable;
(b) The contract specifies a ceiling price, and the contractor shall not exceed that price except at its own risk; and

(c) The Method of Procurement Decision Matrix Form (Exhibit C) must be submitted to the Chief Procurement Officer and included with the file for this type of contract.

**Labor / Hour Contracts** - Labor / hour contracts are a variation of the time and materials contract, differing only in that materials are not supplied by the contractor. You should use this type of contract only when no other would be suitable, and you need to document your determination if you choose to use this type of contract.

**Cost Plus Percentage of Cost Contracts (CPPC)** - The FTA Circular 4420.1E clearly prohibits the use of this contracting method.

**Out of Scope Changes** - An “out of scope change” is a contract amendment or change order that is not within the scope of the original contract is considered a sole source procurement. Please use the sole source policies for this type of action. FTA Circular 4220.1E, paragraph 9(f).

**Contract Term Limitation** - The District shall not enter into any contract for rolling stock or replacement parts with a period of performance exceeding five (5) years inclusive of options. All other types of contracts (supply, service, leases of real property, revenue and construction, etc.) will be based on sound business judgment. Length of contracts shall be for not more than the amount of time required to accomplish the purpose of the contract, and will also include consideration for competition, pricing, fairness, and public perception. Once a contract has been awarded, an extension of the contract term length that amounts to an out of scope change, will require a sole source justification.

**Revenue Contract** - Revenue contracts are those third-party contracts whose primary purpose is to either generate revenues in connection with a transit related activity, or to create business opportunities utilizing an FTA funded asset. FTA requires these contracts to be awarded utilizing competitive selection procedures and principles. The extent of and type of competition required is within the discretionary judgment of the District.

**Tag on** - The use of tag-on, or the addition of work including supplies, equipment or services, that is beyond the scope of the original contract that amounts to a cardinal change as generally interpreted in Federal practice by the various Boards of Contract Appeals, is prohibited and applies to the original buyer as well as to others. In scope “tag-on” changes are not considered tag-on.

**Piggybacking** - Piggybacking is an assignment of existing contract rights to purchase supplies, equipment or services. Piggybacking is permissible when the solicitation document and resultant contract contain an assign ability clause that provides for the assignment of all or a portion of the specified deliverables as originally advertised, completed, evaluated, and awarded. If the supplies were solicited, competed and awarded through the use of an indefinite-delivery-indefinite-quantity (IDIQ) contract, then both the solicitation and contract award must contain both a minimum and a maximum quantity that represents the reasonably foreseeable needs of the party(s) to the solicitation and contract. If the District and another party jointly solicit and award an IDIQ contract, then there must be a total minimum and maximum.

**E-Commerce** - Ecommerce is an allowable means to conduct procurements, when utilized, full and open competition must be addressed in compliance with the Federal Circular 4200.1E. A written procedure will be required prior to using the alternative. Please call the Chief Procurement Officer prior to use of this alternative.
95. CONTRACT ADMINISTRATION FILE.

To ensure a sound and complete agreement, the Chief Procurement Officer will ensure the Contract/Purchase Order File Index is accurate, complete, and included in the master file (Exhibit A). Where appropriate, the file contains:

(a) Purchasing Department Tracking Sheet;

(b) Executed contract and notice of award;

(c) Bond-related documents;

(d) Insurance documentation;

(e) Post-award correspondence;

(f) Notice to proceed;

(g) Approvals or disapprovals of waivers and deviations;

(h) Modifications and changes in the terms or conditions of the contract, including a rationale for the change, determinations regarding their scope, and cost/price analysis of any price increases or decreases.

96. NOTICE OF FEDERAL PUBLIC POLICY REQUIREMENTS.

If the District contract is being funded in whole or in part by assistance from a federal agency, and the contract is subject to one or more federal public policy requirements, such as:

(a) Equal employment opportunity;

(b) Fair labor standards;

(c) Energy conservation;

(d) Environmental protection; or

(e) Other similar socioeconomic programs.

The Chief Procurement Officer shall include contract provisions giving the contractor notice of these requirements and, where appropriate, including in those contract provisions the requirement that the contractor give a similar notice to all of its subcontractors.

31. Types of Contracts

General

All FTA related procurements must use the Contract/Purchase Order File Index Forms as provided in the appendix. These checklists will be used by the Chief Procurement Officer to ensure contract clauses and federal flow down language are included in each contract as required.
**Fixed Price v. Cost Reimbursement**

Procurement by the Sealed Bid/Invitation for Bids (IFB) method when certain conditions are present. Among those listed is the condition that:

1. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

2. Paragraph 9.d of FTA Circular 4420.1E authorizes procurement by the Competitive Proposal/Request for Proposals (RFP) method and either a fixed price or cost reimbursement type contract may be awarded.

3. Paragraph 7.i of FTA Circular 4420.1E requires that departments must document their reasons for selecting the contract type as a part of the written record of procurement history.

4. Paragraph 10.e of FTA Circular 4420.1E prohibits the cost plus a percentage of cost method of contracting.

There are two broad categories of contract types: fixed-price contracts and cost-reimbursement contracts. Within these two families of contract types there are a number of subtypes offering differing degrees of incentives. At the extremes are the firm fixed-price contract, in which the contractor has complete responsibility for the costs of performance and the resulting profit or loss, and the cost-plus-fixed-fee contract, in which the contractor has virtually no risk for performance costs and the fee (profit) is fixed. Between these two extremes are the various incentive-type contracts where the degree of cost risk and profit incentive can be tailored to meet almost any specific program situation.

**Fixed-price contracts**

These contracts are appropriate for acquiring commercial items, or for supplies or services which can be clearly defined with either performance/functional specifications or design specifications, and where performance uncertainties do not impose unreasonably high risks upon the contractor.

**Cost-reimbursement contracts**

These contracts are one in which the District does not contract for the performance of a specified amount of work for a predetermined price, but agrees instead to pay the contractor’s reasonable, allocable and allowable costs of performance regardless of whether the work is completed. The District/Department assumes a high risk of incurring cost overruns, while the contractor has almost no risk of financial losses. Cost-type contracts are suitable when (a) you are unable to accurately describe the work to be done, or (b) there is an inability to accurately estimate the costs of performance. If either of these conditions is present, the cost-reimbursement contract is the proper type of contract. Cost-type contracts are ideally suited to complex requirements because the parties can devote their attention to accomplishing the work rather than on the claims process, which will be significant on larger, complex projects.

**Time and Materials Contracts**

Departments will use time and materials contracts only:

1. After a determination that no other type of contract is suitable;

2. The contract specifies a ceiling price, and the contractor shall not exceed that price except at its own risk; and
(3) The Method of Procurement Decision Matrix Form (Exhibit C) must be submitted to the Chief Procurement Officer and included with the file for this type of contract.

**Labor / Hour Contracts**

Labor / hour contracts are a variation of the time and materials contract, differing only in that materials are not supplied by the contractor. You should use this type of contract only when no other would be suitable, and you need to document your determination if you choose to use this type of contract.

**Cost Plus Percentage of Cost Contracts (CPPC)**

The FTA Circular 4420.1E clearly prohibits the use of this contracting method.

**Out of Scope Changes**

An “out of scope change” is a contract amendment or change order that is not within the scope of the original contract is considered a sole source procurement. Please use the sole source policies for this type of action. FTA Circular 4220.1E, paragraph 9(f).

**Contract Term Limitation**

The District shall not enter into any contract for rolling stock or replacement parts with a period of performance exceeding five (5) years inclusive of options. All other types of contracts (supply, service, leases of real property, revenue and construction, etc.) will be based on sound business judgment. Length of contracts shall be for not more than the amount of time required to accomplish the purpose of the contract, and will also include consideration for competition, pricing, fairness, and public perception. Once a contract has been awarded, an extension of the contract term length that amounts to an out of scope change, will require a sole source justification.

**Revenue Contract**

Revenue contracts are those third party contracts whose primary purpose is to either generate revenues in connection with a transit related activity, or to create business opportunities utilizing an FTA funded asset. FTA requires these contracts to be awarded utilizing competitive selection procedures and principles. The extent of and type of competition required is within the discretionary judgment of the District.

**Tag-ons**

The use of tag-ons, or the addition of work including supplies, equipment or services, that is beyond the scope of the original contract that amounts to a cardinal change as generally interpreted in Federal practice by the various Boards of Contract Appeals, is prohibited and applies to the original buyer as well as to others. In scope “tag-on” changes are not considered tag-ons.

**Piggybacking**

Piggybacking is an assignment of existing contract rights to purchase supplies, equipment or services. Piggybacking is permissible when the solicitation document and resultant contract contain an assign ability clause that provides for the assignment of all or a portion of the specified deliverables as originally advertised, completed, evaluated, and awarded. If the supplies were solicited, competed and awarded through the use of an indefinite-delivery-indefinite-quantity (IDIQ) contract, then both the solicitation and contract award must contain both a minimum and a maximum quantity that represents the reasonably
foreseeable needs of the party(s) to the solicitation and contract. If the District and another party jointly solicit and award an IDIQ contract, then there must be a total minimum and maximum.

**E-Commerce**

E-Commerce is an allowable means to conduct procurements. If an E-Commerce solicitation will be utilized, full and open competition must be addressed in compliance with the Federal Circular 4200.1E. A written procedure will be required prior to use of E-Commerce. Please call the Purchasing Office prior to use of this alternative.

**32. Payments.**

**Advance Payments**

FTA does not authorize, and will not participate in funding payments to a contractor prior to the incurrence of costs by the contractor unless prior written concurrence is obtained from FTA.

**Progress Payments**

Grantees may use progress payments provided the following requirements are followed:

- Progress payments are only made to the contractor for costs incurred in the performance of the contract.
- The grantee must obtain adequate security for progress payments. Adequate security may include taking title, letter of credit or equivalent means to protect the grantee's interest in the progress payment.

**9733. Contract Provisions**

**CONTRACT PROVISIONS.**

All contracts shall include provisions to define a sound and complete agreement. In addition, contracts and subcontracts shall contain contractual provisions or conditions that allow for:

(a) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, including sanctions and penalties as may be appropriate. (All contracts in excess of the small purchase threshold.)

(b) Termination for cause and for convenience by the District or sub grantees including the manner by which it will be executed and the basis for settlement. (All contracts in excess of $10,000.)

**Liquidated Damages Provisions.**

The District may use liquidated damages if it may reasonably expect to suffer damages (increased costs on project involved) from late completion and the extent or amount of such damages would be difficult or impossible to determine. In order to obtain liquidated damages, the District must suffer an actual loss. The amount of liquidated damages must be reasonable in light of the loss suffered. The assessment for damages shall be at a specific rate per day for each day of overrun in contract time; and the rate must be specified in the third-party contract. Any liquidated damages recovered shall be credited to the project account involved unless the FTA permits otherwise.

**Architectural and Engineering Services Conflicts of Interest.**
The following language must be included in all RFPs for design and evaluation services covered under this section. This statement prohibits contractors from bidding on follow-up (add on) construction work resulting from the design.

“...In order to prevent real or apparent conflicts of interest, the District prohibits contractors that have participated in FTA-funded design or evaluation services from bidding on any resulting construction work, services, or capital equipment purchases. All specifications prepared by design consultants must be written in such a manner that any reasonable, competent contractor could understand the requirement and perform the work.”

98. PATENTS IN CONTRACTS.

If a District contract involving research and development, experimental, or demonstration work is being funded in whole or in part by assistance from a federal agency, the contract shall include provisions:

(a) Giving notice to the contractor of the applicable grantor agency requirements and regulations concerning reporting of and rights to any discovery or invention arising out of the contract; and

(b) Requiring a contractor to include a similar provision in all subcontracts involving research and development, experimental, or demonstration work.

99. COPYRIGHTS AND RIGHTS IN DATA ADDRESSED IN CONTRACTS.

If a District contract is being funded in whole or in part by assistance from a federal agency, the contract shall include a provision giving the contractor notice of the applicable regulations concerning the rights of the United States to any plans, drawings, specifications, computer programs, technical reports, operating manuals, and similar work products developed and paid for under the contract.

100. BUY AMERICAN PRODUCTS CLAUSE.

If a District contract is being funded in whole or in part by assistance from a federal agency, the District shall adhere to the appropriate buy American requirements of the federal agency providing the assistance. Additionally, as a condition of responsiveness to bidding for procurements of rolling stock, iron, steel, or manufactured products greater than $100,000 the bidder must submit with the bid or offer, a completed “Buy America Certificate” in accordance with Part 661.6 for steel, iron, and manufactured products, or Part 661.12 for rolling stock (including train control, traction power, and communication equipment).

Once submitted the bidder is bound by the certification provided. If the bidder does not submit a certification, the bid shall be considered non-responsive. If the bidder executes certification that it cannot comply but may be eligible for an exception, then the District shall review the circumstances and determine if it should request a waiver form the FTA. There are specific instances included in the regulations for waiver of Buy America provisions including that it is in the public’s best interest, that there are no U.S. products available, or there is a 25 percent price difference between the foreign and domestic products.

For additional information on requirements, please refer to FTA’s Buy America web page:


Certifications in compliance with Part 661.6 and 661.12 are provided in Exhibit N.
101. ENERGY CONSERVATION CLAUSE.

If a District contract is funded in whole or in part from a federal agency, the District's solicitation shall seek to promote energy conservation and shall comply with any mandatory standards and policies which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (PL 94-163).

102. SMALL, WOMEN-OWNED, AND MINORITY BUSINESS ENTERPRISES CLAUSE.

If a District’s contract is being funded in whole or in part by assistance from a federal agency, the Chief Procurement Officer shall take affirmative steps to ensure that small, women-owned, and minority businesses are utilized when possible as sources of supplies, services, and construction items. This requirement includes pass-through contracts to subcontractors; meaning a contractor awarded a federally funded contract shall take the affirmative steps in awarding its subcontracts. Examples of affirmative steps to be taken shall include the following:

(a) Including qualified small, women-owned, and minority businesses on solicitation lists;

(b) Ensuring that small, women-owned, and minority businesses are solicited whenever they are potential sources;

(c) When economically feasible, dividing total requirements into smaller tasks or quantities to permit maximum small, women-owned, and minority business participation;

(d) Where the requirement permits, establishing delivery schedules which will encourage participation by small, women-owned, and minority business; and

(e) Using the services and assistance of the small business administration or the office of minority business enterprise of the department of commerce, as required.

103. LABOR SURPLUS AREA BUSINESS CLAUSE.

If a District contract is being funded in whole or in part by assistance from a federal agency, the Chief Procurement Officer is encouraged to procure supplies, services, and construction items from businesses located in labor surplus areas.

104. FLOW DOWN OF FTA CLAUSES.

Please see the attached FTA Contract Clauses as a guide to ensure the proper clauses are included in the procurement process. These clauses are required to be included in all FTA contracts and purchase orders. (See Exhibit I)

105. PAYMENTS.

Advance Payments- FTA does not authorize and will not participate in funding payments to a contractor prior to the incurrence of costs by the contractor unless prior written concurrence is obtained from FTA.

Progress Payments- Grantees may use progress payments provided the following requirements are followed:
(a) Progress payments are only made to the contractor for costs incurred in the performance of the contract; and

(b) The grantee must obtain adequate security for progress payments adequate security may include taking title, letter of credit or equivalent means to protect the grantee’s interest in the progress payment.

34. Flow-down of FTA Clauses.

Please see the attached FTA Contract Clauses as a guide to ensure the proper clauses are included in the procurement process. These clauses are required to be included in all FTA contracts and purchase orders. See Exhibit I.

A full text of all Contract Clauses from FTA Best Practices Manual may be found here.

35. Buy America.

As a condition of responsiveness to bidding for procurements of rolling stock, iron, steel, or manufactured products greater than $100,000 the bidder must submit with the bid or offer, a completed Buy America certificate in accordance with Part 661.6 for steel, iron, and manufactured products, or Part 661.12 for rolling stock (including train control, traction power, and communication equipment). Once submitted the bidder is bound by the certification provided. If the bidder does not submit a certification, the bid shall be considered non-responsive. If the bidder executes certification that it cannot comply but may be eligible for an exception, then the District shall review the circumstances and determine if it should request a waiver form the FTA. There are specific instances included in the regulations for waiver of Buy America provisions including that it is in the public’s best interest, that there are no U.S. products available, or there is a 25 percent price difference between the foreign and domestic products.

See FTA’s Buy America web page http://www.fta.dot.gov/legal/buy_america/14456_ENG_HTML.htm for additional information on requirements.

Certifications in compliance with Part 661.6 and 661.12 are provided in Exhibit N.

106.36. Lobbying.

Contractors who apply or bid for an award of $100,000 or more must file the certification required by 49 CFR part 20, ”New Restrictions on Lobbying.” Each level of FTA fund recipient certifies to the level above it that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each FTA fund recipient must also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that specific Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from each level of fund recipient to the next level of fund recipient until it reaches the grantor.


Certifications attached as Exhibit O
107. CONTRACTOR RECORDS.

If a District contract is being funded in whole or in part by assistance from a federal agency, the contract shall include provisions requiring the contractor and subcontractors at any tier to:

(a) Maintain for three years from the date of final payment under the contract all books, documents, papers, and records pertinent to the contract; and

(b) Provide to the District, the federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives access to such books, documents, papers, and records for the purposes of examining, auditing, and copying them.

ARTICLE XVII.

IMPLEMENTATION OF AMENDMENTS

10837. SEVERABILITY.

If any provision or application of these regulations is held invalid, such invalidity shall not affect any other provision or application of these regulations which be given effect without the invalid provision or application.

10938. EFFECTIVE DATE.

These policies shall be effective upon adoption.
EXHIBITS
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<table>
<thead>
<tr>
<th>Tab #</th>
<th>Document(s)</th>
<th>Audit</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Purchase Request</td>
<td></td>
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<tr>
<td>2</td>
<td>Specifications &amp; DBE Goals</td>
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<tr>
<td>3</td>
<td>Requirement Justification</td>
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<tr>
<td>4</td>
<td>Independent Cost Estimate</td>
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<tr>
<td>5</td>
<td>Bidder's List</td>
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<tr>
<td>6</td>
<td>Contractor Information Form</td>
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<tr>
<td>7</td>
<td>Justification of Procurement Method</td>
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<td>8</td>
<td>Copy of IFB</td>
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<td>9</td>
<td>Proof of publication</td>
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<td>10</td>
<td>IFB Attachments / Modifications</td>
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</tr>
<tr>
<td>11</td>
<td>Pre-Bid Minutes &amp; List of Attendees</td>
<td></td>
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<tr>
<td>12</td>
<td>Correspondence with Bidders</td>
<td></td>
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<tr>
<td>13</td>
<td>Protests Prior to Bid Opening</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>Interoffice Correspondence</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>Review of Responsiveness</td>
<td></td>
</tr>
</tbody>
</table>

Sealed Bid No. __________  Contract Administrator: ____________________________
Date: _______________
North Central Regional Transit District
Contract / Purchase Order File Index
(For Sealed Bids Only)

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<th>Tab #</th>
<th>Document(s)</th>
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<tbody>
<tr>
<td>1</td>
<td>Rationale for Method of Procurement</td>
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<tr>
<td></td>
<td>Copy of Each Bid</td>
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<tr>
<td>2</td>
<td>Late Bid – Bid Errors</td>
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<tr>
<td>3</td>
<td>Bid Analysis / Tabulation Sheet</td>
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<tr>
<td>4</td>
<td>Technical Evaluation &amp; Pre-Award Survey</td>
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<td>5</td>
<td>Affirmative Action Evaluation / DBE Plan</td>
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<td>6</td>
<td>Bidder’s Responsibility Determination</td>
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<td>7</td>
<td>Price Analysis</td>
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<td>8</td>
<td>Record of Negotiation for Single Bid</td>
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<td>9</td>
<td>Justification of Contract Type</td>
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<td>10</td>
<td>Award Recommendation Memo</td>
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<td>Board Resolution</td>
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<td>12</td>
<td>Notice of Award</td>
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<td>13</td>
<td>Notice to Unsuccessful Bidders (Bond, Check Returns)</td>
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<td>14</td>
<td>FTA Approval</td>
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<td>15</td>
<td>Legal Review of Contract Documents</td>
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<td>Contract Document</td>
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<td>Bond &amp; Certificate of Insurance</td>
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<td>Notice to Proceed</td>
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<td></td>
<td>Purchase Order</td>
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North Central Regional Transit District  
Contract / Purchase Order File Index  
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<table>
<thead>
<tr>
<th>Section C – Contract Administration Documents</th>
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<tbody>
<tr>
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</table>
North Central Regional Transit District
Contract / Purchase Order File Index
(For RFP Only)

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<table>
<thead>
<tr>
<th>Section A - Solicitation Documents</th>
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</thead>
<tbody>
<tr>
<td><strong>Tab #</strong></td>
</tr>
</tbody>
</table>
| 1 | Purchase Request  
Rationale for Method of Procurement |  |
| 2 | Specifications / Statement of Work |  |
| 3 | Justification for Procurement |  |
| 4 | Cost Estimate |  |
| 5 | Set Aside Decision / DBE Goal |  |
| 6 | Contractor Information Form |  |
| 7 | Justification of Procurement Method |  |
| 8 | List of Prospective Proposers |  |
| 9 | Proof of publication |  |
| 10 | Copy of RFP |  |
| 11 | Addenda |  |
| 12 | Pre-Proposal Minutes & List of Attendees |  |
| 13 | Correspondence with Bidders |  |
| 14 | Interoffice Correspondence |  |
| 15 | Review of Responsiveness |  |

RFP No._________ Contract Administrator: ____________________________
Date: ________________
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<td>1</td>
<td>Copy of Each Proposal</td>
<td></td>
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<tr>
<td>2</td>
<td>Proposal Tabulation Sheet</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Evaluation Team Notification</td>
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<tr>
<td>4</td>
<td>Evaluation Sheet / Matrix</td>
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<td>5</td>
<td>Pre-Award Survey</td>
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<td>6</td>
<td>Determination of Zone of Consideration</td>
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<tr>
<td>7</td>
<td>Late Proposers</td>
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<td>8</td>
<td>Invitations for Oral Interviews</td>
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<tr>
<td>9</td>
<td>Notice of Rejection</td>
<td></td>
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<td>10</td>
<td>Minutes of Meetings</td>
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<td>11</td>
<td>Correspondence with Proposers</td>
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<tr>
<td>12</td>
<td>Cost or Price Analysis</td>
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<td>13</td>
<td>Justification of Contract Type</td>
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<tr>
<td>14</td>
<td>Negotiation Memorandum</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>Copy of Each Best &amp; Final Offer</td>
<td></td>
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<tr>
<td>16</td>
<td>Award Recommendation Memo</td>
<td></td>
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<tr>
<td>17</td>
<td>Board Resolution</td>
<td></td>
</tr>
<tr>
<td>18</td>
<td>Legal Review of Contract Documents</td>
<td></td>
</tr>
<tr>
<td>19</td>
<td>Notice of Award</td>
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<tr>
<td>20</td>
<td>Notice to Unsuccessful Bidders</td>
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<tr>
<td>21</td>
<td>Procurement Summary</td>
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<td>22</td>
<td>Determination and Findings</td>
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<td>23</td>
<td>Bonds &amp; Certificates of Insurance</td>
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<td>24</td>
<td>Contract Document</td>
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<td>25</td>
<td>Notice to Proceed</td>
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<tr>
<td>26</td>
<td>Purchase Order</td>
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### North Central Regional Transit District
**Contract / Purchase Order File Index**
(For RFP Only)

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<tbody>
<tr>
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<td>Post Award Conference</td>
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<td>2</td>
<td>Quality Assurance Records</td>
<td></td>
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<tr>
<td>3</td>
<td>Change Notices / Modifications / Change Orders</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Periodic Status Reports</td>
<td></td>
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<td>5</td>
<td>Contractor Evaluation Form</td>
<td></td>
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<td>6</td>
<td>Site Visit Reports</td>
<td></td>
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<tr>
<td>7</td>
<td>Termination / Stop Work Notices or Resolution Plan</td>
<td></td>
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<tr>
<td>8</td>
<td>Invoices and Check Requests</td>
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<td>9</td>
<td>Records of Payments &amp; Receipts</td>
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<td>10</td>
<td>Advance or Progress Payment Documents</td>
<td></td>
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<td>11</td>
<td>Notice of Substantial Acceptance</td>
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<td>12</td>
<td>Punch List Discrepancies</td>
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<td>13</td>
<td>Notice of Final Acceptance</td>
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<td>14</td>
<td>Notice of Claims</td>
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<td>15</td>
<td>Release of Claims / Bonds</td>
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<td>16</td>
<td>Assignments</td>
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<td>17</td>
<td>Notice of Final Payment</td>
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<td>18</td>
<td>Audit Reports</td>
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<td>19</td>
<td>Liquidated Damages</td>
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<tr>
<td>20</td>
<td>Close Out Documentation</td>
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</tbody>
</table>
North Central Regional Transit District
Responsibility Determination Form

BID / RFP No: ________________________________

Supplier: ________________________________

Date: ________________________________

For each of the areas described below, check that the appropriate research has been accomplished and provide a short description of the research and the results.

<table>
<thead>
<tr>
<th>Acceptable</th>
<th>Comment</th>
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</thead>
<tbody>
<tr>
<td>1. Appropriate financial, equipment, facility, and personnel.</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>________________</td>
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<td></td>
<td>________________</td>
</tr>
</tbody>
</table>

| 2. Ability to meet the delivery schedule. | Yes | No |
| | ________________ |
| | ________________ |

| 3. Satisfactory period of performance. | Yes | No |
| | ________________ |
| | ________________ |

| 4. Satisfactory record of integrity, not on declined or suspend listings. | Yes | No |
| | ________________ |
| | ________________ |

| 5. Receipt of all necessary data from supplier. | Yes | No |
| | ________________ |
| | ________________ |

| 6. Debarred and Suspended List has been checked (supplier not listed) | Yes | No |
| | ________________ |
| | ________________ |
North Central Regional Transit District
Method of Procurement
Decision Matrix Form

To best determine which method of procurement is suitable, classify your situation by checking off the appropriate boxes below. All elements must apply to use that method.

<table>
<thead>
<tr>
<th>Micro-purchase</th>
<th>Competitive Procurement</th>
<th>Sole Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amount &lt;$2500</td>
<td>Amount &gt;$2500</td>
<td>OEM or custom item</td>
</tr>
<tr>
<td>Multiple sources</td>
<td>Multiple sources available</td>
<td>Only one source available</td>
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<tr>
<td></td>
<td>Not an emergency purchase</td>
<td>Approved by FTA-sole source</td>
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<td>Public Exigency Issue/Emergency</td>
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<td></td>
<td></td>
<td>Competition is inadequate after public solicitation</td>
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<tr>
<td></td>
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<td>Emergency Procurement (subset of sole source)</td>
</tr>
<tr>
<td></td>
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<td>There is a health and safety issue that prohibits delay</td>
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</tbody>
</table>

**Sealed Bid (IFB)**
- Complete & adequate specs or purchase description
- Two or more responsible bidders willing to compete
- Selection can be made on basis of price
- Procurement suitable for firm, fixed price
- No discussion with bidders needed after receipt of offers

**Competitive Proposals (RFP)**
- Complete specifications not feasible
- Bidder input needed for specification
- Two or more responsible bidders willing to compete
- Discussion needed with bidders after receipt of proposals, prior to award.
- Fixed price can be set after discussions

**Time and Materials Contract**
(subset of RFP)
- Fixed price cannot be set for work
- Complete extent of work unknown, whether time, or material use, or both.

**Best Value**
- Price and qualitative consideration/Greatest value to the District
### North Central Regional Transit District
### Bid Checklist Form

<p>| | | | |</p>
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<td></td>
<td>YES</td>
<td></td>
<td>NO</td>
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<td></td>
<td>N</td>
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<td>O</td>
</tr>
</tbody>
</table>

1. Price is firm, fixed and definite
   - [ ]
2. Bid is responsive to requirements of the solicitation
   - [ ]
3. Exceptions taken to any material term or condition of the solicitation
   - [ ]
4. Bid is ambiguous
   - [ ]
5. All amendments to solicitation acknowledged
   - [ ]
6. Bid signed
   - [ ]
7. All material representations, bonds, guarantees and certifications completed.
   - [ ]
8. All required information submitted.
   - [ ]
9. Bid is not defective
   - [ ]
North Central Regional Transit District
Bid Cost Factors Form

Solicitation / Bid No: ________________________________

Supplier Price Evaluation Factors:

1. Purchase price: $______________________________

2. Payment discount terms: __________________________

3. Transportation costs: ____________________________

4. Warranty: _________________________________

5. Installation: _________________________________

6. Training: _________________________________

7. Technical assistance: ____________________________

Total bid: $______________________________

Evaluation: $______________________________
North Central Regional Transit District
NONCOMPETITIVE PROCUREMENT
JUSTIFICATION FORM

Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies:

Check one:

_________ The item is available only from a single source (sole source justification is attached).

_________ The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation (documented emergency condition is attached).

_________ FTA authorizes noncompetitive negotiations (letter of authorization is attached).

_________ After solicitation of a number of sources, competition is determined inadequate (record of source contacts is attached).

_________ The item is an associated capital maintenance item as defined in 49 U.S.C. §5307(a)(1) that is procured directly from the original manufacturer or supplier of the time to be replaced (price certification attached).

Comments:
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

_________ Cost Analysis is attached.

_______________________________________________________________
Chief Procurement Officer

_______________________________________________________________
Department Manager
## North Central Regional Transit District
### Cost and Price Analysis Form

<table>
<thead>
<tr>
<th>Comparison</th>
<th>Detail</th>
</tr>
</thead>
<tbody>
<tr>
<td>Comparisons with other competitive proposals:</td>
<td>________________________________</td>
</tr>
<tr>
<td>Price quoted by vendor:</td>
<td>________________________________</td>
</tr>
<tr>
<td>Competitive prices obtained from other vendors:</td>
<td>________________________________</td>
</tr>
<tr>
<td>(state name of vendor and price):</td>
<td></td>
</tr>
</tbody>
</table>

| Previous Contracts:                      | ___________________________________________ |
| Date of Contract:                        | ___________________________________________ |
| Purchase Price:                          | ___________________________________________ |

| Catalog/Market Prices:                   | ___________________________________________ |
| Source:                                  | ___________________________________________ |
| Purchase Price:                          | ___________________________________________ |

| Historical Prices:                       | ___________________________________________ |
| Date:                                    | ___________________________________________ |
| Purchase Price:                          | ___________________________________________ |

| Independent Cost Estimates:              | ___________________________________________ |
| Source:                                  | ___________________________________________ |
| Date:                                    | ___________________________________________ |
| Purchase Price:                          | ___________________________________________ |

| Price/Performance Ratio (if applicable): | ___________________________________________ |

| Market Data:                             | ___________________________________________ |
| Source:                                  | ___________________________________________ |
| Date:                                    | ___________________________________________ |
| Purchase Price:                          | ___________________________________________ |
North Central Regional Transit District
Disclosure Statement

The U.S. Department of Transportation Federal Transit Administration Master Agreement, Section 3a(1) prohibits the recipient’s employees, officers, board members or agents from participating in the selection, award, or administration of a third-party contract or subagreement supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when any of the following parties has a financial or other interest in the entity selected for award:

  a) an employee, officer, board member or agent;
  b) any member of his or her immediate family;
  c) his or her partner;
  d) an organization that employs or intends to employ any of the above.

It is the responsibility of the officers and employees of the North Central Regional Transit District, upon acquiring interests which conflict or might appear to conflict with the interests of the Federal Transit Administration and/or the North Central Regional Transit District, to bring them forth immediately for resolution.

I, the undersigned North Central Regional Transit District employee, acknowledge receipt, understanding and acceptance of the North Central Regional Transit District Code of Ethics and this Disclosure Statement, and certify that (1) I have not solicited or received any kickbacks or gratuities, and (2) I have no financial interest in any supplier with whom the North Central Regional Transit District does business. If any real or perceived conflict should arise in the discharge of my duties, I will report such conflict immediately to the Director of Human Resources in writing.

Name: _____________________________ Title: _____________________________

Date: _____________________________

This statement will be renewed on an annual basis
Exhibit I

<table>
<thead>
<tr>
<th>Clauses</th>
<th>Professional Services/A&amp;E</th>
<th>Operations/Management</th>
<th>Rolling Stock Purchase</th>
<th>Construction</th>
<th>Materials &amp; Supplies</th>
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<td>X</td>
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<tr>
<td>2 Buy America</td>
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<td></td>
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<tr>
<td>3 Charter Bus &amp; School Bus</td>
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<td>X</td>
<td></td>
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<tr>
<td>4 Cargo Preference</td>
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<td></td>
<td>X</td>
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<tr>
<td>5 Seismic Safety</td>
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<td>6 Energy Conservation</td>
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<tr>
<td>7 Clean Water</td>
<td>&gt; $100,000</td>
<td>&gt; $100,000</td>
<td>&gt; $100,000</td>
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<tr>
<td>8 Bus Testing</td>
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<td>9 Pre-Award/Post Audit</td>
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<tr>
<td>10 Lobbying</td>
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<td>11 Access to Records</td>
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<td>12 Federal Changes</td>
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<td>13 Bonding</td>
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<td>15 Recycled Products</td>
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<td>&gt; $100,000</td>
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<td>16 Davis-Bacon Act</td>
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<td>&gt; $2,000</td>
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<td>17 Contract Work Hours</td>
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<td>18 Copeland Anti-Kickback</td>
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<tr>
<td>19 No Government obligation</td>
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<tr>
<td>20 Program Fraud</td>
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<td>21 Termination</td>
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<td>22 Government-wide Debarment</td>
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<td>24 Civil Rights</td>
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<td>25 Breach of Contract</td>
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<td>26 Patent Rights</td>
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<td>27 Transit Employees Protective Act</td>
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<td>28 Disadvantaged Business Act</td>
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<tr>
<td>29 State and Local Govt Laws/Regulations</td>
<td></td>
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<tr>
<td>30 Incorporation of FTA Terms</td>
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<tr>
<td>31 Drug &amp; Alcohol</td>
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<td>32 ITS National Architecture</td>
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<td>33 TVM Certifications</td>
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<td>34 Metric Requirements</td>
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<td>35 ADA Compliance</td>
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<tr>
<td>36 Notice of Federal Participation</td>
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</tbody>
</table>

*ONLY FOR EXPERIMENTAL, DEVELOPMENTAL OR RESEARCH WORK*
North Central Regional Transit District

Sole Source Cost Analysis Form

Prior to proceeding with sole source procurements, including contract modifications, the requesting department must perform a cost analysis in order to demonstrate the proposed price is fair and reasonable. The cost analysis should examine the elements of cost (labor hours, material, overhead, and profit) for professional consulting and architectural and engineering type contracts.

Please note: It is not sufficient to list the last price paid and the percentage change of the newly quoted price. Actual analysis of the figures should be evident to explain why any increase or decrease in quoted costs is reasonable. All of the following elements must be completed for each proposed sole source procurement.

1. Verification of cost or pricing data and evaluation of cost elements:
   __________________________________________________________
   __________________________________________________________
   __________________________________________________________
   __________________________________________________________

2. Comparison of cost proposed with independent or previous cost estimate, market indices, and other factors:
   __________________________________________________________
   __________________________________________________________
   __________________________________________________________
   __________________________________________________________

3. Evaluation of suppliers' costs first hand and assessment for completeness and reasonableness, including evidence and rationale for determination.
   __________________________________________________________
   __________________________________________________________
   __________________________________________________________
North Central Regional Transit District
Bid Summary Form

Bid Opening: ____________________________________

Bid#: ___________________ Description: _______________________________ Department: ____________

<table>
<thead>
<tr>
<th>Name of Bidder</th>
<th>Bid Deposit</th>
<th>Total Bid</th>
<th>Unit Price</th>
<th>Unit Price</th>
<th>Unit Price</th>
<th>Unit Price</th>
<th>Responsive Bid (Y/N)</th>
<th>Bid Rejected (Reason)</th>
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</thead>
<tbody>
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</tbody>
</table>

This Bid was opened at the time stated in the advertisement: ____________

Person opening Bids: ____________________________

Signature: ____________________________

Initials

Date/Time: ____________________________
North Central Regional Transit District
Award Recommendation & Justification Form

Department: _________________________________________________________________

Procurement Number: ________________________________
(RFP/BID #)

Subject: _________________________________________________________________

Report Number Bids / Number of Bids /

Date: ______________ RFP'S Mailed: ___________ RFP'S Received: _______________

Recommendaion:

______________________________________________________________________________

______________________________________________________________________________

______________________________________________________________________________

______________________________________________________________________________

______________________________________________________________________________

______________________________________________________________________________

______________________________________________________________________________

Justification:

______________________________________________________________________________

______________________________________________________________________________

______________________________________________________________________________

______________________________________________________________________________

______________________________________________________________________________

______________________________________________________________________________

______________________________________________________________________________

Approvals:

______________________________________________________________________________

PROCURING AGENT

DIRECTOR OF PURCHASING
Exhibit M

North Central Regional Transit District
Price / Rate Quotation Form

Department: 

Subject: 

Report Date: ___________

Number of Quotes Received: ___________

<table>
<thead>
<tr>
<th>Qty.</th>
<th>Qty/Ctn</th>
<th>Item</th>
<th>Vendor</th>
<th>Price</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
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</tbody>
</table>

Recommendation:

Approvals:

PROCURING AGENT  DIRECTOR OF PURCHASING
Buy American Form

Certification requirement for procurement of steel, iron, or manufactured products.

Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.5.

Date ____________________________________________________________

Signature___________________________________________________

Company Name_______________________________________________________

Title _____________________________________________________________

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date ____________________________________________________________

Signature___________________________________________________

Company Name_______________________________________________________

Title _____________________________________________________________
Buy American Form

Certification requirement for procurement of buses, other rolling stock and associated equipment.


The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 C.F.R. Part 661.11.

Date _________________________________________________________________

Signature __________________________________________________________________

Company Name __________________________________________________________________

Title ____________________________________________________________________

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11, but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date _________________________________________________________________

Signature __________________________________________________________________

Company Name __________________________________________________________________

Title ____________________________________________________________________
Exhibit O

APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to 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 [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure or failure.]

The Contractor, ________________, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, et seq., apply to this certification and disclosure, if any.

__________________________ Signature of Contractor's Authorized Official

__________________________ Name and Title of Contractor's Authorized Official

__________________________ Date
CONTRACTOR INFORMATION FOR PROJECTS
FUNDED BY THE U. S. DEPARTMENT OF TRANSPORTATION

BID/RFQ/RFP # _____________________

The completion of this form(s) is a requirement of this bid. A completed form is required for each contractor who submits a Bid/RFP/RFQ in response to this solicitation and for each of the bidders’ subcontractors. Copy and attach additional sheets as necessary. Please provide the following information:

FIRM’S NAME: ___________________________________________________________

PRIME CONTRACTOR ______  SUBCONTRACTOR ______

FIRM’S ADDRESS: _______________________________________________________

_____________________________________________________________________

AGE OF FIRM: ______________________________

DISADVANTAGED BUSINESS ENTERPRISE?* ______ Yes ______ No

If yes, Certified by the State of New Mexico Department of Transportation?

_____ Yes ______ No

ANNUAL GROSS RECEIPTS:

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<th>Range</th>
<th>Amount</th>
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<td>$1,000,000</td>
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<tr>
<td>$2,000,000 - $4,999,999</td>
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<tr>
<td>$15,000,000 - $24,999,999</td>
<td>$15,000,000</td>
</tr>
</tbody>
</table>

* Disadvantaged business enterprise or DBE means a for-profit small business concern—

(1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and

(2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
Appendix 1
WRITTEN PROTEST PROCEDURES

A. GENERAL – DEFINITIONS

1. The procedures established hereunder shall be available to contractors for the purpose of handling and resolving disputes relating to procurements hereunder. A protestor must exhaust all administrative remedies hereunder before pursuing a protest in any court of law. Where applicable, any information received under such procedures shall be disclosed to the Federal Transit Authority (“FTA”) and a protestor must exhaust all administrative remedies before pursuing a protest with the FTA.

2. The term “contractor” means any person, firm, or corporation, which has contracted or seeks to contract with the North Central Regional Transit District.

3. The term “hearing officer” shall mean a person, appointed by the Executive Director, to hear and decide allegations made by any contractor relating to procurements hereunder.

4. A “pre-bid or solicitation phase protest” is a written protest received prior to the bid opening or proposal due date.

5. A “pre-award protest” is a protest against making an award and is received after receipt of proposals or bids, but before award of a contract.

6. A “post-award protest” is a protest received after award of a contract.

B. FILING OF PROTESTS

1. Pre-Bid Protest

Any Contractor may file a written protest of the procurement procedures involved herein, with the District’s Chief Procurement Officer at least five (5) working days before the bid opening or proposal due date.

2. Pre-Award Protest

Any Contractor may file a written protest against the District’s making of an award after the District’s receipt of bids or proposals, but at least five (5) working days before the conditional award of a contract by the District.

3. Post-Award Protest

Any contractor may file a written protest of the procurement procedures involved herein, with the District’s Chief Procurement Officer, at least five (5) working days after the date of the District’s Decision regarding a selection of a contractor with respect to any Bid/RFP/RFQ.
4. Each protest must clearly state:

   a. The name, address, and telephone number of the protester;

   b. The solicitation/contract number or description thereof.

   c. A statement of all of the grounds upon which the protest is made.

5. Protests are to be filed by certified mail, return receipt requested or by personal delivery by 4:30 PM on or before the due date at:

   Purchasing Department
   North Central Regional Transit District
   1327 N. Riverside Drive
   Española, NM 87532

If protests are filed by personal delivery, the protestor must obtain a time-stamped copy of the protest from the Purchasing Department as proof of the date and time of the filing of the protest. It is the Protester’s sole responsibility to provide said copy at the time of filing.

C. HEARING PROCEDURE

1. A hearing shall be conducted in accordance with C.G.S. Section 4-176e through 4-18a, as amended, which are incorporated herein, provided that if there is a conflict between Section 4-176e and these Written Protest Procedures, the latter will prevail. The hearing officer shall issue a written decision within ten (10) days of the last date of such hearing and state in the decision the reasons for the action taken. The Hearing Officer, shall respond in detail, to each substantive issue raised in the protest.

2. The Hearing Officer shall be the responsible official who has the authority to make the final determination of the protest.

3. The Hearing Officer shall address, in his determination, each material issue raised in the protest.

4. The Hearing Officer’s determination shall be final and binding upon all parties upon issuance.

5. Within (5) working days from its receipt of the decision of the Hearing Officer, a protester may request reconsideration of the decision, using the same procedure described in Section 4-5 above. The request for reconsideration shall be addressed to the Hearing Officer, in care of the Purchasing Department, North Central Regional Transit District, 1327 N. Riverside Drive, Española, NM 87532. The request for reconsideration shall set forth all of the grounds upon which the request is made.
6. The Hearing Officer shall issue a written decision on the request for recommendation within ten (10) days of receipt thereof and state in the decision the reasons for the granting or denial of the request.

D. REVIEW OF PROTEST BY FTA

1. Where applicable, review of protests by FTA will be limited to the District’s failure to have or follow its protest procedures, or its failure to review a complaint or protest. An appeal to FTA must be received by the cognizant FTA Regional or Headquarters Office within five (5) working days of the date the protestor knew or should have known of the violation and/or five (5) days after the protestor knows or has reason to know that the District has failed to render a final decision. Such appeal must be filed in accordance with all FTA rules and regulations, and Section 7(1) of FTA Circular 4220.1D., as periodically updated The FTA may allow a request for reconsideration if data becomes available that was not previously known, or if there has been an error of law or regulation.

   Violations of Federal law or regulation will be handled by the complaint process stated within that law or regulation. Violations of state or local or regulations will be under the jurisdiction of state or local authorities.

2. Post-determination protests may include allegations that the District failed to have or follow written protest procedures.
Memorandum

To: Finance Committee
From: Peter Dwyer, Legal Counsel and Dora Anaya, Human Resources Director
Thru: Anthony J. Mortillaro, Executive Director
Date: March 23, 2018
Re: Personnel Rules Update

Background:

The NCRTD last updated its “North Central Regional Transit District Personnel Rules and Regulations” on November 11, 2016 by Resolution 2016-39. In order to ensure that the District rules keep current with changing laws and provide the framework for a modern personnel system they need to be periodically reviewed and updated.

Current Rules:

Current district rules are working as intended. The personnel functions of the District are functional and meet required standards for compliance with such external demands as the FTA Drug and Alcohol policy requirements. However, updates are needed to reorganize and update the rules.

Proposed Rules:

Many of the changes shown in the redline are simply clarification of the existing rules and reorganization of the rules into new sections. However, there are some substantive changes including:

1. Provisions regarding NCRTD Rule 1.9, Equal Employment Opportunity and Sexual Harassment-Discrimination and Harassment. The topic areas have been separated to include Discrimination, Sexual Harassment, Harassment and Retaliation.
2. Included in this update is a NCRTD Rule 1.10 regarding Dating Restrictions. This rule gives guidance to employees regarding interpersonal relationships in the workplace.
3. The Workplace Violence Rule title has been changed to Violence only. It has been modified to clarify Workplace Violence, Violence Outside the Workplace, Convictions, Threats, Searches and consequences of such actions.
4. The Domestic Violence Rule has been updated to cite the NMSA 1978, Section 50-4A-1 et seq.
5. Clarification of Reporting Procedures and responsibilities of NCRTD staff.
6. Changes to the Drug and Alcohol-Free Workplace and Related Policies rule to address open containers on work premises.
7. Employee Responsibilities has been updated to reflect the District’s Professional Standards and Values. Employees responsibilities to contact Human Resources Office of changes has been increased to address outside employment, prescription drugs that may affect or impair performance of job duties, violations of law occurring at work or upon District property, all arrests or detentions of District employees, all convictions for driving while impaired or intoxicated whether subject to appeal or not, dating by and between employee and another District employee or Officer, all convictions of violent crimes, and any drug or alcohol use prohibited by this Rules and the District’s drug and alcohol policies.

8. Addition of language to include Workplans to implement corrective action in lieu of or in addition to any District Action per the Rules.

9. The Rule on Reemployment Process has been changed to include language to give the Executive Director the ability to determine to rehire certain former employee whose infractions are deemed minor.

10. The Type of Employees Rule was modified to include “Interns” and “Volunteers”. Definitions were also included.

11. A New Rule specifically to address Holiday Pay.

12. Added under the Holiday Rule is a section to include language that states an employee whose regularly scheduled day off falls on a day designated as a holiday shall be entitled to an additional day off. This needs to be scheduled by the Department Head as soon as possible.

13. A section was added under the Annual Leave Rule to clarify non-emergency same day request for annual leave for non-represented employees.

14. A section was added under the Sick Leave Rule to require submittal of sick leave forms within 24 hours or by the next scheduled day.

15. The revisions increase the maximum allowed sick leave accrual from 720 hours to 1120 hours. The District surveyed Personnel Rules from Los Alamos County, Santa Fe County, City of Santa Fe, Town of Taos, County of Taos, City of Rio Rancho and the City of Las Cruces to make a comparison on sick leave balance limits. Based on the evaluation, it was determined to increase our sick leave balances to a maximum benefit of 1120 hour. The increase provision would provide an added benefit for employees who have had minimal health issues and did not misuse their sick leave. The increase in the sick leave balances would also be a benefit for employees under the Sick Leave Credits Upon Separation Rule.

16. There is a new Rule for Sick Leave Credits Upon Separation. This Rule would allow employees, upon retirement to use their unused sick leave to extend his/her service time for PERA service time.
17. The reporting period for FMLA Eligible Leave is changed from three (3) days to (5) days. The additional two (2) days would give the supervisor and the Human Resources Office addition time to determine if the medical condition was a short-term condition (example, Flu), or a serious medical condition that qualifies for the Federal entitlement.

18. Included in the Leave Without Pay Rule is a section to address placing employees on LWOP status involuntarily if they are the subject of a Disciplinary Action that will result in termination.

19. A new Rule for Continuing Education and Tuition was included. The District surveyed Personnel Rules from Los Alamos County, Santa Fe County, City of Santa Fe, Town of Taos, County of Taos, City of Rio Rancho and the City of Las Cruces to determine what benefits were available to employees for continuing education. All communities that were surveyed offered benefits to employees and the new rule takes bit’s and pieces from each Personnel Rule to fit the needs of the District.

20. Definitions updated to include a definition for Manager.

**Recommendation:**

It is recommended that the Finance Committee discuss and review the policy and make recommendations on any needed changes.

**Attachments:**

- Proposed Rules in redline format.
NORTH CENTRAL REGIONAL TRANSIT DISTRICT
PERSONNEL RULES AND REGULATIONS

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RULE 1 – GENERAL PROVISIONS AND PURPOSE

1.1 Authority.

The North Central Regional Transit District (hereinafter the “NCRTD” or the “District” has the responsibility and authority to enact these Personnel Rules and Procedures pursuant to NMSA 1978, Section 73-25-5.

1.2 Prior Rules.

The District Personnel Rules and Regulations (hereinafter the “Rules”) in effect prior to the date of adoption of these amended Personnel Rules and Regulations, and all amendments thereto are hereby superseded. These policies also supersede all previous written and unwritten guidelines and past personnel practices of the District and also supersede any current department or division policy or procedure inconsistent with those set forth herein. Separate department or division policies that are more restrictive due to the operational needs of the department or division shall remain in effect, subject to the approval of the Executive Director.

1.3 Compliance.

All persons operating under the provisions of these Rules shall conform to, comply with, and aid in all proper ways in carrying out the provisions of these Rules.

1.4 Purpose.

These Rules are prescribed for the purpose of providing a modern personnel system, thereby promoting efficiency in the conduct of public business and assuring fair and impartial treatment to all applicants for employment and to all employed by the District.

1.5 Management Authority.

A. The District is created pursuant to state statute by way of an intergovernmental contract between its member entities who appoint representatives to the Board of Directors (hereinafter the “Board”) for the District. The Board determines and enacts District personnel policy. The Board does not make personnel decisions other than the selection of the Executive Director.

B. The Executive Director serves as the chief executive officer of the North Central Regional Transit District (“District”) and is responsible for the administration of the entire District including any divisions or departments which may be created. The Executive Director executes the policies and directives enacted by the Board and supervises the expenditure of appropriated funds. Authority is delegated to the Executive Director for the administration of the District’s Rules. The Executive Director may issue interpretive memoranda as may be necessary to interpret and enforce the provisions of the Rules. No contracts of or offers of employment may be made without the consent and signature of the Executive Director.

C. The District retains all customary, usual and exclusive rights, functions, prerogatives and authority connected with or incident to its responsibility to manage the affairs of the District. The exclusive prerogatives, functions and rights of the District include but shall not be limited to the following:
1. Determine the mission, budget, organization and number of employees allocated by position to meet the minimum staffing levels of its operations and departments;

2. Determine qualifications for employment; validate content of examinations; make requests for position audits and reclassifications; and ensure that best practices exist for the recruitment, interviewing and selection of applicants;

3. Direct employees and evaluate their performance based on standards of work established by the Employer;

4. Make assignments, transfer, or retain employees in positions, and make determination of job duties;

5. Provide reasonable rules and regulations governing the conduct of employees;

6. Provide reasonable standards and rules for employees' safety;

7. Determine the location and operation of its facilities;

8. Determine standards for work, hiring, promotion, transfer, assignment and retention of employees in positions;

9. Initiate corrective and/or disciplinary action including, but not limited to, coaching and guidance, written reprimands, suspensions, demotions, alternate forms of discipline, transfers and terminations;

10. Determine scheduling and all other actions necessary to carry out the Employer's functions;

11. Relieve an employee from his/her duties because of lack of funds, reduction in force, inability to return to work, or other legitimate reason; (note not in CBA)

12. Maintain efficiency of government operations; determine methods, means, equipment and personnel by which the Employer's operations are to be conducted;

13. In cases of an emergency or declared disaster, take such actions as may be necessary to carry out the missions of the Employer even if it requires some variation from the strict application of these Rules or any collective bargaining agreement; and

14. Act in furtherance of all other duties and responsibilities set forth in the Constitution, federal laws, state statutes, administrative regulations, and executive orders of the President and Governor, as well as North Central Regional Transit District Resolutions, and these Rules.

This list is not an all-inclusive list of all of the District’s rights, functions, prerogatives or authority, but only serves a general guide. The District expressly reserves, and the District retains all customary, usual and exclusive rights as set out in in this paragraph of these Rules, unless expressly set forth to the contrary in any agreement.
1.6 Coverage.

These Rules cover all District employees except the Executive Director to the extent that his contract of employment varies from these Rules. Notwithstanding the general application of these Rules to all employees the District can and shall, within the prescribed limits of the law, provide different standards for performance, review, and disciplinary action based upon the duly adopted Classification and Compensation policies of the District. These Rules do not apply to independent contractors who are not covered by the District Classification and Compensation policies.

Furthermore, it is recognized that the District has certain employees that are covered by a Collective Bargaining Agreement. The specifics of the Rules herein have not been the subject of collective bargaining. The Collective Bargaining Agreement recognizes the District’s right to establish and maintain such Rules. The Rules contained herein shall apply to bargaining unit employees so long as and to the extent that they do not conflict with the terms of any Collective Bargaining Agreement.

1.7 Merit Principles.

The District adopts the following merit principles as standards for implementation of these Rules:

A. Recruiting, selecting, and advancing employees will be on the basis of their ability, knowledge, and skill, including open consideration of qualified candidates for initial employment.

B. Equitable and adequate compensation will be provided.

C. Employees will be trained as needed to assure high-quality performance.

D. Employees will be retained on the basis of the adequacy of their performance and provisions will be made for correcting inadequate performance and separating employees from employment if inadequate performance cannot be corrected.

E. Candidates and employees will be treated fairly in all aspects of personnel administration without regard to race, color, religion, disability, national origin, ancestry, sex, sexual orientation, age, political affiliation, veteran status, or other non-merit factors, and with proper regard for their primary and constitutional rights as citizens will be assured.

F. Merit principles may be administered by way of performance and development plans.

1.8 Nepotism Prohibited.

A. Persons shall not be employed by the District in a position where they would supervise or be directly supervised by any person related to them by blood or marriage to the third degree, or where they would supervise or be directly supervised by a domestic partner. It is incumbent upon all employees and candidates to inform the District of any relation or relationship which could limit or effect the employee or candidate’s hiring, promotion, transfer or management of other District employees under this nepotism policy. Failure to report a relation or relationship that results in a violation of this nepotism policy is grounds for disciplinary action up to, and including termination.

B. The following persons are relatives within the third degree:

---

1 The Executive Director is covered by an employment agreement and is an At-Will employee.
Employee’s spouse or domestic partner,
child
brother
sister
grandparent
grandchild
great-grandparent
great-grandchild
aunt (sister of parent)
uncle (brother of parent)
nephew (son of brother or sister)
niece (daughter of brother or sister)

if the employee is married, or has a domestic partner, relatives of such spouse or domestic partner, as listed above, are included in this prohibition.

C. The Executive Director, and all Supervisors may neither immediately supervise nor directly hire relatives as defined above.

D. The District shall refrain from hiring, transferring, and promoting employees where such action would violate the terms of this nepotism policy. If the District was not aware of a situation that would constitute a violation of the terms of this nepotism policy and becomes aware of the situation after the fact, the District shall take any steps necessary, up to and including transfers, demotions and termination of employees, in order to ensure that this prohibition on nepotism is upheld.

1.9 Equal Employment Opportunity and Sexual Harassment-Discrimination and Harassment Prohibited.

A. Discrimination. The District is an “equal opportunity employer.” The District expressly prohibits Harassment and invidious discrimination. The following acts of discrimination on the part of any person (employee) are expressly prohibited, and if such discriminatory acts occur, the person responsible for the act(s) is subject to dismissal or suspension from District employment or other appropriate disciplinary action. No District employee shall:

1. Unless based on a bona fide occupational qualification, refuse to hire, discharge, promote or demote or to discriminate in matters of compensation against any person otherwise qualified, because of the person’s inclusion in a Protected Class.;

2. Deny equal treatment or otherwise favor any employee on the basis of the person’s inclusion in a Protected Class.;

3. Print or circulate or cause to be printed or circulated any statement, advertisement or publication or to use any form of application for employment or membership to make any inquiry regarding prospective membership or employment which expresses, directly or indirectly, any limitation, specification or discrimination as to a Protected Class.;
4.3. Discriminate, intimidate, or retaliate against any person because he/she has filed a complaint, testified or participated in any proceedings under this section;

5.4. Aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this section; or attempt to do so;

6.5. Attempt to favor or deny treatment to any employee or prospective employee or attempt to cause any person to violate the terms of these Rules on the basis of the person’s inclusion in a Protected Class.

B. Sexual Harassment. Sexual Harassment is prohibited and unacceptable in the NCRTD workplace and at any work-related events. Sexual Harassment may occur between persons of the same gender, by a female against a male or by a male against a female. Some examples of conduct which may constitute sexual harassment are:

1. Sexual advances, requests for sexual favors, repeated unwelcome requests for dates;
2. Sexually oriented comments, jokes, teasing, language or gestures;
3. Display of sexually related material such as calendars, posters, and inappropriate electronic wallpaper;
4. Staring or leering, in a suggestive manner;
5. Viewing of inappropriate text messaging or e-mails which contain sexually suggestive or demeaning comments, jokes, graphics or pictures (“sexting”);
6. Viewing of inappropriate text messaging or e-mails which contain sexually suggestive or demeaning comments, jokes, graphics or pictures (“sexting”);
7. Inappropriate hugging, touching, kissing, pinching, patting, grabbing, or brushing against a person;
8. Promising a promotion or job benefit if the employee will consent to sexual relations;
9. Taking adverse action against an employee who does not consent to sexual relations.

C. Harassment. Harassment on the basis of any protected class is also prohibited and unacceptable in the NCRTD workplace. This policy also covers harassment on the basis of race, color, sex (gender), religion, national origin, ancestry, pregnancy, physical or mental disability, genetic history, sexual orientation. Harassing conduct may include derogatory comments, racial epithets, ethnic slurs, negative stereotyping and any type of conduct which shows hostility towards an employee because of his/her protected class. Harassment may include any act whether in person or through electronic means that places an Employee in reasonable apprehension of the acts of another Employee or the safe and professional environment of the District’s workplace.

D. Retaliation is Unlawful

NCRTD prohibits retaliation against an employee who reports or complains of invidious discrimination, Sexual Harassment or Harassment, or discrimination or who participates as a witness in an EEO investigation. Non-managerial employees and Managerial Employees who
are proven to have engaged in retaliation against a complainant or witness will be subject to disciplinary action up to and including the possibility of termination.

1.10 Dating Restrictions

Dating is defined as a consensual, mutually acceptable relationship between individuals who have or have had a continuing relationship of a romantic or intimate nature. The District recognizes that dating between co-workers and supervisors occurs frequently in many workplaces. Because relationships outside the workplace can result in adverse consequences in the workplace, such as a hostile work environment, invidious discrimination, Sexual Harassment, Harassment and Retaliation, the District restricts dating among and between Employees as follows.

1. Dating between Supervisors and any employee they supervise is prohibited.

2. Employees dating other District Employees are required to verbally report the situation to a Supervisor.

3. Interpersonal relationships within the working environment shall always be professional. Personal, familial or romantic involvement on the part of an employee with an outside provider of goods or services, or with another employee of the District, may create a potential conflict of interest. Those relationships that impair an employee’s ability to exercise good judgment in the performance of his/her duties for the District are discouraged and may be cause for discipline up to and including termination of employment.

1.11 Workplace Violence.

The District is committed to ensuring a safe working environment for all employees. Both management and non-management employees have a responsibility to assist in establishing and maintaining a violence-free work environment. Therefore, all employees are responsible for reporting all acts of violence, threats or other conduct which could lead to behavior, which could potentially lead to violence to a hostile work environment, Harassment, Sexual Harassment, invidious discrimination or retaliation.

A. Violence Outside the Workplace. Any employee who is found to have committed workplace violence outside of the workplace that has a negative impact upon the workplace may be subject to corrective action and may be directed to stay away from District premises. Violators may also be subject to civil and criminal prosecution.

B. Convictions. Additionally, where an employee is convicted of a violent crime of violence or threat of violence under any criminal code provision for non-workplace conduct, the District reserves the right to determine whether the conduct involved may adversely affect the legitimate business interests of the District. Any employee convicted of such a crime must report the conviction to the District absent a
court order to the contrary. Failure to do so is a violation of this policy and subjects the employee to corrective action.

C. **Threats.** Threats, threatening conduct, or any other acts of aggression or violence in the workplace will not be tolerated and are deemed a violation of these Rules. Any employee determined to have committed such acts will be subject to Disciplinary Action, up to and including termination. Non-employees engaged in violent acts on the District’s premises and property will be reported to the proper authorities. Possession of weapons (not assigned as a tool of a job assignment) on any District premises and property, including vehicles, parking facilities and District sponsored events constitute a threat of violence. The threat of violence may include, but is not limited to, any indication of intent to harm a person or damage District property. Threats may be direct or indirect and they may be written, verbal or nonverbal and can include the dissemination of electronic messages or images.

D. **Searches.** The District reserves the right to conduct reasonable workplace inspections at any time, with or without notice, for purposes of enforcing this policy, including searching:

1. Outer clothing, packages, handbags, briefcases, lunch bags, boxes, and/or other containers being taken in or out of the District's buildings, or to or from the District's premises;

2. Vehicles parked on District property (owned, leased or occupied), or District-owned vehicles;

3. All workstations, computer files, book shelves, lockers, desks, credenzas, file cabinets, store rooms and other areas.

Any refusal to permit an inspection or interference with inspections may result in Disciplinary Action. The discovery of any violation of any other District policy as a result of such search may also result in Disciplinary Action. Any illegal activity discovered during an inspection is subject to referral to the appropriate law enforcement authorities.

E. **Workplace Violence.** The District does not tolerate any type of workplace violence committed by or against employees. Employees are prohibited from making threats or engaging in violent activities. The following list of behaviors, while not exclusive, provides examples of conduct that is prohibited:

1. Threatening physical or aggressive contact directed toward another individual or engaging in behavior that causes reasonable fear of such contact.

2. Threatening an individual or the individual’s family, friends, associates, or property with physical harm or behavior that causes a reasonable fear of such harm.

3. Intentional destruction or threat of destruction of the District’s or another's property.

4. Harassing or threatening physical, verbal, written or electronic communications, including unnecessary and rude behavior intended to be offensive (bullying), verbal statements, phone calls, e-mails, letters, faxes, posts on social media, website materials, diagrams or drawings, gestures, and any other form of communication that would
causes a reasonable person apprehension or to be intimidated, fear or intimidation response in others.

5. Stalking.

6. Veiled threats of physical harm or intimidation or like statements, in any form, that would lead to a reasonable person to fear of harm or to be intimidated, an intimidation response in others.

7. Communicating an endorsement of the inappropriate use of weapons of any kind.

8. Possessing weapons on one's person of any type on one's person during regular work hours, or at any time and on District property.

F. Domestic Violence. The District prohibits acts of Domestic Violence to the maximum extent permitted by law. The District and its Employees shall at all times fully comply with the Promoting Financial Independence for Victims of Domestic Abuse Act. (NMSA 1978, Section 50-4A-1 et seq.) Compliance shall include granting necessary leave, maintaining victim confidentiality, and refraining from any form of retaliation for the acts authorized under the act. Where any acts of Domestic Violence occur on District premises or property, this policy applies. Where any acts of Domestic Violence occur off District premises or property this policy applies if the abuser is someone acting as an employee or representative of the District at the time, where the victim is an employee who is exposed to the conduct because of work for the District, or where there is a reasonable basis for believing that violence may occur against the victim or others in the workplace.

G. The District will take appropriate action for acts of violence and threats of violence. Such incidents will lead to disciplinary action up to and including termination. While the District does not expect employees to be skilled at identifying potentially dangerous persons, employees are expected to exercise good judgment and to inform the Human Resources Office or their Supervisor if any employee exhibits behavior that could be a sign of potentially dangerous situations. Such behavior includes:

1. Discussing weapons or bringing them to the workplace;
2. Displaying overt signs of extreme stress, resentment, hostility, or anger;
3. Making threatening remarks;
4. Sudden or significant deterioration of performance;
5. Displaying irrational or inappropriate behavior.

1.12 Reporting Procedures.

All employees and managers are expected to comply with the NCRTD-Personnel Rules regardingDiscrimination, Harassment, Sexual Harassment and violence (collectively Reportable Acts). If an Employee supervisor or manager becomes aware that prohibited acts—Reportable Acts—are occurring in the workplace, it is the responsibility of the Employee supervisor or manager to take immediate action. Employees must report the violation of the Rules to a Supervisor or to the
Human Resources Director promptly and provide any supporting testimony, information or
evidence needed to assist any investigation or action by the District, to stop the violation of these
Rules and report it to the NCRTD Executive Director. If appropriate in the judgment of the
employee and supervisors involved, call 9-1-1. Under this policy, decisions may have to be made
quickly to prevent a threat from being carried out, a violent act from occurring, or a life threatening
situation from developing. Nothing in this policy is intended to prevent quick action to stop or
reduce the risk of harm to anyone, including requesting immediate assistance from law enforcement
or emergency response resources.

A. **Reporting Violations by the Subject.** If any person believes they are the victim of
harassment, sexual harassment, or discrimination; or if they have witnessed such conduct, they
Anyone alleging that they have been the subject of a violation of these Rules should
immediately report it to an NCRTD their Supervisor or the Human Resources Director,
Manager. Employees have the option to report the violation or complaint to anyone in their
immediate supervisory role including the Executive Director or an NCRTD Manager, the
NCRTD Human Resources Director, or the Executive Director. Appropriate forms will be
provided to employees reporting prohibited acts. If a report form has not been completed by
the employee, the supervisor shall complete a report form and forward the report to the Human
Resources Office.

B. **Confidentiality.** The NCRTD will make reasonable efforts to maintain the confidentiality of
complaints to the extent that it is possible and permitted by law. NCRTD encourages the
prompt reporting of concerns in order to take appropriate corrective action before the
harassment, discrimination, or retaliation becomes severe or pervasive.

C. **Investigations.** All complaints of harassment, discrimination and retaliation allegations
regarding Reportable Acts will be promptly investigated. All employees will be required to
cooperate in any investigation and may be required to give sworn or unsworn statements, to
provide and preserve physical evidence or writings and to assist in the investigation. A failure
to cooperate with an investigation may be grounds for Disciplinary Action. The District may
consult with law enforcement authorities or other resources as it deems appropriate, and may
require a fitness for duty examination or other professional assessment through providers
chosen by the District to determine whether a person presents a threat to individuals in the
workplace. are expected to be honest and cooperative during the investigation. Appropriate
disciplinary measures, including the possibility of termination, will be taken against the
offending employee if it is determined that he/she violated the NCRTD Anti-Harassment
Policy.

D. **Failure to Report.** Failure to report any threats or acts of violence in violation of this policy
is itself a violation of this policy, and may subject any employees involved to corrective action.
This includes reports by supervisory personnel who may be privy to threats that have been
made by another employee.

E. **Retaliation.** Retaliation against anyone for reporting in good faith an actual or suspected
violation of these Rule will not be tolerated and will subject the individual engaging in the
retaliation to corrective action. Any complaints about retaliation may be reported in the same manner as violations of these Rules are to be reported.

**E. Investigation.** All reported incidents of violence and threats of violence will be investigated appropriately. The District will decide whether its workplace violence policy has been violated and whether preventive or corrective action is appropriate. The District may consult with law enforcement authorities or other resources as it deems appropriate, and may require a fitness for duty examination or other professional assessment through providers chosen by the District to determine whether a person presents a threat to individuals in the workplace. If a violation of this policy occurs, the District will take appropriate preventive and corrective action.

**G.F. False Reports. False Reporting**—In the event that it is determined through an investigation that any employee falsely accused another employee of a violation of these Rules, the accuser will be investigated and may be subject to corrective Disciplinary Action.

### 1.123 American with Disabilities Act.

**A.** The District will not discriminate against qualified individuals with disabilities in regard to the application procedures, hiring, advancement, discharge, compensation, training, or other terms and conditions of employment.

**B.** The District will provide reasonable accommodation to qualified individuals with a disability so that they can perform the essential functions of the job.

**C.** An individual who can be reasonably accommodated for a job, without undue hardship, will be given the same consideration for a position as any other applicant.

### 1.134 Immigration Reform and Control Act, 1986.

The Immigration Control and Reform Act of 1986, requires that all newly hired, or re-hired, employees present documented proof of identity and eligibility to work in the U.S. The District and its new employees shall complete the Employment Eligibility Verification form, I-9 within three days of hire and the District shall verify employee eligibility for employment by obtaining copies of appropriate identification information or use of “E-Verify.”.

### 1.145 Drug and Alcohol Free Workplace and Related Policies.

The District is committed to maintaining a drug and alcohol free workplace. Any questions employees may have about this policy, its administration, or assistance in complying with the policy including any employee assistance programs, shall be directed to the Human Resources Director.

**A.** It is the District’s policy that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance, including alcohol, in or on any District owned property is prohibited.

**A.B.** Drinking alcoholic beverages, selling alcoholic beverages, and possessing open containers of alcoholic beverages on District Property or while wearing a District uniform are prohibited. Drinking non-alcoholic beverages that might reasonably appear to be alcoholic beverages to the public is also prohibited.
B.C. All employees who hold a commercial driver’s license and are required to operate vehicles for the District as part of their employment are subject to the U.S. Department of Transportation substance abuse testing procedures as outlined in the District’s Drug and Alcohol policies including but not limited to the testing programs.

C.D. The District recognizes that employees are a valuable resource and wants to assist any employee who voluntarily comes forward and requests assistance with chemical dependency provided that the employee:

1. has not received notification to report for drug/alcohol testing in the six-week period prior to his request for assistance;
2. has not been identified as a violator nor is under investigation for a violation of the District’s Drug and Alcohol policy; and
3. has agreed to utilize the services available through the District’s Health Insurance carrier.

D.E. Specific policies may be developed further defining the terms used in this Rule as well as procedures for implementation of specific District policies on drugs and alcohol and Federal laws. All policies implementing or amending these Rules regarding the District Drug and Alcohol policy shall be adopted by the District’s Board and provided to all employees following adoption.

E.F. Employees found in violation of this Rule are subject to disciplinary action up to and including dismissal.

F. Employees who are not subject to U.S. Department of Transportation substance abuse testing may still be subject to the District’s Drug and Alcohol policies. Employees are responsible for periodically reviewing the District’s Drug and Alcohol policies when they are revised and distributed.

1.156 Drug and Alcohol Policies.

The District Drug and Alcohol policy is separately adopted and may be revised from time to time but shall be deemed a part of these Rules and Regulations and is hereby integrated by reference. The District shall comply with all mandatory state and federal drug and alcohol related laws, regulations and policies and will coordinate its efforts with those of the state and federal governments, their agents and contractors to ensure that District Employees comply with all legal requirements. The District expressly prohibits all operation of vehicles when impaired by drugs regardless of whether the drug is a properly prescribed prescription drug or over-the-counter medication. It is incumbent upon every employee to provide their doctors and pharmacists with sufficient information about the nature of their employment and job duties to make informed decisions about proper medication use while performing District functions.

1.167 Employee Responsibilities.

A. It is the duty and responsibility of every employee to be aware of and abide by these Rules along with any additional rules and regulations which may from time to time be promulgated and updated by the District. The District shall provide copies of any new or modified rules, regulations and policies regulating the conduct of employees and their work.
B. It is the responsibility of the employee to perform his/her duties to the best of his/her ability and according to the professional standards set forth in his/her job description and the District Professional Standards and Values, or as otherwise established for the type of work performed.

C. Employees are required to work at the times, places and in the manner prescribed for their particular work functions by District Supervisors and to arrive and depart from work in timely fashion to ensure the efficient and timely operation of the District’s business. Supervisors are responsible for maintaining attendance and tardiness records on their employees.

D. Standards for Dress and Appearance: The District is a professional organization. All employees must present a professional appearance by wearing attire appropriate for their job classification in order to promote a positive image of the District and its employees and operations. The general public, other agencies and co-workers may form their initial impression of the District’s professional credibility solely on employee appearance. Therefore, it is the responsibility of each employee to ensure that the District’s image, appearance and professionalism is preserved through appropriate dress and appearance. This policy is intended to provide general standards on dress and appearance and is not meant to address all situations. There may be differences in some dress standards depending on the nature of the work environment, nature of the work performed, involvement with the public, required uniforms or other circumstances. In General employees shall abide by the following standards:

1. All clothing and accessories should be functional, in good repair, and safe.

2. Employees not required to wear uniforms should wear clothing that is neat and clean, and suitable for business.

3. Employees required to wear uniforms should wear uniforms that are clean, fresh, and mended if necessary. Uniforms bearing a District identification patch may not be worn, unless on duty. Employees shall refrain from drinking, vaping and smoking any products which might reasonably be mistaken for regulated or prohibited drugs and alcohol while in uniform or in District vehicles.

4. Personal hygiene is essential. Therefore, it is necessary that all employees maintain a clean, presentable appearance. Personal hygiene includes bathing/shower, and such other steps as are reasonably necessary to ensure that employees do not offend customers or coworkers due to lack of hygiene.

E. Upon separation from the District, any and all District issued equipment and property including but not limited to uniforms, identification patches, keys, records, identification cards, passwords, electronic files, and all other information or property of the District must be returned to the District.

F. Employees are required to notify the their department manager or the Manager’s Designee, their supervisor, and Human Resources Office of the following actions:

1. if they have a change of residence or telephone number within ten (10) business days.

2. Employees are required to notify the Human Resources Office if they have a change in domestic partnership, marital status (marriage, divorce, widowed)
3. Any change in number of dependents within fifteen (15) calendar days. New dependents not enrolled in the employee insurance benefits within fifteen (15) calendar days may be enrolled during the next open enrollment period or as otherwise permitted by law.

4. Prescription drug use that may affect or impair performance of job duties.

5. Violations of law occurring at work or upon District property.

6. All arrests or detentions of District Employees.

7. All convictions of violent crimes.

8. Self-reporting of dating by and between the reporting Employee and another District Employee or Officer.

9. All convictions for driving while impaired or intoxicated whether subject to appeal or not.

10. Any drug or alcohol use prohibited by these Rules or the District’s drug and alcohol policies.

1.178 Employee Performance and Development Plan.

A. The performance of each employee will be appraised by the immediate Supervisor at the completion of the probationary period and annually thereafter with an optional interim appraisal done at the sixth month.

B. This appraisal will be documented on a form approved by the Executive Director and will become a part of the employee’s personnel file.

C. Supervisors may prepare performance development plans whenever it is deemed appropriate, such as when a Supervisor wishes to make an employee’s performance a matter of record and upon change of Supervisors. Workplans may be utilized by Supervisors to implement corrective action in lieu of or in addition to any Disciplinary Action under these Rules.

D. The Executive Director will provide a training program in the proper method of appraisal for supervisory employees.

E. Employees are required to acknowledge in writing, receipt of performance and development plans. In instances where an employee declines to sign such acknowledgment, the Supervisor will verify in writing that the employee received the performance and development plan. Employees may submit rebuttal statements to performance and development plans which will be attached to the performance and development plan. Management may consider the rebuttal and may elect to change the performance and development plan based upon the rebuttal. But, nothing in the rebuttal shall serve to abridge management’s right to prepare, submit, evaluate, update and potentially take disciplinary action or require training based on the performance and development plan nor shall management be compelled to change its performance and development plan by the submission of a rebuttal.

1.189 Training.

A. The primary responsibility for training employees shall be assumed by District management. District management will utilize performance and development plans as an indicator of an employee’s need for training. Supervisors should consult with employees during the preparation of their performance and development plans regarding their training needs. Training shall be provided as needed but the District may prioritize training for employees who have a demonstrated long-term commitment to employment with the District.
B. The Executive Director shall require Supervisors to determine the training needs of employees and establish and implement programs to meet such needs. Priority shall be given to training that is required by law, training that effects safety, and training that will provide long-term benefits to the District.

1.4920 Temporary Modifications to the Rules.

The Executive Director may temporarily modify or waive any of these Rules if it would be reasonable, appropriate, lawful, and necessary for the orderly and efficient administration of the District. The Executive Director shall promptly notify the Board of any temporary modifications made pursuant to this section and shall not modify the rules at a time or in a manner that would be unfair or inequitable to District employees. Nothing herein shall be deemed to prohibit temporary pay increases when duly authorized by the Executive Director for employees who are required by the District to perform functions beyond those of their current classification such as interim or acting supervisory duties.

1.201 Permitted Political Activity.

All employees are permitted to engage in political activities but shall not do so while engaged in NCRTD business, nor upon the vehicles, premises, or any other facilities of the NCRTD, nor in a manner that creates the appearance of NCRTD involvement in political activity. Employees of the NCRTD:

A. are encouraged to register and vote and have a right to express their opinions on all political subjects and candidates on their own time or on authorized leave;

B. may serve as convention delegates on their own time or on authorized leave;

C. may attend political rallies on their own time or on authorized leave;

D. may engage in political activity on their own time or on authorized leave to include signing nomination petitions and making voluntary contributions to political organizations;

E. may serve as an election official on their own time or on authorized leave;

F. may be a member of a local educational board or any other non-partisan elected office, (which shall not be construed to be holding political office), provided the employee is on their own time or authorized leave as necessary;

G. may engage in any political activities permitted under the constitutions and laws of the United States and the State of New Mexico.

1.242 Prohibited Political Activity.

All employees are prohibited from:

A. Using official District property, letterhead, authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office, or for any other political purpose;
B. Using official District property, letterhead, authority or influence for coercing, attempting to coerce, commanding or advising an employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for a political purpose;

C. Threatening to deny promotion to any employee who does not vote for certain candidates, requiring employees to contribute a percentage of their pay to a political fund, influencing subordinate employees to buy tickets to political fund-raising events, advising employees to take part in political activity and matters of a similar nature;

D. Engaging in political activity while on duty, including but not limited to the following:

   i. Wearing campaign buttons or displaying campaign literature in public view for any federal, state or local election;
   
   ii. Displaying political advertisements on District-owned vehicles;
   
   iii. Using any District equipment, supplies, or property for political campaign purposes for any federal, state or local election;
   
   iv. Circulating partisan political nominating petitions;
   
   v. Soliciting political contributions or participating in partisan fund raising activities;
   
   vi. Introducing or meeting with political candidates for the purpose of soliciting support for their campaign.

### 1.223 Holding or Running for Public Office.

A. The Hatch Act (5 U.S.C. Sections 1501 to 1508) restricts the political activity of individuals principally employed by state or local agencies who work in connection with programs financed in whole or in part by federal loans and grants. District employees who are considering political activity should consult their own legal counsel to determine whether the Hatch Act applies to them. The following are District restrictions for employees covered by the Hatch Act.

   1. Employees covered by the provisions of the Hatch Act may be candidates in nonpartisan elections, if, upon filing or accepting the nomination and during the entire campaign, the employee is authorized to use leave.
   
   2. Employees covered by the provisions of the Hatch Act may not be candidates in partisan elections.
   
   3. Employees not covered by the provisions of the Hatch Act may be candidates for any public office, if, upon filing or accepting the nomination and during the entire campaign, the employee is authorized to use leave.

For more details on the Hatch Act and its application to District employees see:


1.234 Time Limits under these Rules.

All days indicated as “Day” or “Days” shall be work days unless these rules expressly provide otherwise. In the event the last day of a time limit falls on a weekend or legal holiday, the time limits shall be extended to include the next working day. Receipt of written notice shall mean the day that the notice is received if hand-delivered or the day the notice is postmarked by registered mail to the address of record for the employee or the date an e-mail is sent unless there is reason to believe the e-mail recipient did not actually receive the e-mail. The time limits set forth in this procedure may be subject to extension under exceptional circumstances as determined by the Executive Director. In processing the complaint, the following procedure shall apply:

RULE 2 – EMPLOYMENT – SELECTION PROCESS

2.1 Classified Job Posting.

A. All job openings in Classified positions shall be posted on designated District bulletin boards and advertised internally for a minimum of ten (10) days to allow current interested employees the opportunity to apply and advance in their careers in the District. Internal posting and recruitment does not preclude the NCRTD from performing concurrent external recruitment efforts. Internal postings are not required when the District fills an opening by promotion or internal transfer of an existing District employee or accretion of employees through consolidation of operations by the District and another transit service provider.

B. During the ten (10) day internal recruitment period the position may be filled internally without further recruitment or analysis of potential eligible Candidates. Following the 10-day internal recruitment period the opening may only be filled by a Candidate who is qualified pursuant to these Rules and the District’s selection process.

2.2 Classified Job Openings filled by Promotion Internal Transfers and Accretion of New Employees.

A. Promotion.

1. Any Classified Employee who has demonstrated continuous satisfactory service may be eligible to be promoted.

2. Employees may be eligible to be promoted to any classification if they meet the minimum qualifications and pass any test deemed appropriate or required by the District.

3. Management may select any candidate, or employee, for promotion so long as the selection complies with these Rules.

4. Promotions approved by the Executive Director will be effective on a date selected and approved by the Executive Director.

5. Promotional increases in compensation are permitted to the extent they are consistent with the District’s Compensation and Classification Plan. The pay of an employee who is promoted shall be adjusted at a minimum to the bottom of the new pay range.
The pay of an employee who is promoted shall generally be increased by a minimum of ten (10) percent unless a higher or lower rate is expressly authorized by the Executive Director.

B. Internal Transfers.

1. The Executive Director, may transfer an employee from one work site, position, or division within the District to another without the employee’s written consent, if the transfer is deemed in the best interest of the District, provided that the employee meets the minimum qualifications for the new classification and the District has complied with any requirements of any current Collective Bargaining Agreement regarding assigning or transferring the employee to meet District requirements.

2. An employee shall retain accrued annual sick and personal leave, if applicable, upon transfer.

C. Accretion of New Employees.

If the District merges its operations with other transit providers and accretes employees from another entity the District shall:

1. Abide by the terms of any written agreements regarding the accretion so long as the terms of the agreement are legally permissible and do not require the hiring of employees who fail to meet minimum requirements for a position or fail to make timely application and acceptance of any District job offer;

2. Assess the accreted employee’s job description, compensation and classification;

3. Provide the accreted employee with notice of how the accreted employee would fit into the Districts compensation and classification system, any changes to their job assignments and job description, and any changes to compensation or benefits that would occur should the accreted employee become a District employee;

4. Offer jobs, compensation and benefits to any accreted employee consistent with the District’s Compensation and Classification Plan; and

6. Fill any job openings created by the merger of operations or any revised organizational structural requirements resulting from the merger of operations by offering jobs to accreted employees prior to posting the job positions, making internal transfers of District employees, promoting District employees or seeking to fill job openings with new candidates that are neither existing District employees or accreted employees.

7. Nothing herein shall be deemed to require that the District retain or manage employees in a manner inconsistent with these Rules or the District’s various policies and procedures and these rules shall not create an employment right in any person who is not duly hired by the District.

8. The District shall not rehire any employee who has an existing personnel file that includes a designation of “not eligible for rehire” due to a prior separation from employment with the District.

2.3 Recruitment, Hiring and Promotion of Exempt Employees
The Executive Director shall have discretion to vary from the hiring process utilized for Classified Employees when hiring Exempt employees. Notwithstanding the discretion granted herein the District shall abide by the merit principles and all prohibitions and restrictions of these Rules regarding Suspect Classes and nepotism when hiring Exempt employees.

2.4 Temporary Promotion.

A. The District may temporarily promote an employee who meets the minimum qualifications for a position at the discretion of the Executive Director.

B. A temporary promotion shall be for a period of at least thirty (30) days or greater but not more than twelve (12) months.

C. Temporary promotions within the same classification level by employees who meet minimum requirements for a job will result in a temporary pay increase to the minimum pay of the new job, or a temporary pay increase of up to 10% if the employee's current pay exceeds the minimum of the new job. In no event shall the temporary promotion permit an increase in pay that would violate the District’s compensation and classification plan by paying an employee more than permitted for a given classification. However, the Executive Director may provide such other compensation and benefits as may be reasonably required to induce employees to assume the additional responsibilities of a temporary promotion so long as the compensation or benefits are commensurate with the additional duties.

D. Temporary promotions from any lower level classification to any higher level classification will result in a pay increase to the minimum pay of the new job, or up to a 10% increase if the employee's current pay exceeds the minimum of the new classification.

2.5 Recruitment for Posted, Advertised Positions.

A. All applications for positions with the District shall be made on forms prescribed by the Executive Director. Such applications shall include information, which is determined necessary or is mandated by State or Federal law, or regulations. All applications shall be signed, dated and the truth of the statements contained therein certified by the candidate’s signature.

B. No question on any form of application shall be so worded as to elicit information concerning inclusion in a Suspect Class of any candidate, except information required to assist with equal employment opportunity efforts. Furthermore, no inquiry shall be made concerning inclusion in a Suspect Class during any interview, and all such disclosures, thereof, shall be disregarded, unless such information is deemed a bona fide occupational qualification.

C. The District may compile and analyze applications and applicants in any manner that is consistent with these Rules and is reasonably calculated to ensure that the District hires meritorious and qualified applicants.

D. All applicants shall inform the district of any relations or relationships that could constitute a violation of the District’s policy on nepotism.

E. The District may require releases from applicants as a condition prior to making any job offer to the Candidate. Releases may be required to obtain any relevant work history, educational background, criminal background or to speak with any person used as a reference during the application process. Nothing herein shall be deemed to preclude the District from making job offers.
that are conditioned upon a subsequent determination that the Candidate is qualified to perform the
job based upon the background checks authorized herein.

F. The Executive Director is authorized to adopt administrative policies regarding the process for
obtaining background information from candidates and any criteria for assessing the responses to
background checks including but not limited to criteria which would disqualify a candidate from
District employment. Any such regulations shall comply with minimum requirements of these
Rules regarding Suspect Classes and shall be written and implemented to ensure that
disqualifications do not occur where such disqualification would constitute a violation of the
express provisions of these Rules.

2.6 Application for Employment or Promotion-Filling.

A. All applications for positions with the District shall be made on forms prescribed by the Executive
Director. Such applications shall include information, which is determined necessary or is
mandated by State or Federal law, or regulations. All applications shall be signed, dated and the
truth of the statements contained therein certified by the candidate’s signature.

B. No question on any form of application shall be so worded as to elicit information concerning
inclusion in a Suspect Class of any candidate, except information required to assist with equal
employment opportunity efforts. Furthermore, no inquiry shall be made concerning inclusion in a
Suspect Class during any interview, and all such disclosures, thereof, shall be disregarded, unless
such information is deemed a bona fide occupational qualification.

C. All applicants shall inform the district of any relations or relationships that could constitute a
violation of the District’s policy on nepotism.

2.7 Applicant Preference.

To the extent permitted by laws, candidates may be given preference for positions if:

A. they are current classified employees;

B. they are accreted employees from a merger of District operations with another transit provider
and are given preference as part of the accretion process and pursuant to any plan adopted for
the accretion of another entities employees;

C. they have reemployment rights due to a prior reduction in force or pursuant to a Collective
Bargaining Agreement;

D. they have special status as veterans; or

E. preference is otherwise allowed by state or federal law.

2.8 Proof of Veteran Status.

Proof of eligibility for veteran preference shall be presented to the District at the time the
application is filed.

2.9 Rejection of Application.
A. Applications may be rejected if the Candidate:

1. fails to meet the required minimum qualifications as stated in the job description;

2. has been convicted of a felony or a misdemeanor and the provisions of the Criminal Offender Employment Act, Sections 28-2-1 to 28-2-6, et seq., NMSA 1978, permit such rejection:
   a. Subject to the provisions of the Criminal Offender Employment Act, in determining eligibility for employment, the District may take into consideration the conviction after the applicant has been selected as a finalist for the position; however, such conviction shall not operate as an automatic bar to obtaining public employment unless otherwise provided by law to the contrary.
   b. The following criminal records shall not be used, distributed, or disseminated in connection with an application for any District employment:
      i. Records of arrest not followed by a valid conviction; and
      ii. Misdemeanor convictions not involving moral turpitude.
   c. The Executive Director may refuse to grant or renew, or may suspend or revoke the application of any candidate or employee for District employment for any of the following causes:
      i. where the candidate or employee has been convicted of a felony or a misdemeanor involving moral turpitude and the criminal conviction directly relates to the particular employment;
      ii. where the candidate or employee has been convicted of a felony or a misdemeanor involving moral turpitude and the criminal conviction does not directly relate to the particular employment and if the Executive Director determines, after investigation, that the person so convicted has not been sufficiently rehabilitated to warrant the public trust.
   d. The Executive Director shall explicitly state in writing the reasons for a decision which prohibits the person from engaging in District employment, if the decision is based in whole or in part on conviction of any crime described in Paragraph two of this section. Completion of probation or parole supervision or of a period of three years after final discharge or release from any term of imprisonment without any subsequent conviction, shall create a presumption of sufficient rehabilitation for purposes of Subsection c, ii, above;

3. has made any material omission, false statement or produced any false document in support of the application;

4. has failed to complete the application correctly or submit the application within prescribed time limits;
5. has submitted an application for a job that is closed for recruitment;
6. has attempted to use political influence in securing a District position; or
7. has otherwise violated these Rules.

B. The District shall notify each candidate whose application is rejected.

2.10 Examinations-General.

A. Examinations shall be confined to those matters which test the candidate’s capability in areas which are directly job-related and which fairly, validly, and reliably test the capacity and fitness of the applicant to successfully discharge the duties of the position for which the examination is administered.

B. Examinations may be written, oral, or physical, and may include but are not limited to performance tests, ratings of training, rating of education, or any combination of tests and procedures.

C. New tests may be developed in accordance with established professional techniques and relevant federal laws, regulations, and guidelines with the intent of measuring critical or important knowledge, skills, abilities, job duties, work behavior, or work necessary for successful job performance.

D. No test shall be administered by the District without such test having been approved by the Executive Director or by a duly authorized state or federal agency.

2.11 Exemption from Examination.

A. The Executive Director may exempt from competitive entrance tests those professional and technical persons who possess recognized registration or certification who are applying for positions, which require such registration or certification.

The Executive Director may also exempt from competitive entrance tests certain jobs where job-related ranking measures are not practical or appropriate.

2.12 Selection for Employment.

A. Applicants shall be selected who are best able to perform job requirements without regard for membership or inclusion in a Suspect Class, political affiliation or other non-merit factors.

B. The selected candidate may not start employment until background checks, pre-employment physicals, and drug tests are successfully completed as required.

C. Those candidates interviewed but not selected shall be notified in writing of their non-selection in a timely fashion.

2.13 Emergency Hiring.
A. An emergency hire is the employment of a person when an emergency condition exists that would, in the opinion of the Executive Director, compromise the public health, safety, and welfare, or severely curtail the normal operations of the District.

B. If no candidates are available for the classification, the District may hire an apparently qualified person without testing.

C. An emergency hire may be converted to a probationary, regular, limited term, or temporary employee with the approval of the Executive Director if the individual

   1. passes the appropriate test; or

   2. has taken but not passed the appropriate test; the Department Management certifies that the employee is performing at a satisfactory level; and there are no available candidates for the position.

D. No individual shall hold an emergency appointment longer than ninety (90) days in any twelve (12) month period, unless approved by the Executive Director.

2.14 Reemployment Process

Former employees who separated from the District in good standing may be re-hired by the District within one (1) year from the date of separation without recourse to analysis of additional Candidates. However, nothing herein shall be deemed to require reemployment of former Employees.

A. The individual must submit an application and meet the minimum qualifications for the classification and the re-hire must be approved by the Executive Director.

B. Such individuals will be treated as a new Employee regarding probationary period, leave accrual, seniority, and other employee privileges unless a Collective Bargaining Agreement expressly provides for contrary treatment.

C. Former classified Employees, who were laid off as a result of a reduction in force, may be offered reemployment by the District pursuant to the Rules and Regulations regarding reduction in force.

D. Former employees who are Employees shall be listed as ‘not eligible for rehire’ in the District’s personnel files and shall not be eligible for reemployment with the District if they were terminated for a serious infraction of District rules. The determination as to whether an infraction is serious, or minor is in the sole discretion of the Executive Director but any infraction that constitutes a safety violation shall be deemed serious.

D.E. Former Employees terminated by the District for minor infractions may be considered for re-hire after the expiration of five years from the termination date.

2.15 Probationary Period.

A. New employees shall satisfactorily complete a Probationary Period as a precondition for continued employment by the District.
1. The Probationary Period for new, promoted or re-employed employees is six (6) months.

2. Prior to the expiration of the Probationary Period a supervisor may extend the Probationary Period up to an additional ninety (90) days for further evaluation if, in the opinion of management, it is necessary to determine the employee’s ability to adequately perform the job, and the extension is approved by the Executive Director.

3. If leave without pay is taken during the probationary period, the probationary period shall be extended by the number of days of leave without pay used by the employee.

B. An employee may be separated from employment by the District without a right of appeal or hearing at any time during the probationary period for any reason so long as the reason is not contrary to the express limitations in these Rules regarding Suspect Classes.

RULE 3 – CLASSIFICATION AND COMPENSATION

3.1 Authority.

The District has authority pursuant to NMSA 1978, Section 73-25-5 (G) (6) to appoint, hire and retain employees, agents, engineers, attorneys, accountants, financial advisors, investment bankers and other consultants. In order to implement this authority on an equitable and fair basis the District hereby elects to implement a system of Classification and Compensation as further defined by these Rules. Classification and Compensation may be the subjects of separate District policies which may be changed from time to time independent of these Rules.

3.2 Preparation of Classification System.

The Executive Director or a contractor or agent shall prepare and maintain a Classification System which provides for a grouping of all positions in the District into Classifications on the basis of essential duties, responsibilities, and minimum qualifications required.

3.3 Content of Classification System.

A. The Classification System shall include the descriptions for the various classifications, which may be subdivided or grouped as deemed appropriate. Each Classification shall be assigned a salary range which shall be used by the District to ensure fair pay to employees within each Classification.

B. Written descriptions for each classification shall be prepared by the Human Resources Office, and approved and amended as necessary by approval of the Executive Director. These descriptions shall include:

1. The title of the classification;

2. Examples of typical essential tasks performed, responsibilities, and working conditions;
3. A statement of the minimum qualifications required, including the kind and amount of training and experience, knowledge, skills, and abilities, physical requirements, and job-related personal attributes that an employee should possess; and

4. Signature by the Executive Director and the date of the last revision.

3.4 Revisions to the Classifications.

A. Whenever the creation, abolition, subdivision, or consolidation of individual classifications appears necessary, due to the creation of a new position, change in organization, or change in the duties of certain positions, a classification may be revised and the revision must be submitted to the Executive Director for approval.

B. Any revisions that may reflect a major change in policy should be submitted to the affected Managers, Supervisors and interested parties in order to obtain input concerning such revisions.

C. When a classification is revised, the title of classification and in some cases the salary range assignment may be affected. The salary of individual employees in the revised classification may not be reduced or increased without the approval of the Executive Director.

D. When there are revisions to the classification system as a whole the revisions shall be submitted to the District Board for approval.

3.5 Allocation of Positions to Classifications.

A. Every position in the District shall be allocated to a Classification; all positions substantially similar as to the tasks performed, as to the responsibilities exercised, and as to the minimum qualification requirements shown in the Classification descriptions, shall be allocated to that same Classification.

B. The title of a Classification shall become the title of positions under that Classification and shall be used on all official records and correspondence relating to individual positions within the Classification.

C. Department Management may recommend the allocation or reclassification of positions to one of the Classifications in the Classification System or a new Classification, subject to approval by the Executive Director.

D. Department Management shall submit adequate documentation to support the recommended reclassification of a position to a different classification.

E. Periodic audits to determine whether or not positions are properly allocated shall be conducted. If it is determined that a position is improperly allocated, the Executive Director shall reallocate it to its proper classification.

F. When a new position is contemplated, the position must be formally established before it may be filled. Except as otherwise provided by these Rules, no person shall be appointed to or employed in a position until the position has been allocated to a classification and approved by the Executive Director.

3.6 Types of Employees.
The District recognizes the rights and duties of employees and employers under New Mexico law which includes the employment contract between employer and employee under these Rules. In addition to Classification of employees the District distinguishes between types of employees based upon the following standards.

A. A Classified Employee is a, full or part-time position, the duties of which do not terminate at any stated time. The term Classified Employee includes the status of said employee as further defined herein.

B. An Exempt Employee (Non-classified) is a, full or part-time position, exempt from the classified service under the FLSA.

C. A limited term employee is the employment of a person with benefits for a limited and specified time period, e.g., one year or longer subject to funding for the project or program. Limited term employees are subject to these Rules and all other rules and regulations of the District, except for the right of appeal regarding separation from employment following the expiration of a term or project or program funding.

D. A temporary employee is a person hired to perform a job which is limited in nature or is on a seasonal basis and which will not exceed twelve months of continuous employment unless otherwise approved by the Executive Director. Temporary employees are not eligible for benefits and have limited remedies for employment disputes as stated herein. Temporary Employees may be converted to Classified or limited term status in the same classification and credited with up to six-months service towards completion of the probationary period at the time of the conversion with the approval of the Executive Director. Temporary employees may fill in for Classified Employees on Long Term Disability, Family Medical Leave, Worker’s Compensation or Extended Leave without pay. If the temporary assignment lasts for more than six (6) months, these employees will receive the same insurance and paid leave benefits as Classified Regular Employees, beginning the seventh (7th) month of their employment. However, these employees will remain temporary for all other purposes.

E. An At-Will employee is and employee who is freely terminable and not subject to the requirements of these Rules regarding Disciplinary Action and Just Cause for purposes of termination as further defined in these Rules. At-will employees are not required to serve a Probationary period due to the fact they are freely terminable.

F. A full-time employee is an employee who generally works 40 hours or more in a given work week or 80 hours or more within a given two week pay period.

G. A part-time employee is an employee who works less than 40 hours per week or less than 80 hours in a given two week pay period.

H. Volunteers/interns are defined in these Rules and are subject to the following:
   1. An Intern may or may not be an Employee and internships may be created and managed as needed by the Executive Director. Interns are subject to the same requirements and restrictions as employees prior to performing work comparable to that of an Employee.
   2. Unless otherwise employed by the District, a volunteer is not an Employee but is subject to the same requirements and restrictions as Employees prior to performing work comparable to that of an Employee.
   3. Volunteers are not eligible for District benefits.
4. As defined by the Fair Labor Standards Act (FLSA), a volunteer is an individual who performs a service for the District without expectation of payment for the service.

5. Volunteers and interns are responsible for complying with all policies of the District.

6. Prior to the commencement of any volunteer/intern service for the District, each volunteer shall complete an application, and any provide the District with such information as is normally required of Employees.

7. Volunteers/interns who assignments will include safety sensitive duties will be required to undergo background checks, drug and alcohol tests, and a driver’s license check as needed to work in the District.

G.

3.7 Compensation Policy.

A. Compensation for District employees shall be equitable and competitive with the market and in accord with the District’s ability to pay.

B. It is the policy of the District that any comprehensive Compensation plan, for all classifications of the District is subject to and limited by the availability of funds as determined by the Board. The Board shall be the final arbiter of available funds.

C. An employee working 40 hours, minimum, per week is eligible to receive full benefits. An employee working not less than 21 hours and nor more than 39 hours per week is entitled to partial benefits on a pro rata basis.

3.8 Preparation of the Compensation Plan—Salary Ranges.

A comprehensive Compensation plan for all classifications in the District shall be prepared under the direction of the Executive Director. The Compensation plan shall take into consideration experience in recruiting for positions for the District, prevailing rates of pay in comparison to similar services in public and private employment (to the extent that such data is available), cost of living, and other benefits received by District employees, and the District’s financial condition and ability to pay.

3.9 Adoption of the Compensation Plan.

The Compensation plan (whether a part of a Compensation and Classification policy or otherwise) shall be adopted by resolution of the Board.

3.10 Revision to the Compensation Plan.

The Compensation plan may be revised upon the recommendation of the Executive Director and the approval of the Board.

3.11 Administration of the Compensation Plan.
A. The approved Compensation Plan shall constitute the official schedule of pay for all classifications in the District to which such Compensation plan is applicable. The rates of pay for all persons in the District shall be approved by the Executive Director and no pay shall be approved unless it conforms to the approved Compensation plan.

B. No employee in the District shall be paid less than the minimum nor greater than the maximum of the salary range for the classification as fixed by the Compensation plan unless otherwise provided for in these Rules.

C. The entry pay of any employee of the District shall be the minimum pay in any applicable pay range, unless a higher rate, in-grade hire, is authorized by the Executive Director because of the candidate's exceptional qualifications, difficulty in recruitment, or other valid reason.

D. Increases in pay within the pay range shall be based upon performance and shall require the approval of the Executive Director. Supervisors and the Executive director shall consider an employee’s compliance with District policies and procedures, job performance, competence and job knowledge when evaluating any increase in pay of an employee.

3.12 Individual Pay Adjustments and Promotion.

A. Promotions within a classification will result in a pay rate increase to, either the minimum pay for the Classification based upon the current Compensation plan, or up to 10% increase if the employee's current pay rate exceeds the minimum Compensation for the Classification. The maximum pay for the Classification shall not be exceeded.

B. Promotions from a lower level Classification to any higher-level Classification will result in a pay rate increase to the minimum pay for the Classification based upon the current Compensation plan, or up to a 10% increase if the employee's current pay rate exceeds the minimum Compensation for the Classification. The maximum pay for the Classification shall not be exceeded.

C. A higher pay rate may be authorized upon promotion by the Executive Director because of salary compaction; experience and qualifications; correction of salary inequities; or other valid reasons.

D. The pay of an employee who is laterally transferred to a comparable position shall remain the same unless the Executive Director finds cause for a salary increase due to any change in employment conditions, job assignment or particular duties caused by the change.

E. The pay of an employee who is re-employed after being called to military active duty in accordance with the provisions of Rule 4.21 shall be at a rate equal to what the employee would have attained had the employee not been called to active duty.

3.13 Decreases in Pay

A. If an employee is demoted for their inability or unwillingness to perform the assigned duties and essential functions of their position, then that employee may also suffer a decrease in pay. The amount of the pay reduction shall be determined on a case-by-case basis, but never shall decrease pay below the lowest pay for the Classification.
B. An employee may receive a reduction from their current Classification to a lower Classification with no reduction in pay if the reclassification of the employee’s position is due to reorganization or a reduction in force.

C. The pay of an employee who voluntarily takes a Classification reduction may be reduced but never below the lowest pay for the Classification.

D. Pay of all employees may be decreased uniformly and equitably for budgetary reasons or in the context of a reduction in force or furlough upon the recommendation of the Executive Director and approval of the Board.

E. Affected employees shall be given at least twenty-eight (28) days’ notice and such additional notice as may be required prior to any reduction in force.

F. In no case shall pay be reduced below the minimum rate for the Classification.

G. Pay decreases may be made to types of employees, when deemed necessary by the Board due to budgetary constraints. Reductions in pay shall be implemented in such a manner as to reduce pay to Classified employees as a last resort. In the event that the Board decreases pay by employee types the pay decreases shall be imposed in the following order of priority:

1. Emergency.
2. Temporary.
3. Limited Term.
5. Exempt.
6. Classified

3.14 Performance Based Increases.

A. Performance increases shall not be granted on an automatic basis but shall be granted upon the demonstrated quality of an employee’s performance, subject to the availability of funding.

B. Exempt, Classified and limited term employees whose performances are average or above average, may be granted a performance increase. Any limitations for such increases shall be approved by the Board, and shall be further limited by the pay permitted to the Classification. Periodic performance evaluations may be performed as needed. Management may in its discretion perform performance evaluations at any time but shall generally perform evaluations one (1) year from the most recent of:

1. Rehire or re-employment
2. Initial employment
3. Promotion.
C. Generally, performance increases shall only be considered annually. Any period of leave without pay in excess of thirty (30) days shall not be credited as continuous service in calculation of this annual period. Service in emergency or limited term, or temporary status, when followed without a break in service by probationary employment to the same Classification, will be credited toward calculation of this annual period.

D. The Executive Director may authorize a pay increase within the range permitted for a Classification as an incentive for the retention of exempt, classified and limited term employees who are offered employment outside of the District to retain them in their current positions. The following will be required:

1. The District must have satisfactory proof of an outside job offer.
2. Any pay increase shall be prospective, not retroactive and pay shall never be provided in advance of work performed.
3. Before receiving a pay increase for retention, an employee must sign a written agreement to complete a specified period of service with the District.

E. The Executive Director may authorize a pay increase within the range permitted for a Classification as an incentive for the retention of limited term “seasonal” employees who return to work in subsequent seasons. The following will be required:

1. The District must be satisfied that the limited terms employee’s prior work was satisfactory and that the rehiring of the employee is a benefit to the District because of the employee knowledge and training regarding District operations.
2. Any pay increase shall be prospective, not retroactive and pay shall never be provided in advance of work performed.

3.15 Red Circle Rate.

Red Circle Rate refers to the rate of pay for an employee whose pay rises above the current maximum pay for the Classification to which the employee is assigned, reclassified or transferred. Such employee(s) shall be placed on a salary freeze for a period not to exceed two (2) years and shall not be eligible for any general adjustment (COLA) given during the same period of time. However, the employee may be eligible for a performance increase based on a performance review which will be treated as a one-time award distribution and not added to the employee’s base pay.

During the two-year salary freeze period, if the employee’s rate of pay falls below the maximum within the pay range, the freeze shall be lifted. If at the end of two years, the employee's pay rate exceeds the maximum permitted for the Classification, that employee's pay rate shall be reduced to the maximum for the Classification.

3.16 Overtime Compensation.

A. In order to meet the demands of work, employees may be required to work in excess of the hours designated in their normal work week. Overtime compensation will be paid to employee, as indicated below, for actual hours worked. Supervisors are responsible for scheduling overtime in advance whenever possible and keeping overtime usage to a minimum consistent with the budget. However, the needs of the District and service to its constituents may dictate overtime usage and
supervisors are responsible for raising the budgetary needs and impacts of overtime usage with the Executive Director as early as possible to ensure a proper balance is struck between staying within budget and meeting District service needs.

B. Exempt Employees who work **in excess of more than** the normal work week (forty [40] hours), are not eligible for overtime pay. The basic compensation of exempt employees is based on the amount of work necessary to complete the assigned functions and is not based upon a set number of hours per work week. Time worked **in excess of more than** forty (40) hours per week is not eligible for compensation during the course of employment or upon termination. However, at the discretion of the Executive Director, exempt employees may be granted administrative leave in consideration of their work efforts.

C. Overtime will normally be permitted or required when service demands present no other reasonable alternative. Because of the size of the District and the nature of the Districts business supervisors and managers may require individual employees to perform overtime work based upon their geographical location and access to District property and equipment. However, when a supervisor has determined that overtime work may be equitably distributed, employees may be required to work a proportional share of the overtime assigned to the employee's Classification or work unit. Refusal to accept an overtime assignment may result in disciplinary action.

D. Nothing in these Rules shall be construed as limiting the authority of the District to schedule Employee work time and to limit all work within the Workweek to forty hours. The District reserves the right to reschedule hours or days of work to limit the use of overtime and to require the use of leave by employees when they do not actually work their scheduled hours during a Workweek.

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A department may “flex” a non-exempt employee’s work schedule within the workweek in order to keep the employee’s work hours at the employee’s authorized number of hours for the week. “flex” for this purpose means to temporarily alter the employee’s starting and/or quitting times for a day or days in a work week. For example, if a non-exempt employee who normally works eight hours per day, five days per week, is required to work 10 hours on Monday, the department may require the employee to work two hours less on another day in the same work week in order to keep the employee’s hours at or below the authorized number of hours. “Flexing” may only be done within the same work week, not over a two week pay period, and shall only be done in accordance with department procedure.

C.

D.E. Non-exempt employees shall be compensated for overtime at one and one-half (1 1/2) times their hourly rate of pay unless otherwise specified in the Fair Labor Standards Act (FLSA). Non-exempt employees shall be paid for overtime within the pay period that the overtime is worked unless the employee elects to receive compensatory time in lieu of paid overtime. Such compensatory time shall be accrued at time and one-half.

E.F. The following hours are considered as hours worked for the purpose of qualifying for overtime pay at the rate of time and one-half.

1. Hours actually worked;
2. Paid holidays;
3. Hours allowed for voting time;
4. Jury duty;

5. Hours allowed for court duty when appearing as a witness on behalf of the District or because of an official capacity with the District; and

6. Training time.

F-G. The following are considered hours not worked and will not be counted toward overtime/comp-time eligibility. Excepting only the provisions above, an employee must be physically at work more than forty (40) hours per week and cannot use the following time to obtain overtime/comp-time eligibility:

1. Vacation;

2. Sick leave;

3. Military leave;

4. Funeral leave;

5. Injury leave;

6. Lunch break or meal periods;

7. Comp-time hours used;

8. Standby time.

9. Travel time between home and work.

Employees whose scheduled day off falls on the observed holiday shall be given 8 hours of annual leave or compensatory time. In order to be eligible for holiday pay the employee must be in approved paid status on both the regular scheduled workday immediately preceding the holiday and the regular scheduled workday immediately following the holiday. Approved pay status is defined as any compensable time such as time spent at work, as well as approved vacation, approved sick leave and holidays. Employees will not receive holiday pay for an unpaid or unapproved absence(s) or unapproved sick leave usage (unless the sick leave is from a proven illness) on the regular scheduled workday immediately preceding the holiday and the regular scheduled workday immediately following the holiday.

G. Travel time may be work time depending upon the nature of the travel. The District will maintain a matrix showing compensable and non-compensable travel time when required by the District.

1. Travel from home to work and from work to home is not work time unless the travel is required by the District to an alternative work site that is not the employees regular
work site. Any such paid travel time shall require prior approval by the Executive Director.

2. Time spent by an employee in travel as part of his/her normal activities, such as travel from job site to job site during the employee’s regular working hours, or operation of a transit vehicle for public transit, is work time and must be recorded.

3. Travel performed outside of an employee’s normal work schedule as a result of assigned duties may constitute work time. The Human Resources Office must be consulted in advance to determine whether or not such travel time is work time.

3.17 Compensatory Time.

A. In some cases, compensatory time may be granted to Classified Employees in lieu of cash payment. Classified Employees may accrue and use up to forty (40) hours of compensatory time annually in any single fiscal year. In the last pay period of the fiscal year, all accrued but unused compensatory time shall be paid to the employee, at the employee’s then current regular rate of pay.

B. Classified Employees who separate from the District shall be compensated for all accrued compensatory time.

3.198 Holiday Pay.

A. All Classified, Non-Exempt or Limited Term Employees who are required to work a holiday shall be compensated at the rate of one and a half (1.5) two (2) times their hourly rate for all hours worked and shall also receive pay for holiday time described below as a benefit.

B. All Classified, Exempt or Limited Term employees who do not work on a holiday shall be paid an amount of holiday pay calculated at the employee’s straight time hourly rate. Holiday pay is based on eight (8) hours of pay for full-time employees and prorated hours for part-time regular employees. An employee whose Work-day is in excess of eight hours will be required to utilize compensatory time or annual leave for any absence in excess of eight hours on the day that the holiday is observed unless the required use of leave is prohibited in a CBA or by law.

C. In order to be eligible for holiday pay the employee must be in approved paid status on both the regular scheduled workday immediately preceding the holiday and the regular scheduled workday immediately following the holiday. Approved pay status is defined as any compensable time such as time spent at work, as well as approved vacation, approved sick leave and holidays. Employees will not receive holiday pay for an unpaid or unapproved absence(s) or unapproved sick leave usage (unless the sick leave is from a
proven illness, that has been certified by a medical provider) on the regular scheduled workday immediately preceding the holiday and the regular scheduled Workday immediately following the holiday.

3.189 General Wage/Salary Adjustments.

It is the intent of the District to consider prevailing practices related to cost of living and market trends in establishing wages and salaries which constitute any formal Compensation plan. Any change in Compensation will ultimately be based upon the anticipated affect(s) upon the District budget. The Executive Director, based upon Board of Director’s approval, will make final determinations of any changes regarding Compensation. If general, across-the-board, adjustments in Compensation are approved for District employees, then the change will be effective on a date determined and approved by the Board of Directors. General adjustments in Compensation are separate and distinct from merit based adjustments to Compensation. General adjustments may affect the Compensation plan only, potentially shifting the pay of all employees in relation to the midpoint without changing individual Compensation.


Adjustments to any Compensation plan may be determined periodically through analysis of market trends in comparison to cost-of-living (COL). The District may utilize either market survey results or cost-of-living index data (federal) or a combination of both. If the District’s Board approves an adjustment to a Compensation plan, all employees, except those being red circled (frozen for having reached the top of their salary scale), shall receive the benefits of such general COL adjustments to the pay plan unless such employees are represented by a union and such adjustments, if any, are governed by a collective bargaining agreement.

In determining the total compensation value of the position, benefits and changes to overall costs of the District from Employer contributions must be considered. Base salary plus all employer cost of benefits constitutes total compensation. In comparing benefit packages provided in the labor market, the District may evaluate both level and cost of benefits or other factors as deemed appropriate.

3.201 Pay Upon Separation from Employment.

When employees are separated from employment with the District for any reason, they shall be required to return all District property and equipment and to resolve all financial obligations involving their employment with the District. Any such obligation not resolved prior to separation may be itemized and deducted from their final paycheck as contested amounts which the District claims to the extent that the deduction is legally authorized and not in violation of minimum wage requirements. The employee’s final paycheck, including compensation for all uncompensated hours worked, unused annual leave and overtime not disputed by the District, will be issued on the next regularly scheduled pay period following termination or within 10 days of separation from employment whichever is sooner. Claims for disputed amounts must be timely filed by the employee with the District following issuance of the final paycheck.

3.212 Pay Advancement.

It is illegal for the District to make pay advances to employees and no such advances shall be authorized or made. Furthermore, the District may not pay employer’s share of any paycheck deduction in a manner that would constitute an extension of credit in violation of the New Mexico
State Constitution. Employees who have expended all leave and not returned to work may be required to tender the full amount of any premium or contribution due for continued participation in employee benefits pending their return to work. Nothing herein shall be deemed to require the District to continue to employ an employee or hold open a position for an employee who has not returned to work.

3.223 Standby pay and callout pay.

The Executive Director is authorized to establish administrative regulation regarding standby pay and callout pay for employees required to be available at times not outside the regular work schedule or any such time as the District requires the employee to be available. However, nothing herein shall authorize any pay that would be in violation of the District Compensation and Classification Plan, any Collective Bargaining Agreement or federal and state laws.

3.243 Out of Classification/Temporary Assignment Pay.

The Executive Director is authorized to establish administrative regulations regarding employees who are assigned additional duties and responsibilities of a different job or Classification in addition to their regular job duties. The Executive Director is authorized to increase and employee’s pay by up to ten percent (10%) on a temporary basis for out of classification/temporary assignments. The Executive Director shall provide any employee assigned such additional duties a written statement outlining the specific additional job duties or tasks the employee is responsible for and explaining that any increase of pay under this rule is for the additional job duties and shall only be paid for so long as the employee performs the additional job duties. Nothing herein is intended to allow or require any District employee to perform job duties that they are not qualified to perform. Employees should also be advised that out of classification pay is expressly authorized in instances where an employee is qualified to perform some but not all job duties of another job and that the temporary assignment of partial duties does not indicate that the employee is qualified to perform all the job duties.
RULE 4 – EMPLOYEE WORK WEEK, HOURS AND LEAVE

4.1 Work Week.

   A. The Work Week for full-time employees shall consist of forty (40) hours in a seven-day period. The standard Work Week commences at 12:01 a.m. every Saturday and ends at 12:00 p.m. on Friday. However, the Executive Director has the authority to vary the Work Week if the efficient operation of the District so requires. There are two Work Weeks in a pay period.

   B. The District may impose a work schedule for each particular position altering the specific hour of work for the position to meet District needs. Work schedules may require any combination of hours within a Work Week deemed necessary for District operations including but not limited to split shifts, scheduled work on weekends or holidays, scheduled work in early morning and late evening hours, and scheduled work consistent with routes bid under any current CBA. Failure to follow any District work schedule may be grounds for disciplinary action.

   C. Hours worked within a Work Week shall be tabulated by including all hours actually worked by an employee as contributing toward the forty (40) hour Work Week and only permitting or requiring the use of leave or the payment of overtime when actual hours worked exceed or fall short of the 40 hours required for a Work Week.

4.2 Work Day.

The Work Day shall be determined by the Executive Director to best meet the needs of the organization and the work day may vary by position depending upon the operational needs of the District.

4.3 Work Hours

   A. Full-time District employees have a regular Work Week of forty (40) hours. All Exempt employees and any Classified Employee who performs administrative support work for the District shall generally be required to work from 8:00 A.M. to 5:00 P.M. Monday through Friday unless an alternative schedule is approved for the specific position.

   B. Normal work hours for Classified Employees who do not perform administrative support work shall be set by the supervisor, with the approval of the Executive Director. Consideration should be given to shift requirements, seasonal conditions, special service needs and other activities necessary to provide a continuity of public service. Occasionally, it may become necessary to deviate from the normal work hours due to changing District requirements, availability of properly trained and licensed employees and unforeseen events and conditions. It is the responsibility of supervisors to prescribe work hours in such cases.

   C. Lunch Breaks shall be set by Supervisors with the approval of the Executive Director generally a one-hour lunch break shall be provided to all Classified employees; however, work schedules and other job-related functions may necessitate variations in the scheduling of the lunch break.

   D. Relief periods are permitted for the purposes of breaking up a continuous period of work to improve the well-being and performance of employees. Relief periods may be granted as time permits but should be limited to fifteen (15) minutes, once in the first half of the work shift and
once in the second half. Employees shall not combine two (2) relief periods into one, nor shall they be allowed to combine a relief period with a lunch break. Relief periods shall not be used or skipped in a manner that permits employees to start or leave their work early. Employees are not permitted to leave the work site during a relief period.

Employees may be permitted to have family members or acquaintances at the work site during a relief meal period break if authorized in advance by their supervisor and as provided for by the District’s “Visitors in the Workplace” administrative policy.

Nothing herein shall be deemed to limit the District’s ability to provide reasonable accommodations to employees as the District deems appropriate and in compliance with all relevant laws including but not limited to the Americans with Disabilities Act. Relief periods are considered hours worked; lunch breaks are considered hours not worked. Supervisors shall not permit Classified employees to forego their lunch break or continue working while having lunch or allow any similar changes to the work schedule that would permit or require accumulation of uncompensated overtime. Lunch breaks shall not be eliminated or shortened so that employees can alter their regular schedule in any way unless previously approved by the employee’s Supervisor and the Executive Director.

4.4 Other Employment while on duty for the District.

No employee shall engage in any other employment or self-employment, during the hours the employee is scheduled to work for the District. Violation of this Rule may be grounds for disciplinary action.

4.5 Outside Employment.

A. It is anticipated that employment with the District will be the employee’s primary duty and all employees are required to ensure that any other employment does not interfere with their ability to fully and professionally perform their duties as District employees. All employees engaging in employment other than with the District must have prior District approval.

B. To assure no conflicts exists between District employment and outside employment (including but not limited to conflicts of interest, schedule conflicts or travel conflicts) employees who engage in employment in addition to their District employment are required to obtain written approval on a prescribed form from the Executive Director.

C. Before an employee may work for any other organization or engage in business for himself/herself, approval of the Executive Director is necessary to determine that:

1. Neither the employee nor his/her subordinates shall conduct any business connected with the employee’s outside employment while on duty.

2. There is no conflict between the employee’s official duties with the District and the proposed outside employment.

3. The employee is serving the District satisfactorily and will be able to do so if he/she undertakes outside employment.
D. Approval authorizes outside employment for a period of one (1) year from the time of approval. The employee must re-apply on a prescribed form for continued approval annually so long as employee wishes to continue outside employment.

E. Authorization to engage in outside employment shall be suspended during periods of sick or disability leave.

4.6 Holidays and Holiday Pay

B.A. The holiday schedule listed herein is the official holiday schedule. Holidays are a benefit conferred by the District and the pay for holidays is conditioned upon compliance with these Personnel Rules.

The following holidays shall be observed as paid holidays:

<table>
<thead>
<tr>
<th>Month</th>
<th>Holiday</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 1</td>
<td>New Year’s Day</td>
</tr>
<tr>
<td>January</td>
<td>Martin Luther King Day</td>
</tr>
<tr>
<td>May</td>
<td>Memorial Day</td>
</tr>
<tr>
<td>July 4</td>
<td>Independence Day</td>
</tr>
<tr>
<td>September</td>
<td>Labor Day</td>
</tr>
<tr>
<td>October</td>
<td>Columbus Day</td>
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<tr>
<td>November</td>
<td>Veteran's Day</td>
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<tr>
<td>November</td>
<td>Thanksgiving</td>
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<tr>
<td>November</td>
<td>Day after Thanksgiving</td>
</tr>
<tr>
<td>December 24</td>
<td>Christmas Eve</td>
</tr>
<tr>
<td>December 25</td>
<td>Christmas Day</td>
</tr>
</tbody>
</table>

C.A. All Classified, Exempt or Limited-Term employees shall be paid for holidays listed herein at the employee’s straight-time hourly rate. Holiday pay is based on eight (8) hours of pay for full-time employees and prorated hours for part-time regular employees. An employee whose work day is in excess of eight hours will be required to utilize compensatory time or annual leave for any absence in excess of eight hours on the day that the holiday is observed unless the required use of leave is prohibited in a CBA or by law.

B. D.A. All Classified Employees who are required to work a holiday shall be compensated at the rate of two (2) times their hourly rate for all hours worked.

E.C. Whenever a legal public holiday falls on a Saturday, it will be observed on the preceding Friday and whenever a legal public holiday falls on a Sunday, it will be observed on the following Monday. If Christmas Eve falls on a Sunday it shall be observed on the preceding Friday. Should an employee be on an authorized Leave with Pay when a holiday occurs, the holiday shall be paid and not charged against sick or vacation leave.

D. Any employee whose regularly scheduled day off falls on a day designated as a holiday shall be entitled to an additional day off. The Department head shall schedule this additional day off at the mutual convenience of the District and the employee. This additional day should be scheduled as close as possible to the holiday as practical.

E. Employees whose scheduled day off falls on the observed holiday shall be given 8 hours of annual leave or compensatory time. In order to be eligible for holiday pay the employee must be in approved paid status on both the regular scheduled workday immediately preceding the holiday and the regular scheduled workday immediately following the holiday. Approved pay
status is defined as any compensable time such as time spent at work, as well as approved vacation, approved sick leave and holidays. Employees will not receive holiday pay for an unpaid or unapproved absence(s) or unapproved sick leave usage (unless the sick leave is from a proven illness) on the regular scheduled workday immediately preceding the holiday and the regular scheduled workday immediately following the holiday.

E. Any employee whose regularly scheduled day off falls on a day designated as a holiday shall be entitled to an additional day off. The Department head shall schedule this additional day off at the mutual convenience of the District and the employee. This additional day should be scheduled as close as possible to the holiday as practical.

4.7 Approval of Leave.

A. All requests for leaves of absence, with or without pay, shall be made to the immediate supervisor for approval on forms prescribed by the Executive Director.

B. All requests for leave shall be submitted in advance of the beginning date of the leave, (except requests for unanticipated sick leave which shall be submitted for approval at the earliest possible time), and the duration and kind of leaves shall be recorded on the payroll. Supervisors are responsible for providing sufficient advance notice of any employee leave to ensure that the approval of leave by the Executive Director shall be made at a time and in a manner that permits consideration of District needs prior to the employee’s absence from work.

C. The Executive Director or (in the case of the Executive Director’s leave the Chair of the NCRTD Board) shall regulate annual leave usage by requiring the scheduling and preapproval of leave in order to ensure proper operation of the District. In no circumstances shall an entire department be permitted to take annual leave at the same time. Supervisors shall be responsible for scheduling annual leave and seeking pre-approval of leave so as to avoid unreasonable interference with District operations. Each employee is responsible for monitoring his/her leave balances and ensuring that he/she schedules leave in a manner that will avoid unreasonable interference with District operations and the loss or conversion of leave.

D. Paid leaves of absence are subject to the employee’s accrued leave balance and the scheduling requirements of the Department Manager.

E. All requests for leave without pay are subject to the rules set forth below.

4.8 Accrual and Use of Annual Leave.

A. Annual leave is accrued in accordance with the schedule below. Part-time employees accrue a pro-rated amount of Annual Leave based on their base budgeted hours. Temporary employees do not accrue Annual Leave. Periods of leave without pay shall not count for the purpose of accumulation of annual leave. Employees may accumulate annual leave, but only a limited amount may be carried forward from year to year based on the schedule below. All hours of annual leave that may not be carried forward by the end of last pay period in the calendar year will be credited to the employee’s sick leave balance on the first pay period of following calendar year.
<table>
<thead>
<tr>
<th>Months</th>
<th>Length of Service</th>
<th>Annual Leave Hours/days</th>
<th>Hours Accrued (based on 80 hours worked per pay period)</th>
<th>Maximum Accumulation(^2) (current employees)</th>
<th>Maximum Accumulation(^3) (new employees)</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 – 48</td>
<td>0 thru 4 years</td>
<td>80 hours/10 days</td>
<td>3.077 hours</td>
<td>2 times annual accrual</td>
<td>240 hours</td>
</tr>
<tr>
<td>49 – 108</td>
<td>5 thru 9 years</td>
<td>120 hours/15 days</td>
<td>4.62 hours</td>
<td>2 times annual accrual</td>
<td>240 hours</td>
</tr>
<tr>
<td>109 -299</td>
<td>9 thru 24 years</td>
<td>160 hours/20 days</td>
<td>6.15 hours</td>
<td>2 times annual accrual</td>
<td>240 hours</td>
</tr>
<tr>
<td>300 +</td>
<td>25 years or more</td>
<td>200 hours/25 days</td>
<td>7.69 hours</td>
<td>2 times annual accrual</td>
<td>240 hours</td>
</tr>
</tbody>
</table>

B. Annual leave shall be taken for the actual number of hours absent from a normal work week and in increments of not less than 1/4 hour increments.

B.C. Annual leave requires the scheduling and preapproval of leave from the employee’s supervisor. If an employee calls off on a workday and request to use annual leave for a non-proven emergency event, the leave will be denied. The employee may be placed on LWOP or AWOL for the time not worked and may be disciplined up to and inclusive dismissal.

C.D. Upon termination of employment an employee shall be paid for any annual leave which has been accrued but not taken.

D.E. The preceding rules apply to accruals of leave unless there is a written agreement by the District to the contrary in which case the contract rate shall apply.

E.F. The preceding caps on accumulated leave may be altered if an employee participates in the District sick leave incentive program and transfers sick leave to annual leave. At the time of such transfer and thereafter for the term of any employment with the District the employee’s annual leave cap shall be altered to allow for the higher cap permitted under these Rules.

4.9 Family Medical Leave Act, (FMLA).

A. Eligible employees are entitled to Family Medical Leave (FML) in accordance with the FMLA.

B. Employees who have been employed by the District for a total of at least twelve (12) months and who have worked at least 1,250 hours during the twelve (12) months immediately preceding the start of any period of proposed FMLA leave are eligible employees. During any period of unpaid leave, employees must continue to pay the employee’s share of health insurance premiums.

Based on an employee’s length of service, employees may accumulate and carry over into the first pay period of the calendar year accrued and unused vacation, not to exceed two (2) times the annual maximum accrual.

All employees hired after the effective date of adoption of these revised Rules may accumulate and carry over into the following year accrued and unused vacation not to exceed 240-hours subject to the provisions in section 4.9.
C. Eligible employees are entitled to a total of twelve (12) work weeks of FMLA leave during a rolling 12-month period measured backward from the date on which the employee last used any FML for:

1. Birth of a child of the employee and care for the newborn child.
2. Placement of a child with the employee by way of adoption or foster care.
3. Care for the spouse, child, parent or one who stood in place of a parent of the employee, if that person has a serious health condition.
4. A serious health condition that renders the employee unable to perform any of the essential functions of the employee's position; or
5. Any qualifying exigency when the employee's spouse, child or parent is on active duty or is notified of an impending call or order to active duty in the Armed Forces (including the Reserves and National Guard) in support of a "contingency operation."
6. Any other qualifying event as established by the FMLA.

D. Military Caregiver Leave Entitlement. Eligible employees are entitled to a total of 26 work weeks in a single 12-month period per-covered service member, per-injury, measured forward from the date the employee's leave begins, to care for a spouse, child, parent, or next of kin who is a service member undergoing medical treatment, recuperation or therapy, is on outpatient status, or is on the temporary disabled retired list for a serious injury or illness.

E. Employees are required to use all available paid leave concurrently with FMLA leave.

F. Employees shall not accrue annual and sick leave, nor be paid for holidays while on unpaid FMLA leave.

G. All medical records and correspondence relating to the employee and/or their family’s medical conditions shall be confidential and shall be protected from disclosure to the maximum extent permitted by law. However, the District reserves the right to demand, examine and retain such medical records as are necessary to ensure proper use of FMLA leave.

H. These Rules expressly authorize the District to adopt implementing policies for the administration of the FMLA and procedures for FMLA monitoring and use of FMLA leave.

I. The District shall require medical clearances to the extent and in the manner permitted by law as a precondition for return to work following the use of FMLA leave.

4.10 Sick Leave General Provisions.

Sick leave is provided as a benefit to prevent or minimize an employee’s loss of income during time lost due to personal and family illness or injury. Supervisors are responsible for controlling excessive absenteeism and abuse of sick leave by employees under their supervision. Employees are expected to utilize sick leave responsibly and should minimize their sick leave usage where possible.
G. Sick leave shall be taken for the actual number of hours absent from the office, and in increments of not less than 1/4 hour increments.

A. One hour. All sick leave shall be accounted for by reporting its use on the approved forms for pre-scheduled sick leave or upon returning to work. Employees must submit a sick leave form within 24 hours or by the next scheduled work day after returning from an unexpected illness or injury. Failure to do so may result in leave without pay and disciplinary action. The Executive Director or their designee shall be authorized to approve all sick leave. The Chair of the NCRTD Board shall be authorized to approve all sick leave for the Executive Director.

B. Sick leave may be used for any period of approved absence with pay from regularly scheduled work resulting from an:

1. employee having an illness or injury which renders him/her unable to perform his/her duties;

2. an employee having a medical examination, consultation, or treatment by a licensed practitioner; or

3. an employee’s Immediate Family Member as defined by the FMLA, requiring his/her presence because of injury, illness or medical treatment.

4.1 Accrual Rates for Sick Leave.

A. Sick leave for full time employees shall be accrued at the rate of 3.077 hours per two-week pay period (80 hours per year) to a maximum of seven-hundred-twenty-twenty (720) hours.

B. Sick leave may only be taken in the event of illness of the employee, or the employee’s Immediate Family. The District may require the employee to furnish a written medical statement issued by a licensed physician or practitioner, or other evidence of illness that confirms the illness of the employee or their Immediate Family member, provides an estimate of when the employee will be able to return to work, states whether the employee’s incapacity will require intermittent treatments, states the estimated frequency and duration of such treatments, and provides the estimated period for recovery, if known. If the employee’s leave qualifies as protected leave under the FMLA, the District may require a medical certification as provided by federal law.

4.12 Sick Leave Incentive Transfer/Sell Back Program.

A. The following provisions shall apply to non-represented employees who are not already covered under the Collective Bargaining Agreement’s comparable program. The intent is to give non-represented employees an additional incentive to make judicious use of sick leave.

B. Annually, 15 days prior to the first pay period in December, employees who meet the criteria described below may elect to participate in the sick leave transfer/sellback program by completing the applicable forms.

C. All employees who are separated from the District payroll before one (1) year of employment shall not be eligible to transfer/sell back unused sick leave hours under this program.
D. Employees who have accumulated sick leave in excess of 80 hours are eligible to annually transfer to their vacation leave balance or to sell back up to 80 hours of sick leave per year at the value listed below. Employees who utilize the annual sick leave transfer/sell back program must maintain a sick leave balance of 80 hours after transferring or selling any hours.

E. Those employees who participate in this program and transfer a minimum of 40 hours of sick leave annually will have their maximum vacation accumulation cap changed from the standard (two times annual accumulated leave) to three times the annual accumulation.

F. Employees utilizing the sell back of sick leave (rather than conversion to annual leave) for a calendar year will not be eligible to have their maximum vacation accumulation changed.

The percentage value at which sick leave maybe transferred to vacation leave or sold back is based upon the following:

<table>
<thead>
<tr>
<th>Number of Sick Leave Hours Used Annually (calendar year)</th>
<th>Percentage Transfer/Sell Back Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>24 hours or less</td>
<td>100%</td>
</tr>
<tr>
<td>25 – 32 hours</td>
<td>75%</td>
</tr>
<tr>
<td>33 – 40 hours</td>
<td>50%</td>
</tr>
<tr>
<td>41 hours or more</td>
<td>25%</td>
</tr>
</tbody>
</table>

G. The preceding rules apply to accruals of leave unless there is a written agreement by the District to the contrary in which case the contract rate shall apply.

4.13 Sick Leave Credits Upon Separation.

A. Termination – Any employee who terminates his/her service with the District before retirement shall not be paid or receive any credit for unused sick leave at the time of termination.

B. Retirement – Any employee who retires from the District under the Public Employee Retirement Association (PERA) retirement system and has a minimum of five (5) years creditable District service meets all PERA retirement requirements may be allowed to use his/her unused sick leave balance to extend his/her period of employment with the District prior to separation and retirement. Unused sick leave payment are made through continuation of the member on the regular payroll for the period represented by that payment. Service time on an hour for hour basis. Full-time regular hours of accrued and unused sick leave to extend his/her service time for PERA service time. (Subsection 10-11-2U, 1978 NMSA provides for use of sick leave in this manner.) To be eligible for this benefit, an employee must file his/her intent to retire with PERA, the Executive Director, and the Human Resources Office.

4.13 Misuse of Sick Leave.
Misuse of sick leave by an employee affects the efficiency and productivity of other employees in the workgroup, especially those who seek assistance, advice, or guidance from an absent employee. Therefore, misuse of sick leave shall be cause for disciplinary action.

“Misuse” is considered the use of sick leave for that which it was not intended or provided. Examples of “misuse” may include, but are not limited to, the following:

1. Patterned sick leave usage before and/or after holidays.
2. Patterned period of sick leave usage before and/or after weekends or regular days off;
3. Patterned period of sick leave usage after pay days;
4. Absence following overtime worked;
5. Continued pattern of maintaining zero or near zero leave balances; and/or
6. Excessive absenteeism – the use of more sick leave than is granted.

Leave required by federal or state law such as Family and Medical Leave and Workers’ Compensation shall not be considered when determining whether or not there is misuse of sick leave.

If a supervisor believes that an employee is misusing sick leave, the supervisor has the discretion to require a suitable explanation or documentation to determine whether the sick leave was used in accordance with this policy.

4.14 No Payment for Sick Leave upon Termination.

Upon termination of employment with the NCRTD, an employee shall not be paid for sick leave that has been accrued but not used.

4.15 Reporting Sick Leave.

Sick leave must be reported to the Executive Director, or the employee’s immediate supervisor, at a minimum, two hours in advance of the employee’s start of their work day. Failure to report their absence at a minimum of two hours prior to the start of their work day may result in the employee’s leave being unapproved by the Executive Director or their supervisor.

4.16 Exhaustion of Sick Leave and Absence without Leave.

If an employee has exhausted earned sick leave, and requests additional time off the Executive Director may either elect to reduce balances on any other leave such as vacation or compensatory leave or proceed with appropriate action under these rules in the event the employee fails to report for work as required.

4.17 Reporting Potential FMLA Eligible Leave.

Supervisors should refer to the Family and Medical Leave policy regarding an employee’s absence from an injury, illness or temporary disability. If an employee’s absence is anticipated to be more than three Five (35) days, or once the employee exceeds three-five (35) days of absence, due to
either their own illness/injury or to their family member’s illness/injury, the absence should be reported to Human Resources.

4.18 Reporting Return to Work Prior to Leave Expiration.

Employees not planning to return to work following an extended sick leave must notify their supervisor or the Human Resources Office prior to the expiration of the leave (as defined by the physician’s statement). An employee who does not return to work within the time frame specified by a physician may be subject to disciplinary action.

4.19 Leave Without Pay.

A. The District may grant leave without pay (LWOP) either when required to do so by law or when, in the District’s sole discretion, it determines that the following criteria are met:

1. The employee has exhausted all applicable accrued leave and compensatory time;

2. The employee has demonstrated a clear and reasonable basis for taking leave;

3. The District will not suffer undue hardship by holding open the employee’s current position or is reasonably certain it will have a position of like status and pay available at the same work location upon the return of the employee from LWOP.

4. The leave period will not exceed thirty (30) consecutive calendar days (in the case of probationary employees) or six (6) consecutive months (in the case of Classified Employees).

B. Employees shall not accrue sick or annual leave while on LWOP.

C. Employees are not eligible for paid holidays while on LWOP.

D. Employees who desire to continue insurance and other benefits provided by the District while on LWOP, must make advance arrangements to pay the employees share of monthly group insurance premiums for the covered employee and any covered dependents. Where the LWOP is granted on a discretionary basis (non-FMLA leave) the employee share of all employee benefits provided by the District shall be the full cost of the benefits. Failure to pay insurance premiums or other costs of benefits may result in cancellation of coverage. Payment will be due on the first day of the month but shall have a 30-calendar day grace period before the payment is deemed overdue and the District cancels or suspends the benefit program.

E. LWOP shall be recorded by the District on a Personnel Action Form.

F. Failure to report to work upon the expiration of approved LWOP may be grounds for disciplinary action up to and including termination.

G. Return from leave without pay LWOP shall be recorded by the District on a Personnel Action Form.

H. The Executive Director is granted the maximum discretion permitted by law to implement the provisions of these Rules regarding LWOP as he or she deems necessary and appropriate for the efficient administration of the District.
H.I. Employees may be placed upon LWOP status involuntarily if they are the subject of Disciplinary Action that will result in termination.

4.20 Absence without Leave or Authorization.

A. Employees who fail to appear at work without authorized leave may be considered absent without leave. Unauthorized absence may be grounds for disciplinary action up to and including termination.

B. An employee who is absent from work without authorized leave for three (3) days may be deemed by the Executive Director to have abandoned their job and voluntarily terminated their employment.

C. Employees who fail to obtain prior approval of leave where such prior approval is practicable may be subject to disciplinary action up and to include dismissal.

4.21 Administrative Leave.

The Executive Director may authorize paid administrative leave if there are exceptional circumstances and the Executive Director determines that granting paid administrative leave is in the best interests of the District. Paid administrative leave shall generally not exceed five (5) consecutive days. The Executive Director may grant additional administrative leave when deemed necessary and in the best interest of the District but shall promptly report any such extended administrative leave to the Board Chair along with an explanation of the bases for the leave. Nothing herein shall be deemed to require the Executive Director to grant administrative leave when requested or to limit the Executive Director’s authority to place employees on administrative leave where such action is permitted under these Rules or the law.

4.22 Voting Leave.

In accordance with the provision of NMSA 1978, Section 1-12-42 employees who are registered voters may absent themselves from work for up to two (2) hours for the purpose of voting between the opening and closing times of the polls.

A. District management may specify the hours during this period in which the employee may be absent.

B. These provisions do not apply to any employee whose Work Day begins more than two (2) hours after the opening of the polls, or ends more than three (3) hours prior to the closing of the polls.

C. An employee who abuses voting leave by using it for purposes other than traveling to and from the polling place and voting may be charged with Leave Without Pay and subject to disciplinary action.

D. The Executive Director shall promulgate such administrative policy as he/she deems necessary for the implementation and enforcement of this Rule regarding Voting Leave.

4.23 Court, Litigation or Jury Leave.
A. General Litigation. When employees are absent from work for a job-related reason involving litigation by the employee or the District (including testimony by employees at criminal proceedings arising from work or work-related functions where the employee is not a defendant) or regulatory proceedings, by or on behalf of the District, the employee shall be entitled to leave with pay for the required period. Litigation and regulatory proceedings shall include any depositions, required hearings and any related proceedings where attendance is either required by law or in the best interest of the District. Fees received as a witness, or for appearance, excluding reimbursement for travel and meals, shall generally be remitted to the District unless the employee elects to take annual leave.

B. Jury Service. An employee shall be entitled to leave with pay for serving on a federal or state grand or petit jury. Fees received as a juror, excluding reimbursement for travel, shall be remitted to the District.

C. Compulsory Hearings or Testimony. Employees required to attend court on District matters shall receive wages for up to their regularly scheduled hours. Paid leave shall be granted for all time spent in court, hearings, regulatory proceedings and related proceedings such as depositions and shall include net travel time, (actual travel time less the employee’s regular commute). Employees must submit any witness or appearance fees received, however they shall retain any travel expense reimbursements received.

D. Release from Jury Duty. An employee who is released from jury duty shall report to work upon release or contact their supervisor if it would not be feasible to return to work. Failure to adhere to this provision will be considered unauthorized absence and may result in disciplinary action.

E. At the employee’s option, the hours of leave provided under this rule may be taken as annual leave, provided that the employee has enough annual leave available. The employee under this circumstance may keep any compensation received from third parties for attendance at the proceeding.

F. Those employees who become involved in personal litigation or who testify or appear in non-District matters or are named as criminal defendants are not eligible for leave with pay, but may use accumulated annual leave subject to the conditions set forth in these Rules or the Collective Bargaining Agreement.

4.24 Military Leave.

The District shall provide such military leave as may be required by pertinent laws of the State of New Mexico and the United States of America for any District employee in the military service who is duly qualified for said leave.

4.25 Bereavement Leave.

A. In the event of the death of an employee’s Extended Family member, the District may grant up to three (3) days of bereavement leave for the employee to attend to the funeral arrangement and services. An additional leave of two (2) workdays may be allowed for necessary funeral travel when approved by the Executive Director. Workdays are defined as the employee’s regular daily work schedule. Use of sick leave may be authorized in addition to bereavement leave when deemed appropriate by the Executive Director.

B. The District, in its discretion, may require some proof that a death in the family has occurred.
4.26 Domestic Abuse Leave

District employees shall be permitted to take up to 14 days of unpaid leave per year as Domestic Abuse leave pursuant to NMSA 1978, Section 50 -4A-1 et seq. The District may require that:

A. When domestic abuse leave is taken in an emergency, the employee or the employee's designee shall give notice to the District within twenty-four hours of commencing the domestic abuse leave.

B. The District may require verification of the need for domestic abuse leave, and, if so, an employee shall provide one of the following forms of verification through furnishing in a timely fashion:

1. a police report indicating that the employee or a family member was a victim of domestic abuse;

2. a copy of an order of protection or other court evidence produced in connection with an incident of domestic abuse, but the document does not constitute a waiver of confidentiality or privilege between the employee and the employee's advocate or attorney; or

3. the written statement of an attorney representing the employee, a district attorney's victim advocate, a law enforcement official or a prosecuting attorney that the employee or employee's family member appeared or is scheduled to appear in court in connection with an incident of domestic abuse.

4.27 Paid Administrative Leave for Inclement Weather.

A. Full-Day Closing – The District in its sole discretion my elect to grant administrative leave due to inclement weather. Weather-related paid administrative leave shall be limited to an amount equal to the hours that the employee was scheduled to work and was unable to work or requested or permitted not to work due to the inclement weather. No paid administrative leave shall be granted in consideration of hours worked, hours already approved for leave, or for hours that the employee was not scheduled to work.

B. Partial-Day Closing (delayed opening/early closing) - In the event that normal reporting time is delayed by the District due to inclement weather, employees scheduled and available to work that day (not employees with previously approved leave) may be granted paid administrative leave for the period between their normal scheduled reporting time and the rescheduled reporting time. In the event of an early closing time, those employees actually working that day will receive paid time between the rescheduled closing time and their scheduled or normal closing time.

C. Prior Leave Requests - Employees who have sought or obtained any form of leave, or in the case of non-leave earning employees, have called to advise that they will not be reporting to work, are not be eligible for paid administrative leave under this rule or for a refund of leave balances.

4.28 Critical Incident Leave.

The Executive Director is authorized to allow usage of annual leave, sick leave or compensatory time for employees who are involved in critical incidents including but not limited to assaults or
threats while on the job resulting in anxiety that may impair their ability to work effectively. A critical incident occurs when an employee is directly involved in on-duty violence or threats of violence. The leave is granted to allow the employee to recover from the adverse physical or psychological impacts of the incident. The employee shall be authorized to elect which type of leave to use. Where an employee is receiving compensation from worker’s compensation or other victim compensation relief programs the leave shall be authorized only to the extent that the employees pay plus other compensation does not exceed his or her regular pay. If more than one day of leave is required by the employee’s physician or mental health practitioner then the District may require the employee be examined by a medical practitioner of the District’s choosing to give an independent assessment of the need for any additional leave.

RULE 5- NON-DISCIPLINARY SEPARATION FROM EMPLOYMENT AND RETURN TO WORK

5.1 Layoff - Reduction in Force (RIF).

A. The tenure for all classified employees in the District shall be continuous provided that they are not separated from employment pursuant to these Rules. However, this provision shall not be interpreted to prevent the layoff of employees by the District because of lack of funds or curtailment of work, when made in accordance with these Rules.

B. The Executive Director may propose to lay-off employees through a RIF only for shortage of work or funds, or other legitimate governmental reasons that do not reflect discredit on the services of the employees. The decision to lay-off employees using a RIF shall be made by the Board. All other separations from employment shall follow the pertinent.

C. Nothing in this rule shall limit the ability, prerogative or necessity of the Board to direct the Executive Director to conduct a reduction-in-force for any and all positions and any and all departments.

D. In the event that the Board determines that the District should lay-off employees through a RIF, the Executive Director shall identify organizational units and submit a written RIF plan to the Board for approval. Such organizational units may be recognized on the basis of function, funding source or other factors.

E. The Executive Director shall define the classifications that will be affected within the organizational units and shall provide a rationale for recommendations made in the RIF plan. Prior to submitting the RIF plan to the Board for approval, any employee objecting to the RIF plan or to a layoff that would separate them from employment shall be given notice of their right to a pre-RIF hearing and may request to meet with the Executive Director and shall be allowed to present any arguments or information they have at the pre-RIF hearing.

F. All employees objecting to the RIF plan or who may be laid off shall be provided with notice of any Board meeting at which a RIF plan is proposed for adoption and shall be given the opportunity to be heard at the Board meeting.

G. Upon approval by the District Board of a layoff plan, the Executive Director shall initiate layoffs according to the RIF Plan approved by the Board. The order of layoffs shall be according to the RIF plan. Any employee laid off pursuant to a RIF plan shall be given fourteen (14) calendar days prior written notice of the separation from employment.
H. Right of first refusal within the District. All employees affected by the lay-off shall be provided the following opportunities for re-employment by the District following a layoff:

1. Employees to be affected by the reduction in force (RIF) shall be provided the right of first refusal to any position to be filled within the District for which the employee meets the minimum qualifications, at the same or lower pay range of the position the employee currently holds, unless there is an actual layoff candidate from an earlier layoff exercising reemployment rights for the position;

2. Affected employees shall compete only with other employees affected by the reduction in force for positions subject to the right of first refusal;

3. The District’s list of eligible candidates for open positions subject to the right of first refusal shall be comprised of those affected employees meeting the minimum qualifications of the position;

4. The selection of employees from the list of eligible candidates shall be based on the RIF plan and these Rules.

5. Employees shall have ten (10) days from the date of an offer to accept the position unless another time period is mutually agreed upon.

6. Employees who do not accept an offer shall not lose the right of first refusal to other positions but shall be removed from the list of eligible candidates for the position offered. A laid-off employee may refuse one right of first refusal offer. A second refusal of a right of first refusal offer will serve as a voluntary resignation and the District will have no further employment obligations to the laid off employee.

7. After six (6) consecutive months of layoff status, the District shall have no further right of first refusal or employment obligation to the laid-off employee.

5.2 Return from Reduction in Force.

A. Former employees who were in classified status at the time of separation by a reduction in force and who are granted a right of first refusal under the previous Rule shall return to work as follows:

1. The sequence and timing of return to work shall be according to the RIF plan;

2. Offers of employment shall be made in writing and shall be delivered by a method that provides proof of service or attempted service;

3. A former employee who is offered and accepts employment after lay off shall occupy the position within fourteen (14) days of accepting the offer of employment or forfeit the right of first refusal and have no further right of first refusal.

B. Former employees returned to work according to the provisions of this section shall have that period of time they were laid off counted as time in the service for District (non-PERA) purposes, and do not have to serve a new probationary period if re-employed into permanent status.
5.3 Furlough-Reduced work schedule.

A. In the event of the need for a furlough, the Executive Director shall submit a plan identifying organizational units to be affected by the furlough to the Board for approval to begin the furlough.

B. The furlough plan shall reduce the hours of employment for all employees within the organizational unit impacted proportionate to their regular work hours wherever possible. However, nothing in these Rules shall be interpreted as requiring the District to reduce hours in a manner that would impair District operations. Hours may be reduced on the basis of reduced operations, routes and services if such reduction is authorized by the Board approval of a furlough plan.

C. No furlough shall exceed twelve (12) months.

D. Employees shall be given at least fourteen (14) days written notice of a furlough that reduces their hours.

E. Employees shall be returned from furlough when the reasons for the furlough cease to exist. Any restoration of work hours for furloughed employees shall be allocated across all employees within the organizational unit impacted proportionate to their regular work hours.

5.4 Employee Medical Separation.

A. Employees who have suffered work related injury and cannot perform the essential functions of their position may be placed modified duty as deemed necessary by the District and where such modified duty work is available.

B. Employees who have suffered a job-related injury which is compensable under the Workers’ Compensation Act and are physically or mentally unable to perform the essential functions of their pre-injury position, with or without reasonable accommodation, (to the extent required by the Americans with Disabilities Act) shall be involuntarily or voluntarily separated from employment without prejudice provided:

1. the employee has been afforded modified duty to the extent the work is available and possible;

2. all efforts to accommodate the medical restrictions of the employee have been made and documented; and

3. the District has made reasonable efforts to find other suitable vacant positions at the same or lower pay of the pre-injury/pre-illness position for which the employee meets the established requirements and can perform the essential functions of the job, either with or without reasonable accommodation, or

4. The employee has exhausted all paid leave and FMLA leave, and

C. A former employee who has separated from employment due to job-related injury and who has received or is due to receive benefits under the Workers’ Compensation Act or the New Mexico Occupational Disease Disablement Law shall have reemployment rights in accordance with the provisions of Section NMSA 1978, 52-1-50.1 or 52-3-49.1. A former
employee may apply for his or her pre-injury job or modified job similar to the pre-injury job, or any job that pays less than the pre-injury job that the worker is qualified for subject to the following conditions:

1. the worker's treating health care provider certifies that the worker is fit to carry out the pre-injury job or modified work similar to the pre-injury job without significant risk of re-injury; and

2. the employer has the pre-injury job or modified work available.

D. Employees who have suffered a non-job-related injury or illness and are permanently unable to perform the essential functions of their pre-injury/pre-illness position with or without reasonable accommodation, (to the extent required by the Americans with Disabilities Act), as a result of the physical or mental disability created by the non-job-related injury or illness shall be involuntarily or voluntarily separated from employment without prejudice provided:

1. The District has made reasonable efforts to find other suitable vacant positions within the District for which the employee meets the established requirements and can perform the essential functions of the job, either with or without a reasonable accommodation (to the extent required by the Americans with Disabilities Act); and

2. The employee has exhausted all paid leave and FMLA leave.

E. Notice of Contemplated Medical Separation. To initiate the involuntary medical separation of an employee, the Supervisor shall serve a notice of contemplated medical separation to the employee which:

1. describes the circumstances that form the basis for the contemplated separation;

2. gives a general explanation of the evidence the District has;

3. advises the employee of his or her right to inspect and obtain copies of any documentary evidence relied upon;

4. specifies what the contemplated action is; and

5. states that the employee has fifteen (15) calendar days from the service of the notice to respond in writing to the notice or to request an opportunity for an oral response.

F. Response to Notice of Contemplated Medical Separation:

1. If there is a request for an oral response to the notice of contemplated separation, the Supervisor, or designee, shall meet with the employee within ten (10) days of a request for an oral response, unless the employee and Supervisor, or designee, agree to an extension of time.

2. The purpose of the oral response is an opportunity for the employee to present his or her side of the story. It is an initial check against mistaken decisions, essentially a determination of whether there are reasonable grounds to support the proposed involuntary separation.
G. Notice of Final Medical Separation:

1. If the employee does not respond to the notice of contemplated separation, the Executive Director shall issue a notice of final separation within ten (10) days following the response period.

2. If the employee has filed a written response or has been provided an opportunity for oral response, the Supervisor shall provide recommendations to the Executive Director no later than ten (10) days from the date of the receipt of the response or the date of the oral response. The Executive Director shall render a written decision on the notice of final separation no later than ten (10) days from the date of the receipt of the Supervisor’s recommendation.

3. The written decision and the notice of final separation shall:
   a. Specify the action to be taken;
   b. Describe the circumstances which form the basis for the involuntary medical separation;
   c. Give a general explanation of the evidence;
   d. Specify when the final separation will be effective; and
   e. Inform the employee that the final separation may be appealed to an independent hearing officer by submitting a written appeal to the Executive Director within fifteen (15) days of the effective date of the separation. The appeal must specify the basis for the appeal.

H. Appeal of Final Medical Separation:

Appeals of the Executive Director’s decisions may be made pursuant to the provisions of these Rules regarding Appeals.

RULE 6 - DISCIPLINARY ACTIONS

6.1 Oral and Written Reprimands

A. Supervisors may reprimand an employee for just cause whenever they violate these Rules, or the law. Oral Reprimands shall be documented on a form prescribed by the Executive Director. Written Reprimands may be issued for just cause by the Executive Director with or without a recommendation of the direct Supervisor. Oral and Written Reprimands may not be administratively appealed but the employee may respond to the Oral or Written Reprimand and may require that a record of the response be included in the employee’s personnel file.

B. If after six (6) months of continuous employment (excluding all leave) from the effective date of an Oral Reprimand the employee has:

1. shown improvement and;

2. no other infraction has occurred; and
3. the reprimand did not involve a safety violation;

then he/she may request that documentation of the Oral Reprimand be removed from his/her personnel file. Such requests should be made to the Executive Director and approved by the respective supervisor. Approval shall only be granted if the employee demonstrates to the Executive Director’s satisfaction that the above criteria have been met.

C. Written reprimands will not be removed from an employee’s personnel file unless required by a court of competent jurisdiction.

6.2 Dismissal, Demotion, Suspension

The Executive Director shall have the authority to enforce and administer these Rules by all legal and proper means. Appropriate disciplinary action shall include Dismissals, Demotions and Suspensions. Demotions shall generally be utilized only in instances where the employee has demonstrated an inability to perform job duties and has performance or attendance issues but has not engaged in willful or negligent misconduct under these Rules. Even in the absence of an appeal by the employee, the Executive Director, by his own authority, may affirm, modify, or reject any Disciplinary Action taken by a Supervisor.

A. Employees in limited-term, temporary, emergency or probationary status may be dismissed, suspended, or demoted without cause and for any reason the Executive Director deems appropriate. Employees must be advised in writing of the reasons for the dismissal, demotion, or suspension.

B. Classified employees (who have successfully completed their probationary or extended probationary period) may be dismissed, demoted, or suspended only for Just Cause.

C. The dismissal, demotion or suspension of a classified employee shall be accomplished according to the following procedures:

1. To initiate the suspension, demotion, or dismissal, the Supervisor shall serve a Notice of Contemplated Action on the employee by such means as are reasonably calculated to ensure the employee has actual notice of the proposed Disciplinary Action. In general, the District shall send the notice by registered mail to the employee’s current address as indicated in the employee’s personnel file. Additional notice may be given in person, by electronic mail or in any other manner that the District deems appropriate.

2. The Predetermination Meeting shall be set for a date within ten (10) working days of the Mailing of the Notice of Contemplated Action.

Within ten (10) days from the date of the predetermination meeting, the Supervisor or designee shall notify the employee in writing if no disciplinary action will be taken or shall serve the employee with a Disciplinary Action Form and supporting documentation The Disciplinary Action Form shall state what disciplinary action is being recommended and when the proposed action will take effect, absent an appeal to the Executive Director.

No Disciplinary Action shall be final until the Executive Director has approved and signed the Disciplinary Action Form.
D. The dismissal, demotion or suspension of an At-Will employee may be accomplished according to the preceding procedures for Classified employees but the District reserves the right to abridge or suspend the procedural protections for an At-Will employees to the maximum extent permitted by law. The District may, in its sole discretion, elect to offer Exempt and At-Will employees the option to voluntarily resign their position prior to taking a Disciplinary Action under these Rules.

D. E. A notation shall be made in the Personnel file of employees terminated by the District to indicate any restrictions on rehiring pursuant to these Rules.

E. Employees who have been dismissed from employment for disciplinary reasons shall not be eligible for rehire and a note or record to that effect shall be retained in the employee’s personnel file.

6.3 Appeals of Dismissals, Demotions and Suspensions.

A. If an employee wishes to appeal a dismissal, demotion, or suspension, the employee shall submit a written Notice of Appeal to the Executive Director within ten (10) days from receipt of the Disciplinary Action Form. The written notice of appeal shall state the specific reason(s) the employee disagrees with the discipline and any other basis for the appeal.

B. The Executive Director shall review the written Notice of Appeal and respond in writing by preparing a written Notice of Final Decision within ten (10) days from the date of actual receipt of the Notice of Appeal. The Executive Director’s decision may affirm, modify, or reject the disciplinary action. The Executive Director may, within this time period, request a meeting with the employee to discuss the appeal and its resolution.

C. The Executive Director may, when deemed in the best interest of the District, extend the time limit for providing the employee with the Notice of Final Decision.

6.4 Appeal of the Notice of Final Decision.

A. Selection of Hearing Officer.

Only suspension, demotions and termination may be appealed under this section. In order to file a valid appeal under this section, an employee shall submit a written Notice of Appeal to the Executive Director within ten (10) calendar days of receipt of the Executive Director’s Notice of Final Decision. The Executive Director shall, within twenty (20) days from the date of service of the Notice of Appeal, appoint an independent hearing officer to hear the appeal. Appeals not filed within ten (10) days shall be dismissed for lack of jurisdiction.

1. The hearing officer shall be a licensed New Mexico attorney or a person experienced in personnel administration. The NCRTD shall maintain a schedule with the names of one or more persons qualified under these rules who is willing and able to fulfill the requirements of hearing officer.

2. Prior to proceeding with the appeal, the hearing officer shall provide each party an opportunity to state any objections they have regarding the hearing officer. After considering any objections, the hearing officer in his or her sole discretion shall determine whether he or she can afford a fair and impartial hearing.
3. The hearing officer shall verify to both parties that he/she has no conflicts of interest and can remain fair and impartial prior to proceeding with the appeals hearing.

4. No person shall discuss the merits of the appeal with the designated hearing officer unless both parties are present or their representatives are present. Ex parte contacts and any other actions which could cause bias are prohibited and shall be regulated by the hearing officer to ensure the process remains fair and impartial. Hearings on appeals shall comply with the requirements of fundamental due process and shall at a minimum provide, notice, an opportunity for the parties to be heard, the opportunity for parties to submit witnesses and evidence under oath, and the right to cross-examination.

B. Hearings.

1. The hearing officer will determine the date and time of the hearing.

2. A party may appear at the hearing through a representative, provided such representative has made a written entry of appearance and divulged any potential conflicts of interest prior to the hearing date.

3. The hearing officer may clear the room of witnesses not under examination, if either party so requests. The District is entitled to have the Executive Director or his/her designee, in addition to its representative, in the hearing room during the course of the hearing, even if the person may testify in the hearing.

4. The District shall present its evidence first.

5. Oral evidence shall be taken only under oath or affirmation.

6. Each party shall have the right to:

   a. Make opening and closing statements;

   b. Call and examine witnesses and introduce exhibits; and

   c. Offer rebuttal evidence.

   d. Cross-examine the opposing party’s witnesses.

7. The hearing shall be conducted in an orderly and informal manner without strict adherence to the rules of evidence that govern proceedings in the courts of the state of New Mexico. In order to support the hearing officer’s decision, there must be a residuum of legally competent evidence admissible to support a verdict in a court of law.

8. The hearing officer shall admit all evidence, including affidavits, if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs. The hearing officer shall exclude immaterial, irrelevant, or unduly cumulative testimony.
9. The hearing officer may take administrative notice of those matters in which courts of this state may take judicial notice.

10. The rules of privilege shall be effective to the extent that they are required to be recognized in civil action in the District Courts of the State of New Mexico.

11. The hearing shall be recorded by a sound-recording device under the supervision of the hearing officer.

12. The District carries the burden of proof by a preponderance of the evidence.

13. At least fifteen (15) days prior to the hearing, the parties must submit to the hearing officer:
   a. a position statement
   b. a witness list
   c. an exhibit list.

14. At least five (5) days prior to the hearing a party must file any objections to the other party’s witnesses or exhibits with the hearing officer. Witnesses who are not disclosed by this deadline or the deadline contained in a pre-hearing order, if any, shall not be permitted to testify except for good cause shown and to prevent manifest injustice.

C. Hearing Officer’s Decision

1. The hearing officer’s decision shall be issued within twenty (20) days of the hearing, unless an extension is otherwise agreed to by the parties. The hearing officer’s decision shall include findings of fact and conclusions of law. The hearing officer shall provide a copy of the decision to the parties by registered mail.

2. The hearing officer may uphold, modify, or reverse the decision of the Executive Director.

3. In the event that the hearing officer order includes an award of back pay, the employee shall provide the District with a sworn statement and documentation of any gross earnings and unemployment compensation since the effective date of the disciplinary action. The District shall be entitled to offset earnings and unemployment compensation received during the period covered by the back pay award against the back pay due. The hearing officer shall retain jurisdiction of the case for the purpose of resolving any disputes regarding back pay.

4. The decision of the hearing officer shall be the final step in the administrative process provided for by these Rules.

RULE 7 - ADMINISTRATIVE DISPUTE RESOLUTION PROCEDURES

7.1 Purpose
The purpose of this procedure is to secure, in an atmosphere of courtesy and cooperation, an equitable solution to personnel matters, employment practices, or job-related conflicts that may arise. This procedure may not be used for appealing disciplinary actions. Disciplinary actions must be appealed according to the provisions in preceding Section of this Rule.

7.2 Jurisdiction.

All classified employees and limited term, non-probationary employees within the District are afforded the right to utilize the Administrative Dispute Resolution Procedures.

When two or more disputes are filed which require investigations of a common question of law or fact arising out of the same circumstances, the Executive Director may consolidate them into one dispute.

Disputes must be current, concerning matters having taken place within ten (10) days of the violation.

Case files and record keeping of hearings are the Executive Director’s or designee’s responsibility.

7.3 Dispute Defined.

A dispute may be considered as an expressed dissatisfaction, whereby an employee believes that he/she has been unfairly treated in violation of the District’s Personnel Rules and Regulations regarding personnel matters. These Rules and Regulations are expressly limited to personnel disputes and do not cover non-personnel matters or matters that are covered by a separate legal regime such as worker’s compensation.

7.4 Form of Complaint.

The Complaint shall at a minimum contain the following. However, the lack of complete information at the time of filing shall not constitute grounds for refusal to accept a complaint.

A. The date on which the alleged violation of the Rule took place.

B. The specific Rule allegedly violated and about which the complaint is made.

C. Facts and other pertinent information to support the allegations.

D. The remedial action sought by the complainant.

7.5 Complainant’s Rights.

At any stage during the presentation of the complaint, including the counseling stage, the complainant shall be free from restraint, interference, coercion, discrimination, or reprisal and shall have the right to be accompanied, represented, and advised by a representative of his/her own choosing.

7.6 Review Procedures.

A. Step 1: Immediate Supervisor Level
Employee submits, in writing, his or her complaint in regard to a violation of the Rules within ten (10) days of the violation, to his or her Supervisor. The Supervisor shall respond within ten (10) days of receipt of the written complaint by speaking with the employee. If the complaint is not resolved at this meeting, the immediate Supervisor shall provide to the employee a written response. If a satisfactory solution is not reached within ten (10) days after speaking to the immediate Supervisor, the grievance may be submitted to Step 2 by filing the complaint with the next higher Supervisor within five (5) days after receipt of the written response by the immediate Supervisor. If the immediate Supervisor is the highest level of Supervisor for the employee, the grievance shall be moved directly to Step 3.

B. Step 2: Second Level

If the complaint is not satisfactorily resolved at Step 1, the complaint may be submitted to any intermediate Supervisor who is above the direct supervisor but below the Executive Director. The intermediate Supervisor shall respond in writing within ten (10) days of receipt of the written complaint and may, within this time period, request a meeting with the employee to discuss the complaint and its settlement. If the complaint is not satisfactorily resolved at this level, the complaint may be submitted to Step 3 by filing with the Executive Director within five (5) days after receipt of the written response by the intermediate Supervisor.

C. Step 3: Executive Director

If the complaint is not satisfactorily resolved at Step 2, the complaint may be submitted to the Executive Director. The Executive Director shall respond in writing within ten (10) days of receipt of the complaint and may, within this time period, request a meeting with the employee to discuss the complaint and its resolution. The Executive Director’s decision shall be final.

RULE 8 – RECORDS AND REPORTS

8.1 District Official Personnel Records.

The official personnel records for each employee of the District shall be maintained in the Human Resources Office. Such records shall include a copy of the employee’s application, the original copy of each performance appraisal reports, and any other PAF or other pertinent information. Such records shall be made available for inspection by the employee and his/her supervisors, as well as any person employed by the District and authorized by the Executive Director to do so.

8.2 Employee Personnel Files.

Employees shall be provided a copy of any material placed in their official personnel record and may present a written response to any material in the record to be attached to the original material.

8.3 Confidentiality of Records.

A. The District shall maintain personnel records confidential to the extent permitted by law. Personnel records which are subject to inspection under the New Mexico Inspection of Public Records Act or other state and federal laws, or by order of a court of competent jurisdiction, or a validly issued subpoena, will not be kept confidential... Any personnel records may be inspected with the written permission of the employee or by authorized representatives, agents and employees of the district without the employee’s permission.
B. For the purpose of preserving the confidentiality of personnel records, the following records may be inspected by the public only with the written permission of the employee. These records include records pertaining to:

1. physical or mental examinations and medical treatment of persons confined to any institution, use of sick leave, FMLA leave;
2. letters of reference concerning employment, licensing, or permits;
3. letters or memoranda which are matters of opinion;
4. documents concerning infractions and disciplinary actions;
5. performance appraisals;
6. college transcripts; and
7. military discharge if other than honorable.

RULE 9 – EMPLOYEE BENEFITS PROGRAMS

9.1 Employees are eligible to receive the following benefits subject to the District and any third party rules and regulations governing said benefits:

A. Public Employees Retirement Association of New Mexico (PERA);
B. New Mexico Retiree Health Care Authority;
C. Social Security;
D. 457 Deferred Compensation Plan;
E. Insurance benefits;
F. Additional fringe benefits identified in these Rules and administrative policies.
G. Benefits conferred as a part of any District approved programs for employee recognition, employee wellness, and employee morale and team-building.

9.2 Part-time Employees

Shall be eligible for participation in the above-mentioned benefits, on a pro-rated basis, subject to rules and regulations governing said benefits. Pro-ration is based on the ratio of hired hours to the number of hours in the normally scheduled work period.

9.3 Temporary Employees

Temporary employees Shall not be eligible for participation in the benefits identified herein. When a temporary employee is converted from temporary to regular or limited-term, without a break in continuous service, the following shall apply:
A. Eligibility for participation in retirement benefits shall be based on the date the employee was converted to probationary, or limited-term status.

B. The service date, as defined in these rules and regulations, shall be used in computing annual leave and sick leave;

C. Eligibility for participation in any pay increase process shall be based on the date the employee was converted to probationary, or limited-term status;

D. If the employee is converted to a Classified or limited-term position, the date of this conversion shall be used in computing the probationary period.

9.4 Limited-term Employees

Shall be eligible for participation in benefits:

RULE 10.0 Continuing Education and Tuition.

10.1 -

-Eligibility

1. All full-time non-probationary employees whose annual performance has been rated as satisfactory or better are eligible for reimbursement. Part-time non-probationary employees working 20 hours per week or more whose performance has been rated as satisfactory or better will be eligible for reimbursement on a pro-rated basis according to the number of hours worked. Temporary and probationary employees are not eligible for reimbursement.

2. An employee must have worked for the District for a period of one continuous year. Temporary service does not apply toward the one-year period.

B. Guidelines

-Reimbursement will only be made for coursework through an accredited college or university (including on-line coursework). An accredited college or university is one that is recognized by one of the following regional accrediting associations:

1. North Central Association
2. Northwest Association
3. Middle States Association
4. New England Association
5. Southern Association
6. Western Association
7. Distance Education Accrediting Commission

10.2 Course Requirements

Courses must meet one of the following guidelines to be eligible for reimbursement:
A. Degree Seeking Students:

aa. Any class necessary to obtain a degree (must be related to the employee’s current position or to any position within the district and with the authorized Career Path Plan approved by the Human Resources Director.) If there is any question about the relationship, employee should provide a written explanation.

c. Employees may be reimbursed 100% (subject to the availability of budgeted funds) of eligible tuition fees up to twelve (12) credit hours per calendar year provided the employee receives a grade of “B” or better in the class. Employees who feel they are unable to earn a “B” (3.0) or better due to a disability and would like to request a reasonable accommodation, should contact the Human Resources Director. The employee will provide a disability certification from the college or university and each request will be reviewed on a case-by-case basis. Maximum reimbursements will be equivalent to $2,500 per fiscal year for each eligible Employee (see above). PASS FAIL COURSES ARE NOT COVERED.

d. The District will not pay for incidentals not covered by tuition, such as books, parking, lab fees, travel expenses and supplies, etc..

e. Employees must use personal time to attend class(es) unless prior approval has been granted by the Department Head.

f. Employees who receive financial assistance for their education from other sources (i.e. scholarships, grants, etc.) must disclose the source and amount on their Tuition Reimbursement Application. Based on the amount of financial assistance received, the District will adjust the tuition reimbursement.

g. In order to assist with budgeting, employees must declare in advance their intent to take classes and must receive approval prior to taking classes. If the employee does not obtain approval before the class starts, there is no guarantee that the request for reimbursement will be approved.

h. Funds for reimbursement will be deducted from the department’s budget and are subject to limits imposed by the annual budget.

3. Application Process

a. Employees must submit a Tuition Reimbursement Application prior to the start of classes. Also submit course of study and COPY OF TUITION RECEIPT.

b. The employee must sign a reimbursement agreement authorizing the offset against his/her final paycheck in event that repayment may be necessary.

c. The application will be routed to the employee’s supervisor, Department Head, Human Resources Director, and Executive Director for approval.
4. Reimbursement Process
   a. Upon completion of the class the employee must submit a copy of the approved Tuition
      Reimbursement Application, grade-slip showing a “B” grade or better for each class, and
      tuition receipt to their Department Head for processing. When applicable, state and federal
      taxes will be deducted.

   b. The reimbursement will be processed through Accounts Payable and the employee will
      receive a separate check.

5. Repayment
   a. An employee that terminates employment must repay tuition reimbursements they have
      received within the last 12 months.

   b. Payments will begin with the last paycheck and will be evenly distributed over a six-
      month period.

   c. If the employee’s last paycheck is distributed prior to Human Resources’ knowledge of
      the termination, repayment will be handled through the District’s billing process.

   d. After six months, any unpaid balances will be forwarded to collections and the employee
      will be responsible for the cost of the collection, including any attorney fees and court costs.

   e. Exceptions to the repayment requirement may be made for special circumstances (i.e.
      retirement). Exceptions may be granted through the Department Head, with
      recommendation of the Human Resources Director and final approval by the Executive
      Director.

RULE 110 – WORKER’S COMPENSATION BENEFITS

110.1 Reporting on the Job Injuries

   Employees are insured under the provisions of the New Mexico Worker’s Compensation Act,
   NMSA 1978 §§ 52-1-1 et seq., (the “Act”) for job-related injuries or occupational illnesses and
   both the employer and employees must fulfill their respective legal duties under the Act including
   reporting on-the-job injuries.

   A. Employees are required to report all on the job accidents, regardless of how minor. The
      supervisor shall ensure that the employee immediately receives all required medical treatment.

   B. An NCRTD accident form is available from the Human Resources Office and shall be
      completed by the employee. Employer’s First Report of Injury or Illness packet shall be
      completed by the supervisor within 24 hours of the incident. In addition, the employee must
      submit a HIPAA compliance Authorization for Disclosure of Protected Health Information
      form within twenty-four (24) hours of the incident, whenever possible.

110.2 Medical Procedures
A. Emergencies.

In the event of traumatic on the job injury/illness situations or when a medical emergency exists, the employee may go to the nearest emergency room or urgent care center. All follow up medical treatment must be coordinated by a physician designated by the District. If the District has not designated a physician the employee may see their personal physician.

B. Non-emergencies.

An employee with a non-emergency, work related injury/illness shall see a physician designated by the District or their personal physician. That physician will provide medical treatment and/or initiate all referrals for advanced or specialized care, depending upon the nature of the medical problem.

C. Post-Accident Alcohol and Controlled Substance Testing (CDL and non CDL).

These incidents are not covered under the Worker’s Compensation policy and instead shall be covered by the District’s Drug and Alcohol policy.

D. Compensation.

The decision to approve or deny a claim for benefits is made by the District’s insurer of record, not by the District itself. If an employee’s claim is approved for benefits, any and all payments relating to the injury/illness will be made directly by the District’s insurer.

E. Waiting Period.

There is a seven (7) day waiting period before an employee becomes eligible to receive payment for lost wages. Employees shall use sick leave; vacation leave or accumulated compensatory time for any time missed from work due to the work-related injury/illness so that pay will continue from the District. If available leave has been exhausted, the employer will grant Leave without Pay (LWOP) for missed work time and all applicable provisions of the personnel rules will apply including those related to the payment of insurance premiums.

F. FMLA leave.

Any applicable FMLA leave for serious health conditions as defined under FMLA, will run concurrently with employee’s worker's compensation absence. Because worker's compensation absences are not unpaid leave, the provisions for substitution of paid leave is not applicable. An employee whose Worker’s Compensation leave exceeds the FMLA leave period and who has exhausted all paid leave will be placed on LWOP pursuant to Section 4.13 of the personnel rules and all applicable provisions will apply including those related to the payment of insurance premiums.

RULE 124 – RETURN TO WORK (FROM ILLNESS/INJURY) PROGRAM

124.1 Generally, the District’s Return to Work (RTW) Program attempts to provide temporary modified work duty to employees who have suffered an injury or illness and as a result are not immediately able to return to their regularly assigned duties without modification to their work duties. The goal of the RTW Program is for the District to retain and accommodate injured/ill employees and to work with the
employee’s physician to transition the employee back to full, unrestricted and unmodified work duties. The availability of modified work duties under the RTW Program is within the sole discretion of the District unless otherwise required by law. Notwithstanding any rule or provision herein to the contrary, the District shall at all times comply with requirements of the Americans with Disabilities Act and shall provide reasonable accommodations and such other measures as are required by law in the case of disabled persons.

124.2 Employees who experience an on the job injury or illness which results in their temporary inability to return to the full range of duties of their regular position classification, shall accept transitional work assignments if offered by the District.

124.3 Employees who experience an off the job injury or illness which results in their inability to return to the full range of duties of their regular position classification may be eligible for transitional work assignments if offered by the District and if consistent with the provisions of New Mexico and District workers’ compensation laws, rules and regulations.

124.4 Transitional work assignments will consist of work which is within the restrictions outlined by the employee’s health care provider. The employee’s health care provider must provide a specific listing of limitations and the anticipated recuperation time prior to the employee’s returning to work without limitations. Such assignments may include, but are not necessarily limited to:

A. Part-time or fulltime, with a temporary waiver of certain regular duties (reasonable accommodation), in an employee’s regular position classification; or

B. Part-time or full time in another capacity.

124.5 The District may require an employee to submit to an examination by a physician chosen by the District at the District expense, if the duration of the temporary assignment appears to be excessive, if the restrictions or limitations cannot be adequately interpreted or clarified with the employee’s physician, or if the District has reason to believe the employee’s release for duty is inconsistent with job requirements.

124.6 Employees assigned to transitional work assignments will receive their regular hourly rate of pay for their regular job classification for the number of hours worked in the transitional work assignment.

124.7 Assignment to transitional work depends upon the availability of such work and of work suitable to the employee’s medical restrictions. A transitional work assignment may be terminated at any time by the District.

124.8 Priority will be given to workers with job related injuries or illnesses and employees with non-job related injuries or illnesses who seek similar accommodations may be subject to personnel actions, modified work assignments or work schedules, or required use of leave in order to provide transitional work assignment to an employee injured on the job.

124.9 In no event will a modified duty assignment last for more than ninety (90) days in a 12-month rolling calendar year. This applies to both work-related and non-work related conditions. The 90 days may be continuous or intermittent. If the employee is not able to return to full duty following 90 days of continuous or intermittent modified duty assignment, an evaluation will be conducted by the Human Resources Office to identify available options, which may include consideration of medical retirement or separation. The District reserves the right, for good cause, to discontinue a modified-duty assignment at any time. Good cause shall include, but not be limited to,
unavailability of temporary work, operational requirements of the District which make temporary assignment impracticable, or the employee’s inability to satisfactorily perform the duties of the modified duty assignment.

124.10 Employees refusing to work transitional work assignments may not be eligible for workers compensation benefits or paid leave benefits. Transitional work assignment for employees with workers’ compensation claims or receiving workers’ compensation benefits will be made consistent with the provisions of New Mexico Worker’s Compensation Act, NMSA 1978 §§ 52-1-1 et seq., (the “Act”) along with State and District rules. Employees refusing transitional work assignments maybe subject to corrective action. If the employee’s health care provider will not authorize transitional work, the District may take appropriate action as allowed by law.

122.11 Employees unable to return to work due to injury or illness maybe separated from District employment as provided for under these Rules.
DEFINITIONS

All terms capitalized for other than grammatical purposes shall have the following meanings:

**Administrative Dispute**: A written statement of dissatisfaction about the administration of the Personnel Rules and Regulations of the District as it affects an individual employee or group of employees.

**Administrative Leave**: Leave that is authorized by the Executive Director with or without pay for an employee during the time a fact-finding investigation or other administrative proceeding is pending completion or in other circumstances deemed in the best interest of the District.

**Anniversary Date**: The initial date of employment in a budgeted position and the date from which vacation leave, sick leave and longevity will be computed.

**At–Will Employment**: The employment relationship of employees hired with a written understanding and agreement at the time of employment that they may be terminated at any time with or without cause or notice.

**Board**: means the Board of Directors of the NCRTD.

**Bona fide occupational qualification**: Means a qualification reasonably related to the satisfactory performance of the duties of a job, and for which where there is factual basis to believe that a person lacking the qualification would be unable to perform satisfactorily the duties of the job with safety and efficiency.

**Candidate**: Means any person who has qualified under these Rules for employment in a specific classification and who may or may not have an outstanding job offer from the District but who has not yet become an employee.

**Classification**: Means one or more positions so similar in the essential character of their duties and responsibilities that the same pay range, title, and qualification requirements can be applied.

**Classification Title**: A name assigned to a position that indicates a particular level of rank and specific duties and responsibilities. This term is sometimes used interchangeably with the term Job Title.

**Classification and Compensation Plan**: The District’s official plan that classifies positions and sets compensation rates.

**Compensation**: means the salary or wages and all other forms of valuable consideration earned by, or paid to, any employee in remuneration for the services in any position.

**Day or Days**: any reference to day or days means business day or days and shall include normal dates of operation and excludes weekends and holiday unless these rules expressly provide otherwise.

**Demotion**: A demotion is an action changing an employee’s position to another position with a lower salary range and a reduction in pay. Demotions only may be made to a position in a classification for which the employee is qualified. Demotions shall generally be used only where an employee has performance or attendance issues and has not engaged in willful or negligent misconduct constituting a violation of these Rules.
Disabilities: A physical or mental impairment that substantially limits one or more major life activities of an individual, a record of such impairment, or being regarded as having such an impairment.

District: The North Central Regional Transit District.

Disciplinary Action: There are several types of disciplinary action that may include, whether individually or in combination, an official reprimand (verbal or written), suspension, reduction in salary, demotion, or termination.

Disciplinary Action Form: means a form or forms approved for use by the Executive Director for the purposes of documenting the District’s decisions regarding Disciplinary Action.

Dismissal. A dismissal is separation of an employee from his/her employment with or without cause.

Division or Department: A major functional subdivision of the District organizational structure that is accountable to the Executive Director. Divisions and Departments shall mean such subdivisions as may, from time to time, be shown on any organizational chart promulgated by the Executive Director.

Division or Department Guidelines: Guidelines issued by a division manager and approved by the Executive Director designed for specific types of activities within a division’s operation.

Domestic Partner: means any person living in the same domicile as the employee or prospective employee.

Domestic Violence or Domestic Abuse. means a pattern of coercive tactics carried out by an abuser against an intimate partner or family member (the victim) with the goal of establishing and maintaining power and control over the victim. These coercive tactics can be physical, psychological, sexual, economic and/or emotional.

Drug and Alcohol: As defined in the District’s adopted Drug and Alcohol policy.

Employee: A person occupying a position in the District service. Such persons include, but are not limited to, the following types of employees:

1. **Classified Employee:** means a budgeted, full or part-time position, duties of which do not terminate at any stated time. Classified employees also means an employee who is eligible for overtime compensation and other protections and provisions of the FLSA.

2. **Exempt Employee:** means a budgeted, full or part-time position, exempt from the classified service under FSLA.

3. **Temporary Employee:** means the employment of a person hired to perform a job which is limited in nature or is on a seasonal basis and which will not exceed twelve months of employment unless otherwise approved by of the Executive Director.

4. **Limited Term Employee:** means the employment of a person for a designated period of time, usually in excess of one (1) year. for a limited and specified time period, e.g., one year or longer subject to funding for the project or program.

5. **Emergency Employee:** employment of a person when an emergency condition exists that would, in the opinion of the Executive Director, compromise the public health, safety, and welfare, or severely curtail the normal operations of the District.
6. **Intern:** means a student or trainee who works, sometimes without pay, at a trade or occupation in order to gain work experience.

5. **Essential Functions:** The fundamental job duties of any particular employment position. The term “essential function” does not include the marginal functions of the position. The job function may be essential for any or several reasons including, but not limited to, the following:

- the reason the positions exists is to perform that function;
- there are a limited number of employees available among whom the performance of that job function can be distributed; or
- it is necessary to ensure that life or safety is not jeopardized.

**Executive Director:** means the chief executive officer of the North Central Regional Transit District (“District”) or a person designated in writing to act on behalf of the Executive Director, who is responsible for the administration and supervision of all District activities including the appointment, hiring, and retention of all employees, management of any divisions or departments which may be created, and ultimate supervisory responsibility for all employees of District.

**Extended Family:** includes an employee’s spouse or domestic partner, child, father, mother, brother, sister, grandparent, grandchild, current mother-in-law, current father-in-law, current sister-in-law, current brother-in-law, current son-in-law, and current daughter-in-law.

**Fair Labor Standards Act (FLSA):** A federal law enacted by the United States Congress in 1938, which sets minimum wage, overtime pay, equal pay, recordkeeping, and child labor standards for employees who are covered by the Act.

**Family Medical Leave Act (FMLA):** A federal law which generally entitles qualified employees to up to 12 weeks of unpaid leave per year for the birth, adoption or placement for foster care of a child, to care for a spouse or an immediate family member with a serious health condition, or when unable to work because of a serious health condition.

**Furlough:** means the temporary placement of an employee in a reduced work hour schedule, which can either be partial or full time, due to lack of work or funds.

**Immediate Family Member:** means an employee’s spouse, domestic partner, child or parent.

**Hire Date:** The date that a newly hired employee (temporary or probationary) begins work for the District.

**Intimate Partner:** includes people who are legally married to each other, people who were once legally married to each other, people who have had a child together, people who live together or who have lives together, and people who have or had a dating or sexual relationship, including same sex couples.

**Just Cause:** includes, but is not limited to:

1. Violation of or failure to comply with the Federal or State Constitution, Statutes, or District Policies, District Rules and Regulations and District Resolutions;
2. Indictment by a grand jury;

3. Conviction of or entrance of a plea of guilty or nolo contendere to a felony or other crime which has or may have a material adverse effect on the employee’s ability to carry out their duties or upon the reputation of the District;

4. Careless, negligent, or improper use of District property, equipment, or funds;

5. Insubordination, which shall consist of violation of any official regulation or order, or failure to obey, comply or accept any proper directions made and given by a Supervisor in the course of employment, or any verbal ridicule of a Supervisor by an employee during the course of employment;

6. Inefficiency, incompetence or negligence in the performance of assigned job duties or failure to perform job requirements or job performance which continues to be unsatisfactory;

7. Disorderly conduct or threats or abuse of others;

8. Chronic tardiness or absenteeism, or the improper or unauthorized use of leave privileges or benefits;

9. Stealing from the District or from other employees;

10. Taking unauthorized leave or job abandonment.

11. Failure to obtain and maintain a current license or certificate required as a condition of employment;

12. Intentional falsification or mishandling of District records;

13. Fraud in securing employment with the District or attempting to secure a promotion or a position by political influence;

14. Unauthorized or illegal use, sale, or possession of alcohol or illegal drugs, or being under the influence of such substances while on duty;

15. Unauthorized discussion or release of confidential information documents or records;

16. Harassment and/or discriminatory behavior towards any person because of their membership in a Suspect Class; or

17. Action which reflects poorly upon the integrity of the District.

**Manager:** An employee hired and/or appointed by the Executive Director assigned to manage internal staff, and/or who plans, organizes, integrates, coordinates, and controls the activities of others. A manager is may be held accountable for the performance of people, services, systems, programs and resources and can change their direction, objectives and assignments to meet performance and business needs.

**Notice of Appeal:** means any written document prepared by an employee or his/her agents that unambiguously states that the employee disputes a specific Disciplinary Action and seeks further review of
said Disciplinary Action. Failure to use District forms or proper terminology shall not deprive an employee of his/her opportunity to appeal a Disciplinary Action so long as the writing clearly identifies that challenged action, is dated and signed by the employee or his/her agent, and is received by the District within the time allowed for appeals. Although no specific form of service is required, proof that an appeal was timely filed is the responsibility of the employee.

**Notice of Contemplated Action:** means a written notice to an employee which: describes the conduct, action, or omissions which form the basis for contemplated Disciplinary Action; gives a general explanation of the evidence the Supervisor has regarding the alleged violation of these Rules; specifies what disciplinary measures or corrective action may be taken; and states the date, time and place of a Predetermination Meeting, and that the employee may waive the right to the meeting by notifying the Supervisor in writing prior to the start of the meeting.

**Notice of Final Decision:** means a document prepared by or on behalf of the Executive Director that:

- Documents the date, time and place of the predetermination meeting;
- Identifies specific employee misconduct;
- Specifies the disciplinary action, if any, to be taken;
- Specifies the effective date of any dismissal, demotion, or suspension which must be at least seven (7) days after the date of the Notice of Final Decision (during this seven-day period the Executive Director may place the employee on LWOP or paid administrative leave if deemed in the best interest of the District);
- Informs the employee that the Disciplinary Action may be appealed to an independent hearing officer by submitting a written appeal to the Executive Director within fifteen (15) days of the effective date of the dismissal, demotion, or suspension; and
- Is delivered personally to the employee by the employer or by registered mail to the employee’s last address on record.

**Notify or Notification:** means providing a person with information by any means reasonably calculated to achieve actual notice. In general, the District shall provide notification in person where possible, by registered mail, where mailing is necessary or desirable, by e-mail where the recipient has an active and functional e-mail account and by phone where exigent circumstances warrant.

**Oral Reprimand:** Means a disciplinary action taken by a Supervisor to caution an employee regarding misconduct constituting a violation of these Rules. Although the reprimand is cautionary and may not incur further action by the Supervisor, it may be used as the basis for subsequent action in the context of progressive discipline. Oral Reprimands are given to the employee verbally but documented with the Human Resources office in writing.

**Personnel Action Form:** Means any form the District elects to utilize to document any employment or administrative action by the District under these Rules or the administrative regulations of the District.

**Predetermination Meeting:** Means a meeting with and employee and one or more Supervisors to discuss alleged facts that may constitute a violation of these Rules and at which and employee is given a chance to make any statements, assertions or contentions that may influence the District’s decision regarding a
proposed Disciplinary Action. At the predetermination meeting the employee shall have the grounds and the proposed action explained to him/her and shall have the right to respond. The purpose of the response is an opportunity for the employee to present his or her side of the story. It is an initial check against mistaken decisions. The District will use the information gathered from the meeting to make a determination of whether there are reasonable grounds to believe that the charges against the employee are true and support the proposed action. The employee shall have the right to representation and the meeting may be recorded by either party.

**Probationary Period:** A working trial or orientation period ranging from six to twelve months during which an employee demonstrates, by actual performance, the employee’s ability to perform the duties of the position for which the employee has been hired.

**Position:** The official rank within a given classification and held by an employee with a descriptive title.

**Promotion:** A change in the employment status of an employee to a position in a higher classification with a higher rate of pay and increased responsibility.

**Protected Class:** For purposes of these Rules a Protected Class shall mean a person who is protected legal interests due to belonging to any of the following classes:

- Race
- Color
- National origin
- Religion
- Sex (including pregnancy, childbirth, and related medical conditions)
- Disability
- Age (40 and older)
- Citizenship status
- Genetic information
- Marital status
- Sexual orientation (includes perceived sexual orientation
- Gender identity
- Serious medical condition
- Use of Domestic abuse leave

**Range:** The limits set for the minimum and maximum rates of pay within a given classification.

**Rate of Pay or Pay:** The amount of money allocated for payment to an employee whether hourly or by way of a salary. Pay may be indicated as hourly even for salaried employees solely for the convenience of District administration notwithstanding the fact that the pay is on a salary basis.

**Reclassification:** The process of reassigning a position to a different classification for non-disciplinary reasons.
**Retirement**: Official retirement from a budgeted position and District service that is available when the requirements of the employee’s retirement system are met.

**Separation Date**: The last day of an employee’s work in District service, after which no vacation or sick leave is accrued or used.

**Sexual Harassment**: The Equal Employment Opportunity Commission (EEOC) defines Sexual Harassment as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
3. The conduct is unwelcome, unwanted, or offensive and has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile, or offensive working environment.

**Stalking**: A pattern of conduct over a period of time, however short, which evidences a continuity of purpose and includes physical presence, telephone calls, e-mails and any other type or correspondence sent by any means.

**Supervisor**: An employee hired and/or appointed by the Executive Director assigned to direct and evaluate the work of other employees within a designated work unit.

**Suspension**: A suspension is the temporary removal of an employee from his/her work assignment without pay. Employees covered by the Fair Labor Standards Act (FLSA) shall only be suspended without pay as permitted by the FLSA. *See e.g.* 29 C.F.R. 602 (full-work week suspensions for any disciplinary reason); 29 C.F.R. §541.602(b)(4) (less than full-work week suspensions for infractions of major safety rules); 29 C.F.R. §541.602(b)(5) (less than full-work week suspensions for violations of workplace conduct rules such as sexual harassment, workplace violence, drug or alcohol violations etc., but not for performance or attendance issues).

**Reduction in Force**: Means the separation, lay off, involuntary demotion, reassignment, or reduction of work hours or number of employees in the District or in a division due to lack of work or funds.

**Termination**: The separation of an employee from District service. Termination may be by discharge, death, lay-off, resignation, retirement, work completion, contracting out District services, or lack of work or funds. The termination date is synonymous with the separation date and is the last day of an employee’s work in District service. No vacation or sick leave is accrued or used from that date forward.

**Transfer**: A reassignment of an employee from one position to another position in the same classification or another classification having the same pay range, involving the performance of similar duties, and requiring substantially the same basic qualifications.

**Unauthorized Leave of Absence**: Failure of an employee to notify and receive permission from their immediate supervisor in advance of absence or failure of an employee to report for work at the beginning of their next regularly-scheduled work period. An unauthorized leave of absence includes all or any portion of a work day for which notice and approval have not been provided. An unauthorized leave of absence
may be grounds for disciplinary action up to and including termination. Unauthorized leave is not compensated.

**Volunteer:** mean a person who freely offers to take part in a job or undertake a task.

**Weapons:** Objects classified as weapons include, but are not limited to:

- any firearm, loaded or unloaded, assembled or disassembled, including pellet, "BB" and stun guns, unless the possession of such firearm is licensed, authorized or permitted pursuant to state and/or federal law and expressly permitted by the District;
- knives longer than 2.36 inches (and similar instruments) other than those present in the workplace for approved work purposes or for the specific purpose of food preparation and service;
- brass knuckles, metal knuckles, and similar weapons;
- bows, cross-bows and arrows;
- explosives and explosive devices, including fireworks, ammunition, and/or incendiary devices;
- throwing stars, nun-chucks, clubs, saps, and any other item commonly used as, or primarily intended for use as a weapon;
- self-defense chemical sprays (mace, pepper spray) in canisters or containers larger than two ounces; and
- any object that has been modified to serve as, or has been employed as, a dangerous weapon.

**Workday:** An employee’s scheduled daily hours of employment as established by the Executive Director or an authorized Supervisor.

**Workweek:** An employee’s schedule of work hours within an appointed week as established by the Executive Director.

**Written Reprimand:** means a disciplinary action taken by a Supervisor to caution an employee regarding misconduct constituting a violation of these Rules. Although the reprimand is cautionary and may not incur further action by the Supervisor, it may be used as the basis for subsequent action in the context of progressive discipline. Written Reprimands are given to the employee in writing and documented with the Human Resources office in writing.
Memorandum

To: Finance Committee
From: Hector E. Ordonez, Finance Director
Thru: Anthony J. Mortillaro, Executive Director
Date: March 23, 2018
Re: Diversification of District’s Investments

Background:

Government investors have a fiduciary responsibility to protect public funds and prudently manage their investments to achieve the investment objectives of safety, liquidity, and return. Generally, greater risk in a portfolio increases the opportunity for higher returns; however, greater risk also increases the volatility/risk of the returns.

To achieve an entity's investment objective, it is critical to manage portfolio risk effectively. A useful strategy for managing risk in a portfolio is through diversification which is attained by investing in a variety of securities with dissimilar risk characteristics that respond differently to changes in the market e.g. maturity distribution, sector/issuer allocation, and securities’ structure.

Current Investment Strategy:

The District last updated the Investment Policy on July 7, 2017, allowing for all funds to be diversified to the following percentage allocations:

- **Minimum of 14%** of available funds are in the LANB checking account and the LGIP to insure liquidity/availability within 24-48 hours.

- **Maximum of 86%** of available funds are in government insured treasuries or brokered CD’s at $245,000 to $250,000 increments
  - Strive for yields closer to the same security but with less liquidity
  - Terms of maturity of each investment should not exceed 24 months.

The District has complied with the investment strategy and policy by investing approximately 80% of available funds on broker CDs. However, in an effort to further diversify the District’s portfolio, ensure liquidity of investments and mitigate the risk of having to pay potential early withdrawal penalties associated with Broker CDs the Executive Director, Anthony Mortillaro, and Finance Director, Hector Ordonez, met with 3 representatives from New Mexico Bank and Trust on January 31st, 2018 and 2 representatives from Los Alamos National Bank on March 1st, 2018 to discuss potential services available that might assist the District in accomplishing those goals. Below are the summary notes of the meetings and discussions held:
A) New Mexico Bank and Trust

The Executive and Finance Directors of the District met with Max Myers (Santa Fe Region Market President), Elizabeth VanArsdel (Wealth Advisor), and Kenneth Romero (Treasury Management) on January 31, 2018 at the District’s headquarters in Española. During the meeting the following services were offered:

- Wealth Management Services- The Wealth Advisor service allows for purchases of investment securities (CDs, Municipal and Treasury Bonds, Treasury Bills) on behalf of their clients and meets with them regularly to review progress, assess the impact of changes and financial circumstances and, when appropriate, recommend changes in the financial strategy. This type of service will likely increase diversification and yield by expanding our investments into the Municipal/Treasury Bonds and Treasury Bills market. There is a .0025 annual fee associated with this service and a minimum of $1,000,000 investment is required ($2,500)
- Purchasing Card- Cash Rebates up to 1% in all purchases
- Automated Cash Sweeps- This service transfers excess funds into a higher interest-earning investment option at the close of each business day. The funds are swept back into the checking account from the investment account the next day
- Checking and Savings Account Services

B) Los Alamos National Bank

The Executive and Finance Directors of the District met with Robert J. Joseph (Senior Vice-President and Senior Investment Officer) and Karen Easton (Private Client Services Manager) on March 1, 2018 at the District’s headquarters in Española. During the meeting the following topics and services were offered and discussed:

- Wealth Management Services- Robert Joseph mentioned that they could diversify our investments further by including Treasury Bills in our investment portfolio. There is no cost or annual fee associated with this type of service, but no Municipal Bonds would be purchased under this investment strategy
- Purchasing Card- LANB has a rewards program where a bonus point is given for every dollar spent with their purchasing card; bonus points can be redeemed in exchange of airfare, hotels and merchandise
- Automated Cash Sweeps- This service transfers excess funds into a higher interest-earning investment option at the close of each business day. The funds are swept back into the checking account from the investment account the next day
• Checking and Savings Account Services- They asked for feedback and we gave them a list of things that we needed their assistance with
• A Treasury Services Presentation was scheduled on 3/14/2018 with Karen Easton and Mark Pike (Treasurer Management Officer), where the overnight cash sweep service was discussed. According to Mike Pike:
  o Funds are swept into a Money Market Mutual Fund managed by Goldman Sachs
  o The Mutual Fund only invests in federal securities issued by US Government Agencies that are backed by the full faith and credit of the U.S. government
  o The average yield of the last 2 months is 1.25% which could translate into $1,000-$1,500 annual interest on a $900,000 investment
  o There is no cost/fee associated with this service
  o Mark will be willing to set up a conference call with their trader at Goldman Sachs for further discussion on this service
  o The District asked for a list of references

**Recommendation:**

It is recommended that the Finance Committee discuss and review the potential investment strategy and services information to decide whether to pursue some of these services or not. No changes to the investment policy are needed at this time.

**Attachments:**
• NMBT Presentation
• LANB Money Market Mutual Fund Facts
Outline and Examples for an
Active Liquidity Management (ALM)
Strategy

Prepared for

The North Central Regional Transit District

Products offered through Wealth Advisory Services are not FDIC insured, are not bank guaranteed and may lose value
Active Liquidity Management (ALM):

• Actively Liquidity Management (ALM) is a strategy primarily designed for clients who have significant risk restrictions as a key facet of their investment objective. The strategy is used primarily by municipalities.

• ALM is designed to provide preservation of capital and safety of investments.

• Typically, depending on policy, ALM invests solely in US Treasury, US Agency or government insured securities (e.g. Certificates of Deposit under the $250,000 FDIC insurance limit) or municipal bonds if allowed by policy.

• A high-grade, low volatility portfolio often viewed as a yield enhancement over a cash account. Increasingly popular as interest rates have fallen to historically low levels.

• Each ALM portfolio is customized to match specific investment restrictions and opportunities as defined by the client.
Active Liquidity Management (ALM):

- Primary focus is 100% government or government insured securities that are considered of the lowest possible risk.

- Investments are “laddered” in terms of tenors with proceeds from maturing bonds reinvested at a later part of the ladder as appropriate.

- Designed to ride interest rate cycles, providing current income and longer-term average of interest rates.

- Most current ALM portfolios are targeted to have maturities of no greater than 7-10 years due to the current interest rate environment but could be extended should rates return to longer-term averages on consultation with the client.

- ALM Portfolios can also be designed for short maturities to match cash-flow needs.
Active Liquidity Management (ALM)
Example actual portfolio (01/31/18)

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<th>Maturity</th>
<th>Call Date</th>
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<th>Mod Duration</th>
<th>Face Value</th>
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<td>2.35</td>
<td>$250,000</td>
<td>$4,063</td>
</tr>
<tr>
<td>T 2 10/31/21</td>
<td>912828F96</td>
<td>10/31/2021</td>
<td>2.42%</td>
<td>2.41%</td>
<td>3.56</td>
<td>$250,000</td>
<td>$5,000</td>
</tr>
<tr>
<td>T 2 07/31/22</td>
<td>912828XQ8</td>
<td>7/31/2022</td>
<td>2.49%</td>
<td>2.49%</td>
<td>4.27</td>
<td>$250,000</td>
<td>$5,000</td>
</tr>
<tr>
<td>T 2 02/15/23</td>
<td>912828un8</td>
<td>2/15/2023</td>
<td>2.54%</td>
<td>2.54%</td>
<td>4.71</td>
<td>$250,000</td>
<td>$5,000</td>
</tr>
</tbody>
</table>

Portfolio Total Cost

<table>
<thead>
<tr>
<th></th>
<th>$4,000,000</th>
<th>$55,494</th>
</tr>
</thead>
</table>

*T bills do not produce income, this is the capital gain from the discount moving to par
Active Liquidity Management (ALM)

Example of a Step-Coupon Bond

We have been focusing a portion of our ALM Portfolios on callable, step coupon bonds. The purpose is that should interest rates rise, the interest rate on the bond will be allowed to rise as well. If market rates do not rise then the bond will be called and can be reinvested. Below is one example of the coupon schedule for one of the bonds in the sample portfolio:

The use of callable securities can be restricted at the direction of the client.
Active Liquidity Management (ALM)
Some notes on example portfolio

• All US Treasury and Agency bonds are rated at the level of the US Government (AAA). They are highly liquid and can be easily sold for cash.

• A slightly longer average tenor portfolio can provide an opportunity for a higher current yield but with the Federal Reserve actively raising rates we encourage having short maturities available for reinvestment at higher rates as they evolve.

• As interest rates rise, the portfolio could face modest mark-to-market losses, but as the expectation is to not sell the bonds prior to maturity or call whenever possible, the portfolio would have no actual losses and would still earn income.

• Maturing bonds would be reinvested in new positions, likely at higher interest rates.

Bond ladders provide income and security of investments and “average out” interest rate environments over the business cycle.
FEE SCHEDULE
ACTIVE LIQUIDITY MANAGEMENT

<table>
<thead>
<tr>
<th>Asset Value</th>
<th>Annual Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>First $5,000,000</td>
<td>0.25%</td>
</tr>
<tr>
<td>Next $5,000,000</td>
<td>0.20%</td>
</tr>
<tr>
<td>Over $10,000,000</td>
<td>0.15%</td>
</tr>
</tbody>
</table>

**ACCOUNT MINIMUM FEE** $4,500

**COMPUTATION**
Fees are calculated using an average daily balance of market values for the month. The fees are calculated on the 21st day of the month and posted the 25th at 1/12 of the annual rate and are charged to the account.

**TERMINATION FEES**
We do not charge termination fees unless an account is closed in less than one year. Accounts terminating in the first year will be charged the full year’s estimated fee less any monthly fees taken to the date of closing.

Any fees for services that are not covered in this Schedule will be disclosed in a separate Schedule or agreed to on an individual basis based upon account circumstances.
Wealth Advisory Services Contact Information:

Elizabeth VanArsdel, CFTA, Senior Vice President/Senior Wealth Advisor
1592 St. Michael’s Drive, Santa Fe, NM 87505
(505) 946-2503, evanarsdel@nmb-t.com

Paul Dickson, Vice President, Director of Fixed Income
320 Gold Ave SW, Suite 200, Albuquerque, NM 87103
(505) 830-8146, pdickson@nmb-t.com
North Central Regional Transit District (NCRTD)

Los Alamos National Bank
Portfolio Review and Proposal
Overview

Investment Strategy

- Risk Tolerance – very low; FDIC or Treasury secured
- Rate goal – maximize yield with in 12 to 24 month term
- Fees – low to none
- Funds availability – monthly; laddering
Performance

Certificates of Deposit (ROI)

- 2014: AVE APY 0.35% - $10,157
- 2015: AVE APY 0.40% - $12,826
- 2016: AVE APY 0.40% - $13,627
- 2017: AVE APY 1.35% - $46,209
- 2018: AVE APY 1.75% - $80,505

March 2018
Performance

- 2014 $4.2MM in deposits – checking and 12 CDs with principal balances of $245,000 each earning an average of 0.35% APY.

- 2017 $5.8MM in deposits and investments – earning an average of 1.35% APY. (Transfer Bank CDs to Brokered CDs)

- 2018 $7.3MM in deposits and investments – earning an average of 1.75% APY and rising (last CD booked-24 mos. 2.55% APY).

*No Fees assessed for Brokered CDs*
Portfolio Diversity

- **Fixed Income** (refer to Cetera Bond Center Chart attached)
  - T-Bill 2 year 2.08% APY
  - Government Agencies
    - 2 year Federal Home Loan Bank 2.42% APY
  - Local Municipal Bonds
    - Santa Fe Community College GO Bonds 1.068% APY
    - Santa Fe Public Schools GO Bonds 1.226% APY

*Fees assessed for purchase of T-Bills, Muni-Bonds and Agencies*
Welcome to the Cetera Investment Services Bond Center.

This site has been designed with you, our valued financial professional, in mind. Our site gives you access to over 20,000 bond offerings from dealers across the country. Click on the offerings link to open up the world of fixed income to your customers.

### U.S. Treasury Rates
**Last Updated: 03/16/18 11:41 ET**

<table>
<thead>
<tr>
<th>Maturity</th>
<th>Yield</th>
<th>Yesterday</th>
<th>Last Week</th>
<th>Last Month</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Month</td>
<td>1.73</td>
<td>1.74</td>
<td>1.64</td>
<td>1.54</td>
</tr>
<tr>
<td>6 Month</td>
<td>1.89</td>
<td>1.89</td>
<td>1.83</td>
<td>1.75</td>
</tr>
<tr>
<td>2 Year</td>
<td>2.28</td>
<td>2.29</td>
<td>2.26</td>
<td>2.16</td>
</tr>
<tr>
<td>3 Year</td>
<td>2.44</td>
<td>2.43</td>
<td>2.43</td>
<td>2.38</td>
</tr>
<tr>
<td>5 Year</td>
<td>2.63</td>
<td>2.62</td>
<td>2.65</td>
<td>2.63</td>
</tr>
<tr>
<td>10 Year</td>
<td>2.84</td>
<td>2.83</td>
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<tr>
<td>20 Year</td>
<td>3.08</td>
<td>3.06</td>
<td>3.16</td>
<td>3.17</td>
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</table>

### Municipal Bonds
**Last Updated: 03/16/18 10:59 ET**

<table>
<thead>
<tr>
<th>Maturity</th>
<th>Yield</th>
<th>Yesterday</th>
<th>Last Week</th>
<th>Last Month</th>
</tr>
</thead>
<tbody>
<tr>
<td>2yr AAA</td>
<td>1.11</td>
<td>1.10</td>
<td>1.07</td>
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</tr>
<tr>
<td>2yr AA</td>
<td>1.17</td>
<td>1.15</td>
<td>1.13</td>
<td>1.05</td>
</tr>
<tr>
<td>2yr A</td>
<td>1.25</td>
<td>1.23</td>
<td>1.19</td>
<td>1.14</td>
</tr>
<tr>
<td>5yr AAA</td>
<td>1.66</td>
<td>1.61</td>
<td>1.64</td>
<td>1.62</td>
</tr>
<tr>
<td>5yr A</td>
<td>1.89</td>
<td>1.93</td>
<td>1.91</td>
<td>1.89</td>
</tr>
<tr>
<td>10yr AAA</td>
<td>2.28</td>
<td>2.25</td>
<td>2.14</td>
<td>2.24</td>
</tr>
<tr>
<td>10yr A</td>
<td>2.49</td>
<td>2.51</td>
<td>2.55</td>
<td>2.51</td>
</tr>
<tr>
<td>20yr AAA</td>
<td>3.11</td>
<td>3.17</td>
<td>3.17</td>
<td>3.19</td>
</tr>
<tr>
<td>20yr A</td>
<td>3.50</td>
<td>3.51</td>
<td>3.61</td>
<td>3.44</td>
</tr>
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</table>

### Corporate Bonds
**Last Updated: 03/16/18 10:59 ET**

<table>
<thead>
<tr>
<th>Maturity</th>
<th>Yield</th>
<th>Yesterday</th>
<th>Last Week</th>
<th>Last Month</th>
</tr>
</thead>
<tbody>
<tr>
<td>2yr AA</td>
<td>2.32</td>
<td>2.31</td>
<td>2.26</td>
<td>1.57</td>
</tr>
<tr>
<td>2yr A</td>
<td>2.39</td>
<td>2.38</td>
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<tr>
<td>5yr AA</td>
<td>2.79</td>
<td>2.77</td>
<td>2.78</td>
<td>2.70</td>
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<tr>
<td>5yr A</td>
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<td>2.97</td>
<td>2.95</td>
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<tr>
<td>10yr AA</td>
<td>3.49</td>
<td>3.28</td>
<td>3.28</td>
<td>3.32</td>
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<tr>
<td>10yr A</td>
<td>3.53</td>
<td>3.50</td>
<td>3.52</td>
<td>3.45</td>
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<tr>
<td>20yr AA</td>
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<td>3.78</td>
<td>3.81</td>
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<td>20yr A</td>
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<td>4.02</td>
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<td>4.01</td>
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### CD Rates
**Last Updated: 03/15/18 17:00 ET**

<table>
<thead>
<tr>
<th>Maturity</th>
<th>Yield</th>
<th>Yesterday</th>
<th>Last Week</th>
<th>Last Month</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 Month</td>
<td>1.60</td>
<td>1.60</td>
<td>1.65</td>
<td>1.55</td>
</tr>
<tr>
<td>6 Month</td>
<td>1.75</td>
<td>2.50</td>
<td>1.75</td>
<td>1.75</td>
</tr>
<tr>
<td>9 Month</td>
<td>1.90</td>
<td>2.05</td>
<td>1.90</td>
<td>1.75</td>
</tr>
<tr>
<td>1 Year</td>
<td>2.05</td>
<td>2.05</td>
<td>2.05</td>
<td>1.95</td>
</tr>
<tr>
<td>2 Year</td>
<td>2.55</td>
<td>2.55</td>
<td>2.55</td>
<td>2.40</td>
</tr>
<tr>
<td>3 Year</td>
<td>2.75</td>
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<tr>
<td>5 Year</td>
<td>3.00</td>
<td>3.00</td>
<td>3.00</td>
<td>2.80</td>
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**CUSIP:** [ ]

**Issuer:** [ ]

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For more information, interested parties can email fixedservices@theice.com.
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Additional Services

- Overnight sweep on checking account (1.23 – 1.24% APY)
- Access to investment in local muni bonds through Cetera
- Late 2018 – Corporate Purchasing cards with rebates
Summary

- Banking Local
  When you choose LANB you are banking local. Your deposited funds are invested back into the community improving the lives of all New Mexicans. In return we provide competitive interest rates and the best financial products and services to meet your Banking and Investment needs.

- Dedicated Professional Financial Services Team

Karen Easton, Private Client Services Officer

Robert Joseph, Investment, Vice President

Mark Pike, Treasury Management Officer

March 2018
Goldman Sachs Financial Square Treasury Obligations Fund

AAA.m, Aaa-mf rated by Standard & Poor’s Rating Group and Moody’s Investor Service, Inc.

Data as of 1.31.18
Capital Shares: GCTXX

FUND FACTS
A high quality money market portfolio that comprises U.S. Government and U.S. Treasury securities including bills, bonds, notes and repurchase agreements.

Seeks maximum current income consistent with preserving capital and maintaining daily liquidity.

- A diversified alternative to investing in individual commercial paper issues.
- GSAM has over 35 years of experience as a leading provider of money market funds.

HISTORICAL PERFORMANCE (NAV) (%)

<table>
<thead>
<tr>
<th></th>
<th>YTD</th>
<th>1 Year</th>
<th>3 Years</th>
<th>5 Years</th>
<th>10 Years</th>
<th>Since Inception</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 2018</td>
<td>0.09</td>
<td>0.66</td>
<td>0.25</td>
<td>0.15</td>
<td>0.21</td>
<td>1.08</td>
</tr>
<tr>
<td>December 2017</td>
<td>0.59</td>
<td>0.59</td>
<td>0.22</td>
<td>0.14</td>
<td>0.23</td>
<td>1.08</td>
</tr>
<tr>
<td>December 2016</td>
<td>0.07</td>
<td>0.07</td>
<td>0.03</td>
<td>0.02</td>
<td>0.62</td>
<td>1.11</td>
</tr>
<tr>
<td>December 2015</td>
<td>0.01</td>
<td>0.01</td>
<td>0.01</td>
<td>0.01</td>
<td>1.08</td>
<td>1.19</td>
</tr>
<tr>
<td>December 2014</td>
<td>0.01</td>
<td>0.01</td>
<td>0.01</td>
<td>0.01</td>
<td>1.36</td>
<td>1.29</td>
</tr>
<tr>
<td>December 2013</td>
<td>0.01</td>
<td>0.01</td>
<td>0.01</td>
<td>0.02</td>
<td>1.46</td>
<td>1.40</td>
</tr>
</tbody>
</table>

The yields and returns represent past performance. Past performance does not guarantee future results. Current performance may be lower or higher than the performance quoted above. Please visit www.GSAMFUNDS.com to obtain the most recent month-end returns. Yields and returns will fluctuate as market conditions change. The yield quotations more closely reflect the current earnings of the Fund than the total return quotations. The Quarter-End Total Returns are average annual total returns or cumulative total returns (only if the performance period is one year or less) as of the most recent calendar quarter end. They assume reinvestment of all distributions at net asset value. The Standardized 7-Day Current Yield and Standardized 7-Day Effective Yield of a fund are calculated in accordance with securities industry regulations and do not include capital gains. Standardized 7-Day Current Yield may differ slightly from the actual distribution rate of a given portfolio because of the exclusion of distributed capital gains, which are non-recurring. The Standardized 7-Day Effective Yield assumes reinvestment of dividends for one year.

PORTFOLIO COMPOSITION (%)

- Treasury Repurchase Agreement: 62.5%
- Treasury Debt: 37.5%

The yields and returns represent past performance. Past performance does not guarantee future results. Current performance may be lower or higher than the performance quoted above. Please visit www.GSAMFUNDS.com to obtain the most recent month-end returns. Yields and returns will fluctuate as market conditions change. The yield quotations more closely reflect the current earnings of the Fund than the total return quotations. The Quarter-End Total Returns are average annual total returns or cumulative total returns (only if the performance period is one year or less) as of the most recent calendar quarter end. They assume reinvestment of all distributions at net asset value. The Standardized 7-Day Current Yield and Standardized 7-Day Effective Yield of a fund are calculated in accordance with securities industry regulations and do not include capital gains. Standardized 7-Day Current Yield may differ slightly from the actual distribution rate of a given portfolio because of the exclusion of distributed capital gains, which are non-recurring. The Standardized 7-Day Effective Yield assumes reinvestment of dividends for one year.

Fund holdings and allocations shown are unaudited, and may not be representative of current or future investments. Fund holdings and allocations may not include the Fund’s entire investment portfolio, which may change at any time. Fund holdings should not be relied on in making investment decisions and should not be construed as research or investment advice regarding particular securities. Current and future holdings are subject to risk.

CURRENT YIELD (%)

<table>
<thead>
<tr>
<th>Period</th>
<th>Monthly Yield (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jan 2018</td>
<td>1.06</td>
</tr>
<tr>
<td>Dec 2017</td>
<td>0.97</td>
</tr>
<tr>
<td>Nov 2017</td>
<td>0.82</td>
</tr>
<tr>
<td>Oct 2017</td>
<td>0.77</td>
</tr>
<tr>
<td>Sep 2017</td>
<td>0.72</td>
</tr>
<tr>
<td>Aug 2017</td>
<td>0.71</td>
</tr>
<tr>
<td>Jul 2017</td>
<td>0.70</td>
</tr>
<tr>
<td>Jun 2017</td>
<td>0.60</td>
</tr>
<tr>
<td>May 2017</td>
<td>0.48</td>
</tr>
<tr>
<td>Apr 2017</td>
<td>0.44</td>
</tr>
<tr>
<td>Mar 2017</td>
<td>0.34</td>
</tr>
<tr>
<td>Feb 2017</td>
<td>0.24</td>
</tr>
</tbody>
</table>
Goldman Sachs Financial Square Treasury Obligations Fund

The National Association of Insurance Commissioners (NAIC), through the use of its risk-based capital guidelines and capital reserve requirements, determines which insurance companies should be assigned a rating. NAIC designates funds which have a rating of A, A-, A+, A++, A++, A++, or A++. These designations are produced solely for the benefit of NAIC members.

The money market fund’s weighted average maturity (WAM) is an average of the effective maturities of all securities held in the portfolio, weighted by each security’s percentage of net assets.

The money market fund’s weighted average life (WAL) is an average of the final maturities of all securities held in the portfolio, weighted by each security’s percentage of net assets.

The National Association of Insurance Commissioners (NAIC) designates the Goldman Sachs Financial Square Treasury Obligations Fund as “A” based on the Fund’s risk profile. The NAIC’s decision is based on the Fund’s investment strategy and risk profile. The NAIC does not guarantee that any future designations will be the same as past designations. The NAIC designations are not a guarantee of future performance or a guarantee that the Fund will maintain an “A” rating.

The material is for informational purposes only and is provided solely on the basis that it will not constitute investment or other advice or a recommendation regarding the Fund or any other securities. The material is not intended to provide the basis for the evaluation of the Fund or any other securities. The material is not intended to provide legal, business, tax, accounting or other professional advice. Please consult with a professional advisor regarding your specific circumstances.

Goldman Sachs Asset Management, the asset management arm of The Goldman Sachs Group, Inc., is among the world’s largest asset managers. With $1.28 trillion in assets under supervision (AUS) as of 12/31/17.

The Fund is managed by Goldman Sachs Asset Management. The Fund’s investment strategies and risk profile may change without notice. The Fund is not a deposit of the bank and is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. The material is not intended to provide legal, business, tax, accounting or other professional advice. Please consult with a professional advisor regarding your specific circumstances.

Thank you for your interest in the Goldman Sachs Financial Square Treasury Obligations Fund. For more information on the methodology used by NAIC, please visit the following website: http://www.naic.org/svo.htm

Exempt funds do not require a capital reserve; Class 1 funds require insurance companies to set aside a risk-based capital charge when purchasing Class 1 funds. For complete information on the methodology used by each rating agency, please visit the following websites: S&P - http://www.standardandpoors.com/ratings/funds-mmf/en/us; Moody’s - http://v3.moodys.com/researchdocumentcontentpage.aspx?docid=PBC_79004

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Goldman Sachs Financial Square FundsSM offers certain qualified institutional investors twelve other classes of Shares including Institutional, Select, Preferred, Capital, Administration, Premier, Service, Resource, Cash Management Shares, R6, Class A and Class C shares, which are subject to different fees and expenses which affect the performance.

Goldman Sachs Financial Square FundsSM offer certain qualified institutional investors the ability to purchase certain of the Fund’s Shares without a sales charge or other fees.

Standard & Poor’s (S&P) and Moody’s rating agencies assign ratings to investment-grade money market funds. These ratings provide investors with information on the relative credit quality of the money market funds they are considering investing in. These ratings are not a guarantee of future performance or a guarantee that the Fund will maintain the same rating.

The performance of the money market fund’s is shown in the tables below. The money market fund’s performance is shown for periods of greater than one year and for periods of less than one year.

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Memorandum

To: Finance Committee
From: Hector E. Ordonez, Finance Director
Thru: Anthony J. Mortillaro, Executive Director
Date: March 23, 2018
Re: Input for Financial Summary Report

Background:

The existing Finance Summary Report has not been updated significantly since February 2012; with a new Director of Finance and the 2019 fiscal year approaching, the Executive and Finance Directors consider that an update and enhancement of the Finance Summary Report provided to our Board of Directors is needed.

The general purpose of the financial summary report is to provide information to our Board about the results of operations, financial position, and cash flows of the prior month in a way that is effective and easy to understand for all users; because the report aims to deliver information to our Board of Directors the District is seeking feedback and suggestions from the Finance Committee to improve the report in order to provide information in a concise, effective and consistent manner.

Recommendation:

It is recommended that the Finance Committee discuss the District’s current Financial Summary Report and provide feedback on modifications needed when it comes to the presentation and format of the report. The Director of Finance will update the report based on the recommendations provided and will present different alternatives to the Finance Committee before implementation target date of August 3, 2018.

Attachments:

- Financial Summary Report- March Board Meeting
MONTHLY BOARD REPORT
FY2018 (July 1, 2017 to June 30, 2018)
NCRTD Revenue and Expenses vs. Budget

Overall Revenue/Expenses FY 18

<table>
<thead>
<tr>
<th>Month</th>
<th>Budget Revenue FY18</th>
<th>Current Year FY18 Actuals Revenue</th>
<th>Budget Expenses FY18</th>
<th>Current Year FY18 Actuals Expense</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 2017</td>
<td>$1,096,198</td>
<td>$157,482</td>
<td>$1,096,198</td>
<td>$406,761</td>
</tr>
<tr>
<td>August 2017</td>
<td>$1,096,198</td>
<td>$840,063</td>
<td>$1,096,198</td>
<td>$399,336</td>
</tr>
<tr>
<td>September 2017</td>
<td>$1,096,198</td>
<td>$927,470</td>
<td>$1,096,198</td>
<td>$701,946</td>
</tr>
<tr>
<td>October 2017</td>
<td>$1,096,198</td>
<td>$1,035,803</td>
<td>$1,096,198</td>
<td>$732,397</td>
</tr>
<tr>
<td>November 2017</td>
<td>$1,096,198</td>
<td>$738,191</td>
<td>$1,096,198</td>
<td>$1,214,428</td>
</tr>
<tr>
<td>December 2017</td>
<td>$1,096,198</td>
<td>$823,313</td>
<td>$1,096,198</td>
<td>$678,612</td>
</tr>
<tr>
<td>January 2018</td>
<td>$1,096,198</td>
<td>$1,259,608</td>
<td>$1,096,198</td>
<td>$1,290,182</td>
</tr>
<tr>
<td></td>
<td>$13,154,374</td>
<td>$5,781,930</td>
<td>$13,154,374</td>
<td>$5,423,662</td>
</tr>
</tbody>
</table>
## MONTHLY BOARD REPORT
### FY2018 (July 1, 2017 to June 30, 2018)
#### NCRTD Revenue by Sources
As of January 31, 2018

![Bar Chart](image)

### NCRTD Revenue by Sources

<table>
<thead>
<tr>
<th>Category</th>
<th>Actual FY15</th>
<th>Actual FY16</th>
<th>Actual FY17</th>
<th>Budget FY18</th>
<th>Actual FY18</th>
<th>Year to Date Budget Variance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross Receipt Tax</td>
<td>$7,247,120</td>
<td>$7,673,654</td>
<td>$7,568,341</td>
<td>$7,222,500</td>
<td>$4,074,200</td>
<td>56.41%</td>
</tr>
<tr>
<td>Fed Grant</td>
<td>1,833,820</td>
<td>3,041,790</td>
<td>3,623,558</td>
<td>3,588,879</td>
<td>1,210,236</td>
<td>33.72%</td>
</tr>
<tr>
<td>State Capital/Outlay</td>
<td>-</td>
<td>301,312</td>
<td>93,000</td>
<td>-</td>
<td>-</td>
<td>0.00%</td>
</tr>
<tr>
<td>Local Match</td>
<td>400,000</td>
<td>350,000</td>
<td>350,000</td>
<td>350,000</td>
<td>351,306</td>
<td>100.37%</td>
</tr>
<tr>
<td>Member Contributions</td>
<td>-</td>
<td>156,154</td>
<td>146,629</td>
<td>603,189</td>
<td>64,638</td>
<td>10.72%</td>
</tr>
<tr>
<td>Use of Fund Balance</td>
<td>-</td>
<td>-</td>
<td>71,687</td>
<td>1,096,306</td>
<td>-</td>
<td>0.00%</td>
</tr>
<tr>
<td>Misc Revenues</td>
<td>92,909</td>
<td>161,238</td>
<td>205,733</td>
<td>293,500</td>
<td>81,549</td>
<td>27.79%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$9,573,849</strong></td>
<td><strong>$11,684,148</strong></td>
<td><strong>$12,058,948</strong></td>
<td><strong>$13,154,374</strong></td>
<td><strong>$5,781,930</strong></td>
<td><strong>43.95%</strong></td>
</tr>
</tbody>
</table>

2/22/2018 Unaudited financials-For Board and Management purposes/review
# MONTHLY BOARD REPORT

FY2018 (July 1, 2017 to June 30, 2018)

Gross Receipts Revenue By County

## LOS ALAMOS COUNTY

![Bar chart showing gross receipts revenue by month and budget vs. actual for FY2018.]

<table>
<thead>
<tr>
<th>Month</th>
<th>Budget FY18</th>
<th>Actual FY18</th>
<th>Actual Revenue % of Monthly Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 2017</td>
<td>$122,791</td>
<td>$127,129</td>
<td>104%</td>
</tr>
<tr>
<td>August 2017</td>
<td>118,427</td>
<td>121,353</td>
<td>102%</td>
</tr>
<tr>
<td>September 2017</td>
<td>242,003</td>
<td>334,411</td>
<td>138%</td>
</tr>
<tr>
<td>October 2017</td>
<td>23,577</td>
<td>36,324</td>
<td>154%</td>
</tr>
<tr>
<td>November 2017</td>
<td>87,669</td>
<td>100,116</td>
<td>114%</td>
</tr>
<tr>
<td>December 2017</td>
<td>88,617</td>
<td>102,279</td>
<td>115%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,355,000</strong></td>
<td><strong>$821,643</strong></td>
<td><strong>61%</strong></td>
</tr>
</tbody>
</table>
**MONTHLY BOARD REPORT**  
FY2018 (July 1, 2017 to June 30, 2018)  
Gross Receipts Revenue By County

### RIO ARRIBA COUNTY

![Bar chart showing gross receipts revenue by county for months July to December 2017 with blue bars for budget FY18 and red bars for actual FY18.]

<table>
<thead>
<tr>
<th></th>
<th>Budget FY18</th>
<th>Actual FY18</th>
<th>Actual Revenue % of Monthly Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 2017</td>
<td>$50,886</td>
<td>$43,970</td>
<td>86%</td>
</tr>
<tr>
<td>August 2017</td>
<td>52,520</td>
<td>48,121</td>
<td>92%</td>
</tr>
<tr>
<td>September 2017</td>
<td>51,873</td>
<td>50,166</td>
<td>97%</td>
</tr>
<tr>
<td>October 2017</td>
<td>52,793</td>
<td>42,469</td>
<td>80%</td>
</tr>
<tr>
<td>November 2017</td>
<td>47,329</td>
<td>43,502</td>
<td>92%</td>
</tr>
<tr>
<td>December 2017</td>
<td>53,535</td>
<td>48,097</td>
<td>90%</td>
</tr>
<tr>
<td></td>
<td><strong>$575,000</strong></td>
<td><strong>$276,325</strong></td>
<td><strong>48%</strong></td>
</tr>
</tbody>
</table>

2/22/2018 Unaudited financials-For Board and Management purposes/review
MONTHLY BOARD REPORT
FY2018 (July 1, 2017 to June 30, 2018)
Gross Receipts Revenue By County

SANTA FE COUNTY

<table>
<thead>
<tr>
<th></th>
<th>Budget FY18</th>
<th>Actual FY18</th>
<th>Actual Revenue % of Monthly Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 2017</td>
<td>$381,040</td>
<td>$418,301</td>
<td>110%</td>
</tr>
<tr>
<td>August 2017</td>
<td>394,680</td>
<td>408,961</td>
<td>104%</td>
</tr>
<tr>
<td>September 2017</td>
<td>377,080</td>
<td>415,851</td>
<td>110%</td>
</tr>
<tr>
<td>October 2017</td>
<td>365,200</td>
<td>405,811</td>
<td>111%</td>
</tr>
<tr>
<td>November 2017</td>
<td>341,000</td>
<td>401,313</td>
<td>118%</td>
</tr>
<tr>
<td>December 2017</td>
<td>423,720</td>
<td>443,285</td>
<td>105%</td>
</tr>
<tr>
<td></td>
<td>$4,400,000</td>
<td>$2,493,522</td>
<td>57%</td>
</tr>
</tbody>
</table>
MONTHLY BOARD REPORT
FY2018 (July 1, 2017 to June 30, 2018)
Gross Receipts Revenue By County

TAOS COUNTY

<table>
<thead>
<tr>
<th>Month</th>
<th>Budget FY18</th>
<th>Actual FY18</th>
<th>Actual Revenue % of Monthly Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 2017</td>
<td>$81,714</td>
<td>$80,220</td>
<td>98%</td>
</tr>
<tr>
<td>August 2017</td>
<td>77,380</td>
<td>80,485</td>
<td>104%</td>
</tr>
<tr>
<td>September 2017</td>
<td>74,702</td>
<td>81,220</td>
<td>109%</td>
</tr>
<tr>
<td>October 2017</td>
<td>72,293</td>
<td>75,307</td>
<td>104%</td>
</tr>
<tr>
<td>November 2017</td>
<td>63,725</td>
<td>76,273</td>
<td>120%</td>
</tr>
<tr>
<td>December 2017</td>
<td>96,836</td>
<td>89,205</td>
<td>92%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>892,550</strong></td>
<td><strong>482,709</strong></td>
<td><strong>54%</strong></td>
</tr>
</tbody>
</table>
**MONTHLY BOARD REPORT**

FY2018 (July 1, 2017 to June 30, 2018)

**Gross Receipts Revenue**

<table>
<thead>
<tr>
<th></th>
<th>July 2017</th>
<th>August 2017</th>
<th>September 2017</th>
<th>October 2017</th>
<th>November 2017</th>
<th>December 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Budget FY18</td>
<td>$ 636,431</td>
<td>$ 643,007</td>
<td>$ 745,658</td>
<td>$ 513,863</td>
<td>$ 539,723</td>
<td>$ 662,708</td>
</tr>
<tr>
<td>Actual FY18</td>
<td>$ 669,620</td>
<td>$ 658,920</td>
<td>$ 881,678</td>
<td>$ 559,911</td>
<td>$ 621,204</td>
<td>$ 682,866</td>
</tr>
<tr>
<td>Actual Revenue % of Monthly Budget</td>
<td>105%</td>
<td>102%</td>
<td>118%</td>
<td>109%</td>
<td>115%</td>
<td>103%</td>
</tr>
<tr>
<td>Total</td>
<td>$ 7,222,550</td>
<td>$ 4,074,200</td>
<td>54%</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Prior Year vs. Current Year FY2018**

<table>
<thead>
<tr>
<th></th>
<th>Actual FY17</th>
<th>Actual FY18</th>
<th>Inc/Dec from Prior Year to Current Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 2017</td>
<td>$ 738,095</td>
<td>$ 669,620</td>
<td>$(68,475)</td>
</tr>
<tr>
<td>August 2017</td>
<td>$ 569,631</td>
<td>$ 658,920</td>
<td>89,289</td>
</tr>
<tr>
<td>September 2017</td>
<td>$ 822,146</td>
<td>$ 881,678</td>
<td>59,532</td>
</tr>
<tr>
<td>October 2017</td>
<td>$ 535,710</td>
<td>$ 559,911</td>
<td>24,201</td>
</tr>
<tr>
<td>November 2017</td>
<td>$ 528,344</td>
<td>$ 621,204</td>
<td>92,860</td>
</tr>
<tr>
<td>December 2017</td>
<td>$ 619,874</td>
<td>$ 682,866</td>
<td>62,992</td>
</tr>
<tr>
<td>Total</td>
<td>$ 3,813,800</td>
<td>$ 4,074,200</td>
<td>$ 260,400</td>
</tr>
</tbody>
</table>
## MONTHLY BOARD REPORT

FY2018 (July 1, 2017 to June 30, 2018)

Grant Revenue

<table>
<thead>
<tr>
<th></th>
<th>Budget FY18</th>
<th>Actual FY18</th>
<th>Actual Revenue % of Monthly Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 2017</td>
<td>$175,689</td>
<td>$151,082</td>
<td>86%</td>
</tr>
<tr>
<td>August 2017</td>
<td>175,689</td>
<td>161,892</td>
<td>92%</td>
</tr>
<tr>
<td>September 2017</td>
<td>175,689</td>
<td>221,981</td>
<td>126%</td>
</tr>
<tr>
<td>October 2017</td>
<td>175,689</td>
<td>158,623</td>
<td>90%</td>
</tr>
<tr>
<td>November 2017</td>
<td>175,689</td>
<td>152,311</td>
<td>87%</td>
</tr>
<tr>
<td>December 2017</td>
<td>175,689</td>
<td>168,607</td>
<td>96%</td>
</tr>
<tr>
<td>January 2018</td>
<td>175,689</td>
<td>195,740</td>
<td>111%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>3,588,879</strong></td>
<td><strong>1,210,236</strong></td>
<td><strong>34%</strong></td>
</tr>
</tbody>
</table>

## Prior Year vs. Current Year FY2018

<table>
<thead>
<tr>
<th></th>
<th>Actual FY17</th>
<th>Actual FY18</th>
<th>Inc/(Dec) from Prior Year to Current Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 2017</td>
<td>$139,339</td>
<td>$151,082</td>
<td>$11,743</td>
</tr>
<tr>
<td>August 2017</td>
<td>230,674</td>
<td>161,892</td>
<td>(68,782)</td>
</tr>
<tr>
<td>September 2017</td>
<td>181,682</td>
<td>221,981</td>
<td>40,299</td>
</tr>
<tr>
<td>October 2017</td>
<td>143,530</td>
<td>158,623</td>
<td>15,093</td>
</tr>
<tr>
<td>November 2017</td>
<td>194,959</td>
<td>152,311</td>
<td>(42,648)</td>
</tr>
<tr>
<td>December 2017</td>
<td>163,722</td>
<td>168,607</td>
<td>4,885</td>
</tr>
<tr>
<td>January 2018</td>
<td>162,360</td>
<td>195,740</td>
<td>33,380</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1,216,266</strong></td>
<td><strong>1,210,236</strong></td>
<td><strong>(6,030)</strong></td>
</tr>
</tbody>
</table>
## Monthly Board Report

**NCRTD Budget Expenses by Type**

*As of January 31, 2018*

*Year to Date Budget Variance 50%*

### Comparative Expenses by Type FY15 - FY18

<table>
<thead>
<tr>
<th></th>
<th>Actual FY15</th>
<th>Actual FY16</th>
<th>Actual FY17</th>
<th>Budget FY18</th>
<th>Actual FY18</th>
<th>Year to Date Budget Variance</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Salaries</strong></td>
<td>$1,831,697</td>
<td>$2,563,915</td>
<td>$2,411,609</td>
<td>$2,814,705</td>
<td>$1,394,063</td>
<td>49.5%</td>
</tr>
<tr>
<td><strong>Overtime</strong></td>
<td>-</td>
<td>-</td>
<td>255,839</td>
<td>141,982</td>
<td>110,551</td>
<td>77.9%</td>
</tr>
<tr>
<td><strong>Employee Benefits</strong></td>
<td>830,082</td>
<td>1,055,797</td>
<td>1,095,211</td>
<td>1,402,350</td>
<td>623,325</td>
<td>44.4%</td>
</tr>
<tr>
<td><strong>Railrunner, SF Trails and Atomic City Transit</strong></td>
<td>4,118,232</td>
<td>4,092,619</td>
<td>4,708,159</td>
<td>4,655,650</td>
<td>2,151,499</td>
<td>46.2%</td>
</tr>
<tr>
<td><strong>Office Expenses</strong></td>
<td>37,336</td>
<td>62,039</td>
<td>41,682</td>
<td>53,129</td>
<td>15,631</td>
<td>29.4%</td>
</tr>
<tr>
<td><strong>Utilities (Phone, Gas, Electric, Internet)</strong></td>
<td>33,084</td>
<td>40,873</td>
<td>77,797</td>
<td>77,190</td>
<td>38,727</td>
<td>50.2%</td>
</tr>
<tr>
<td><strong>Contractual Services</strong></td>
<td>376,212</td>
<td>260,113</td>
<td>295,851</td>
<td>451,773</td>
<td>166,663</td>
<td>36.9%</td>
</tr>
<tr>
<td><strong>Advertising</strong></td>
<td>82,687</td>
<td>87,181</td>
<td>81,184</td>
<td>119,670</td>
<td>45,169</td>
<td>37.7%</td>
</tr>
<tr>
<td><strong>Equipment &amp; Building Expense</strong></td>
<td>36,443</td>
<td>94,244</td>
<td>56,844</td>
<td>48,500</td>
<td>27,929</td>
<td>57.6%</td>
</tr>
<tr>
<td><strong>Insurance (Property, WC Ins, Gen liab, Vehicle, Civil Rights)</strong></td>
<td>95,406</td>
<td>119,953</td>
<td>109,556</td>
<td>116,311</td>
<td>104,622</td>
<td>90.0%</td>
</tr>
<tr>
<td><strong>Employee Related Expenses</strong></td>
<td>2,555</td>
<td>2,918</td>
<td>9,330</td>
<td>26,950</td>
<td>9,098</td>
<td>33.8%</td>
</tr>
<tr>
<td><strong>Travel, meetings, lodging and per diem</strong></td>
<td>59,140</td>
<td>56,529</td>
<td>71,452</td>
<td>100,714</td>
<td>31,144</td>
<td>30.9%</td>
</tr>
<tr>
<td><strong>Fuel</strong></td>
<td>352,857</td>
<td>334,796</td>
<td>361,380</td>
<td>400,000</td>
<td>203,319</td>
<td>50.8%</td>
</tr>
<tr>
<td><strong>Vehicle Maintenance, Repairs</strong></td>
<td>304,156</td>
<td>332,269</td>
<td>359,859</td>
<td>381,800</td>
<td>181,047</td>
<td>47.4%</td>
</tr>
<tr>
<td><strong>Capital Expenses</strong></td>
<td>374,409</td>
<td>1,458,967</td>
<td>2,156,994</td>
<td>2,363,650</td>
<td>520,874</td>
<td>13.0%</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$8,534,297</strong></td>
<td><strong>$10,562,213</strong></td>
<td><strong>$12,092,748</strong></td>
<td><strong>$13,154,374</strong></td>
<td><strong>$5,423,662</strong></td>
<td><strong>41.2%</strong></td>
</tr>
</tbody>
</table>

2/22/2018  Unaudited financials-For Board and Management purposes/review
MONTHLY BOARD REPORT
FY2018 (July 1, 2017 to June 30, 2018)
NCRTD BUDGET EXPENDITURES OVERALL
As of January 31, 2018

Budget to Actual FY15 - FY18

<table>
<thead>
<tr>
<th></th>
<th>FY15 Actual</th>
<th>FY16 Actual</th>
<th>FY17 Actual</th>
<th>Budget FY18</th>
<th>FY18 Actual</th>
<th>Inc (Dec) 2017 vs 2018</th>
<th>Inc/Dec of Budget vs Actual</th>
<th>Year to Date Budget Variance</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 2017</td>
<td>$226,528</td>
<td>$273,848</td>
<td>$446,362</td>
<td>$388,389</td>
<td>$406,761</td>
<td>$(39,601)</td>
<td>18,372</td>
<td>104.7%</td>
</tr>
<tr>
<td>August 2017</td>
<td>524,839</td>
<td>607,663</td>
<td>482,640</td>
<td>682,005</td>
<td>399,336</td>
<td>$(83,304)</td>
<td>(282,669)</td>
<td>58.6%</td>
</tr>
<tr>
<td>September 2017</td>
<td>543,236</td>
<td>249,172</td>
<td>830,729</td>
<td>688,295</td>
<td>701,946</td>
<td>$(128,783)</td>
<td>13,651</td>
<td>102.0%</td>
</tr>
<tr>
<td>October 2017</td>
<td>1,331,392</td>
<td>966,567</td>
<td>691,669</td>
<td>1,216,404</td>
<td>732,397</td>
<td>40,728</td>
<td>(484,007)</td>
<td>60.2%</td>
</tr>
<tr>
<td>November 2017</td>
<td>370,513</td>
<td>709,030</td>
<td>1,124,422</td>
<td>897,585</td>
<td>1,214,428</td>
<td>72,006</td>
<td>316,842</td>
<td>135.3%</td>
</tr>
<tr>
<td>December 2017</td>
<td>275,029</td>
<td>913,619</td>
<td>797,642</td>
<td>842,220</td>
<td>678,612</td>
<td>$(119,030)</td>
<td>(163,607)</td>
<td>80.6%</td>
</tr>
<tr>
<td>January 2018</td>
<td>551,091</td>
<td>1,026,524</td>
<td>1,192,050</td>
<td>1,140,821</td>
<td>1,290,182</td>
<td>98,132</td>
<td>149,360</td>
<td>113.1%</td>
</tr>
</tbody>
</table>

$3,822,628 $4,746,423 $5,583,514 $5,855,719 $5,423,662 $(159,852) $(432,058) 92.6%

2/22/2018 Unaudited financials-For Board and Management purposes/review
MONTHLY BOARD REPORT
FY2018 (July 1, 2017 to June 30, 2018)
Administration Expense Summary
As of January 31, 2018

### Administration Expenses FY15 - FY18

<table>
<thead>
<tr>
<th></th>
<th>Actual FY15</th>
<th>Actual FY16</th>
<th>Actual FY17</th>
<th>Budget FY18</th>
<th>Actual FY18</th>
<th>Inc (Dec) of Budget vs Actual</th>
<th>Year to Date Budget Variance</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 2017</td>
<td>$36,996</td>
<td>$76,354</td>
<td>$98,869</td>
<td>$97,683</td>
<td>$98,850</td>
<td>$ (19)</td>
<td>$1,167</td>
</tr>
<tr>
<td>August 2017</td>
<td>$65,796</td>
<td>$154,434</td>
<td>$85,687</td>
<td>$140,811</td>
<td>$107,481</td>
<td>$21,794</td>
<td>(33,330)</td>
</tr>
<tr>
<td>September 2017</td>
<td>$79,531</td>
<td>$75,888</td>
<td>$124,202</td>
<td>$128,707</td>
<td>$120,491</td>
<td>$ (3,711)</td>
<td>(8,217)</td>
</tr>
<tr>
<td>October 2017</td>
<td>$107,450</td>
<td>$114,095</td>
<td>$104,670</td>
<td>$150,154</td>
<td>$108,441</td>
<td>$3,771</td>
<td>(41,713)</td>
</tr>
<tr>
<td>November 2017</td>
<td>$92,871</td>
<td>$72,212</td>
<td>$88,556</td>
<td>$116,748</td>
<td>$96,671</td>
<td>$8,115</td>
<td>(20,077)</td>
</tr>
<tr>
<td>December 2017</td>
<td>$69,805</td>
<td>$88,349</td>
<td>$116,300</td>
<td>$126,329</td>
<td>$103,590</td>
<td>(12,710)</td>
<td>(22,739)</td>
</tr>
<tr>
<td>January 2018</td>
<td>$82,409</td>
<td>$113,515</td>
<td>$98,338</td>
<td>$135,447</td>
<td>$124,131</td>
<td>$25,793</td>
<td>(11,316)</td>
</tr>
<tr>
<td></td>
<td>$534,858</td>
<td>$694,847</td>
<td>$716,622</td>
<td>$895,879</td>
<td>$759,654</td>
<td>$43,032</td>
<td>(136,225)</td>
</tr>
</tbody>
</table>

2/22/2018 Unaudited financials-For Board and Management purposes/review
MONTHLY BOARD REPORT  
FY2018 (July 1, 2017 to June 30, 2018)  
Operating Expense Summary  
As of January 31, 2018

<table>
<thead>
<tr>
<th>Month</th>
<th>Actual FY15</th>
<th>Actual FY16</th>
<th>Actual FY17</th>
<th>Budget FY18</th>
<th>Actual FY18</th>
<th>Inc (Dec) 2017 vs 2018</th>
<th>Inc (Dec) of Budget vs Actual</th>
<th>Year to Date Budget Variance</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 2017</td>
<td>$165,544</td>
<td>$197,494</td>
<td>$344,546</td>
<td>$275,249</td>
<td>$305,477</td>
<td>(39,069)</td>
<td>$30,227</td>
<td>110.98%</td>
</tr>
<tr>
<td>August 2017</td>
<td>411,069</td>
<td>448,110</td>
<td>277,454</td>
<td>442,148</td>
<td>288,854</td>
<td>11,400</td>
<td>(153,294)</td>
<td>65.33%</td>
</tr>
<tr>
<td>September 2017</td>
<td>415,730</td>
<td>173,284</td>
<td>554,568</td>
<td>444,852</td>
<td>581,455</td>
<td>26,887</td>
<td>$136,603</td>
<td>130.71%</td>
</tr>
<tr>
<td>October 2017</td>
<td>1,168,758</td>
<td>785,951</td>
<td>545,424</td>
<td>972,548</td>
<td>498,698</td>
<td>(46,726)</td>
<td>(473,850)</td>
<td>51.28%</td>
</tr>
<tr>
<td>November 2017</td>
<td>275,448</td>
<td>579,144</td>
<td>1,031,722</td>
<td>733,773</td>
<td>1,117,757</td>
<td>86,035</td>
<td>$383,983</td>
<td>152.33%</td>
</tr>
<tr>
<td>December 2017</td>
<td>205,224</td>
<td>705,378</td>
<td>530,833</td>
<td>560,716</td>
<td>532,522</td>
<td>1,689</td>
<td>(28,194)</td>
<td>94.97%</td>
</tr>
<tr>
<td>January 2018</td>
<td>393,437</td>
<td>785,516</td>
<td>1,066,848</td>
<td>873,613</td>
<td>1,019,010</td>
<td>(47,838)</td>
<td>$145,397</td>
<td>116.64%</td>
</tr>
</tbody>
</table>

$3,035,210 $3,674,877 $4,351,395 $4,302,900 $4,343,773 $(7,622) $40,873 100.9%
MONTHLY BOARD REPORT
FY2018 (July 1, 2017 to June 30, 2018)
Capital Expense Summary
As of January 31, 2018

Capital Expenses FY15 - FY18

<table>
<thead>
<tr>
<th></th>
<th>Actual FY15</th>
<th>Actual FY16</th>
<th>Actual FY17</th>
<th>Budget FY18</th>
<th>Actual FY18</th>
<th>Inc (Dec) 2017 vs 2018</th>
<th>Inc (Dec) of Budget vs Actual</th>
<th>Year to Date Budget Variance</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 2017</td>
<td>$23,987</td>
<td>$-</td>
<td>$2,947</td>
<td>$15,457</td>
<td>$2,435</td>
<td>$(512)</td>
<td>$(13,022)</td>
<td>16%</td>
</tr>
<tr>
<td>August 2017</td>
<td>47,975</td>
<td>5,119</td>
<td>119,499</td>
<td>99,046</td>
<td>3,001</td>
<td>$(116,498)</td>
<td>$(96,045)</td>
<td>3%</td>
</tr>
<tr>
<td>September 2017</td>
<td>47,975</td>
<td>-</td>
<td>151,959</td>
<td>114,736</td>
<td>-</td>
<td>$(151,959)</td>
<td>$(114,736)</td>
<td>0%</td>
</tr>
<tr>
<td>October 2017</td>
<td>55,184</td>
<td>66,521</td>
<td>41,575</td>
<td>93,701</td>
<td>125,258</td>
<td>83,683</td>
<td>31,557</td>
<td>134%</td>
</tr>
<tr>
<td>November 2017</td>
<td>2,194</td>
<td>57,674</td>
<td>22,144</td>
<td>47,064</td>
<td>-</td>
<td>22,144</td>
<td>(47,064)</td>
<td>0%</td>
</tr>
<tr>
<td>December 2017</td>
<td>-</td>
<td>119,892</td>
<td>150,509</td>
<td>155,175</td>
<td>42,500</td>
<td>(108,009)</td>
<td>(112,675)</td>
<td>27%</td>
</tr>
<tr>
<td>January 2018</td>
<td>75,245</td>
<td>127,493</td>
<td>26,864</td>
<td>131,761</td>
<td>147,041</td>
<td>120,177</td>
<td>15,279</td>
<td>112%</td>
</tr>
<tr>
<td></td>
<td>$252,560</td>
<td>$376,699</td>
<td>$515,497</td>
<td>$656,940</td>
<td>$320,235</td>
<td>$(195,262)</td>
<td>$(336,705)</td>
<td>48.7%</td>
</tr>
</tbody>
</table>

2/22/2018 Unaudited financials-For Board and Management purposes/review
ROLL CALL

APPROVAL OF AGENDA

CALL TO ORDER

A regular Finance Subcommittee meeting was called to order on the above date by Chairman Commissioner Moreno at 9:08 a.m.

ITEMS FOR DISCUSSION/RECOMMENDATION

A. Mid-Year Budget Financial Summary

Hector Ordoñez provided a report on the last six months of financial activity through December 31, 2017. On the subject of Gross Receipt Tax (GRT), three of the four counties are above their GRT budget.

Leandro Cordova stated that while the projected increase of 4% for Taos County is fair, the numbers will decline due to the lack of snow this year affecting the ski areas in Taos County.
Antonio Maggiore and Ed Moreno indicated that the ski areas in their respective counties have also been affected by the lack of snow this winter and agreed with the observation.

Hector Ordoñez reported on monthly expenditures trends over the six month period. On the subject of the Vehicle Maintenance surplus of $85,917, Antonio Maggiore asked if the funds will rollover to be used in future years. To which, Anthony Mortillaro replied that the newer vehicles purchased last fiscal year are under warranty and the savings will show up in the ending balance.

The Fund Balance, is expected to have a difference of $659, 281.

Antonio Maggiore referred to page 7 of the Projected vs. Budget Review for Los Alamos County GRT and asked Hector Ordoñez to double-check on December FY 17 actual and projected figure of $41,650. Hector Ordoñez stated the number is likely a projection and will report back at the February 2018 Board Meeting.

Ed Moreno commented on page 9 of the Projected vs. Budget Review for Santa Fe County GRT, stating the December FY18 projection is better than expected.

Leandro Cordova commented on page 10 of the Projected vs. Budget Review for Taos County GRT, stating the December FY18 projection is within range.

Leandro Cordova asked what accounts for the growth in Rio Arriba County, it’s a large county. To which, Anthony Mortillaro replied that the displacement of businesses and raised GRT reveal that it shows itself in economic activities.

Antonio Maggiore made a motion to forward this item to the full board. Leandro Cordova seconded the motion and it passed by voice vote.

B. Quarterly Investment Report
Hector Ordoñez reported that the current quarter from October 1, 2017 through December 31, 2017, investments earned a total of $12,502.32 of interest, which is a slight decrease of $1,242.02 from the last quarter – however, 4 CDs that paid interest of $7,590 at the redemption date were redeemed last quarter and received all at once.

Leandro Cordova recommended that the expired CDs, Zion Bank, Bankers Bank, and Discover Bank, be removed from the Investment Report detail on page 15.

Regarding the line item “Cetera Investments Cash” on page 15, Ed Moreno asked if there was a drawdown schedule in place. To which, Anthony Mortillaro replied that the funds were redeemed, but not yet reinvested and would be swept to the investor.

Leandro Cordova made a motion to forward this item to the full board. Antonio Maggiore seconded the motion and it passed by voice vote.

C. Electronic Payment Report
Hector Ordoñez reported on the NCRTD Board resolution of November 2013 to allow for Automatic Clearing House payments to vendors. To date, the District has 85 vendors signed up for ACH payments, an increase of 5 vendors from the first quarter.
He further noted that the Avail Technologies contract expires in 2019, and that technology has been added to the Taos fleet as well as to new buses.

Also, we will see Remix, a cutting-edge technology, on the books for planning, route planning, and run cutting. It will be presented at the next Board meeting.

Antonio Maggiore made a motion to forward this item to the full board. Leandro Cordova seconded the motion and it passed by voice vote.

D. Minutes from December 11, 2017
Antonio Maggiore made a motion to accept the minutes as presented. Leandro Cordova seconded the motion and it passed by voice vote.

MATTERS FROM THE SUBCOMMITTEE
None

ADJOURN
Leandro Cordova made a motion to forward this item to the full board. Antonio Maggiore seconded the motion and it passed by voice vote.

Next Finance Subcommittee will be held Friday, March 23, 2018 at 9:00 AM.