CALL TO ORDER

ROLL CALL

ITEMS FOR DISCUSSION/RECOMMENDATION

A. **Audit Exit Conference -Closed Session**  
   *Sponsor: Anthony J. Mortillaro, Executive Director and Hector Ordoñez, Finance Director*  
   *Attachment*  
   
Pursuant to NMSA 1978, Section 14-2-1 (B) (9), NMSA 1978, Section 12-6-5, and NMAC 2.2.2.10 (J) (3) The NCRTD is scheduling the audit exit conference during a closed session in compliance with the Audit act and the Inspection of Public Records Act, in order to avoid disclosing audit information that is not yet public record, in a public meeting.

   **Reconvene in Open Session: Possible action item(s) from closed session.**

B. **Board Meeting Procedures**  
   *Sponsor: Anthony J. Mortillaro, Executive Director and Peter Dwyer, Legal Counsel*  
   *Attachment*  

C. **Code of Conduct**  
   *Sponsor: Anthony J. Mortillaro, Executive Director and Peter Dwyer, Legal Counsel*  
   *Attachment*  

MATTERS FROM THE SUBCOMMITTEE

ADJOURN

NEXT FINANCE SUBCOMMITTEE MEETING: Friday, January 25, 2019

If you are an individual with a disability 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
Thru: Anthony J. Mortillaro, Executive Director
Date: November 30, 2018
Re: FY2018 Audit Exit Conference

Background:
At the August 24, 2018 Finance Committee meeting, the Finance Department introduced to the Board AXIOM CPAs, the auditing firm engaged to conduct the District’s Financial audit for FY 2018. During the meeting Jaime Rumbaoa, Managing Partner of the certified public accounting firm, officially kicked off the audit engagement by conducting an audit entrance conference where he spoke about AXIOM, his experience, the audit team, and the overall objectives for the engagement.

Over the last three months, the District’s staff has provided the auditors with all the information and documents requested including: (1) the Schedule of Expenditures of Federal Awards (SEFA), (2) trial balance, (3) general ledgers, (3) all samples requested, (4) financial records and (5) unrestricted access to all persons/assets within the organization.

The audit has concluded, and the auditors are required to follow up with the governing body to discuss their findings and overall opinion on the financial statements for fiscal year ended 2018. Due to rules regarding the release and publishing of the annual financial report prior to the approval of the Office of the State Auditor, the conference will be held in a closed session and “DRAFT” copies of the report will be available at the meeting only for members of the committee.

Recommendation:
Review and discuss as a committee with the auditors the FY2018 Audited Financial Statements and recommend approval to Office of the State Auditor for their subsequent review and release of the audit for public inspection. Once the Office of the State Auditor has reviewed and released the Audited Financial Statements for public inspection the document will be shared with the full Board at either the January 2019 or February 2019 meetings for their concurrence.

Attachment:
Draft Audited Financial Statements will be provided at the Committee’s meeting.
Memorandum

To: Finance Committee
From: Peter Dwyer, Legal Counsel
Thru: Anthony J. Mortillaro, Executive Director
Date: November 21, 2018
Re: Abstentions

Background:
The Board adopted "Rules Governing the Conduct of Board Meetings by Resolution 2011-2, in order to ensure the orderly and transparent conduct of the District's business at Board meetings. Since that time the procedural rules have never been reviewed. In order to keep the rules current and consistent with established practices some changes and updates are recommended.

When this item went to the full Board for consideration at the November Board Meeting, there were comments and concerns about tie-breaking procedures in the context of a Motion to Reconsider, Abstentions and Recusals, and inclusion of the Secretary/Treasurer as a listed individual permitted to preside and hold a meeting in the absence of the Chair and Vice Chair.

Current Rules:
The current rule is "Abstentions shall be noted in the record, shall be counted as refraining from voting, and as such shall neither be counted in the affirmative or the negative. The voting units represented by an abstaining Director shall be deducted from the total number of voting units of those Directors present for purposes of tabulating whether a motion obtains a majority or supermajority approval." (Rules Governing Conduct of Board Meetings; Rule XI; Tabulation of Votes).

Executive Summary of Abstention Issues:
In general the definition of abstention is "the act of withholding or keeping back (something or oneself); esp., the withholding of a vote." (Black's Law Dictionary, Eighth Edition).

The NCRTD has three kinds of votes that are impacted differently by abstentions; simple majority votes, absolute majority votes, and (two-thirds) supermajority votes which can be either simple or absolute majority votes. The NCRTD has no minority votes.

The NCRTD uses a "simple majority" in most cases. A simple majority is defined as "a majority of the members who vote, a quorum being present, disregarding absent members, members who are present but do not vote, blanks, and abstentions." (Id.). In simple majority
voting abstentions are effectively neutral and just remove the Board member from the equation without skewing the results.

An absolute majority is defined as "a majority of all those who are entitled to vote in a particular election, whether or not they actually cast ballots." (Id.) Abstentions are effectively no votes in any absolute majority because the requirement is to meet a set number of votes or voting units and the abstention cannot count toward that number.

The Intergovernmental Contract (IGC) and Board Rules both require a "simple majority of the voting units present and voting" not an absolute majority of all voting units. The IGC and Board Rules do not require even a simple majority of Directors. However, our practice has been to apply that "simple majority" requirement to BOTH the number of Directors present and voting and the number of voting units voting and present.

For important supermajority votes the statutes call for an "affirmative vote of two-thirds of the directors" while our Intergovernmental Contract and Board Rules call for majority of voting units only. In keeping with our standard practices we again have required a supermajority of BOTH Directors and voting units. But the issue of whether we require an absolute majority has never arisen.

In supermajority votes abstentions effectively act as a 2/3 "yes" vote unless the vote is deemed to require an absolute majority.

**EXAMPLE: 2/3 vote of Directors is required to add a new member to the NCRTD. 15 total voters are present and 10 votes are required for the 2/3 majority. An initial vote of 9-6 fails. Six members (three for three against) abstain. The remaining voters vote the same as they did the first time. The new vote is 6-3 and the Motion now passes by the 2/3 majority required.**

**Why Voter's Abstain:**

At the Board Meeting several members gave different explanations of what they intend to do when they abstain. Reasons for abstaining included following instructions from one's member organization not to participate in a decision or opposing a proposition but without taking a side. The following paragraph explains some common reasons for abstaining.

"In some cases, people abstain when they are indifferent among the electoral choices, or when they judge the benefits of voting to be outweighed by the costs. In other cases—when, for example, a potential voter has a conflict of interest—an institution may actually compel one of its members to abstain as a kind of "forced" indifference on the matter. The underlying assumption in both of these cases is that abstention, unlike voting, is neutral with respect to the outcome. But while the contours of the right to vote have been the subject of a tremendous amount of scholarship across many disciplines, abstention, despite its obvious connection to the right to vote, has been almost completely ignored."
Statutory Regulation of NCRTD Voting:

The NCRTD is required to establish "voting requirements for action by the board: by means of "a contract establishing the district…" NMSA 1978, Section 73-25-4. We have authority to establish voting requirements in the IGC but we still have to follow the state statutes.

Most of the NCRTD board votes (excluding voting units) are tabulated using a simple majority. However, due to the fact that we have voting units based on population, we are not strictly speaking using a "simple majority" system.

Supermajority voting is required by statute for important decisions. "The board, upon the affirmative vote of two-thirds of the directors, may adopt a resolution including or excluding all or a portion of the property described in the notice." NMSA 1978, Section 73-25-6 (C). "After the creation of a district, a governmental unit adjacent to but not part of that district may join the district and determine the territorial area to become a part of that district. A two-thirds affirmative vote by the board shall be required before the governmental unit may join the district." NMSA 1978, Section 73-25-17 (A).

The language is not entirely clear. I could not find a definition of an "affirmative" vote and it appears to simply mean a "yes" vote but it could be construed as meaning that abstentions would count as "no" votes and that the drafters wanted to require an absolute majority of all Directors and to count abstentions as a no rather than reducing the number of votes required. This is inconsistent with our IGC and Bylaws which both state that the 2/3 majority applies to either "voting units present and eligible to vote" or "voting units."

The safest thing to do is to require two-thirds supermajority of both Directors and voting units and to require an absolute majority rather than a simple majority so that we comply with the statute and our own IGC and Bylaws. Therefore, we should either prohibit abstentions on these votes or count them as no votes in order to ensure we meet the statutory standard.

Last but not least the organic statute prohibits voting in the case of conflicts. It states that "A director of the board shall not vote on an issue when the director has a conflict of interest." NMSA 1978, Section 73-25-5 (E). The mandate that a Board Member "shall not vote" is implemented in the Board's Bylaws that state "[a] Director of the Board shall disqualify him/herself from voting on any issue with which the Director has a potential conflict of interest." The language implies that some kind of affirmative act of "disqualification" must be taken but its not clear if that should be an abstention, excusal, recusal or just going on record and making a statement is enough.

District Regulation of NCRTD Voting:
According to Article IX of our Intergovernmental Contract we have also agreed to specific voting requirements as follows:

**VOTING REQUIREMENTS**

**Section 9.01. Voting Strength of Members.** Each Member of the District shall have a voting strength as determined by the Voting Strength Analysis, Appendix B.

**Section 9.02. Quorum.** The presence of Directors representing a majority of the Members and a majority of the total number of voting units shall be necessary to constitute a quorum for the transaction of business.

**Section 9.03. Simple Majority Vote.** If a quorum is present, action by simple majority of voting units present and eligible to vote shall be the act of the Board, unless the act of a greater number is required by the Bylaws, the Contract, or applicable law.

**Section 9.04. Two-Thirds Vote.** If a quorum is present, two-thirds (2/3) majority of the voting units is required for the following actions:

(a) Addition or withdrawal of territory or property, pursuant to Article 8 of the Bylaws, Article XI of this Contract, and Sections 73-25-6 and 73-25-17 of the Act;

(b) Removal of Officers from the Board, pursuant to Article 10 of the Bylaws and Article VIII of this Contract;

(c) Amendment of the Bylaws, pursuant to Section 15 of the Bylaws.

(d) Amendments to this Contract, pursuant to Article IV of this Contract.

**Section 9.05. Budget.** The annual budget shall be passed by a simple majority of voting units.

The IGC adds the supermajority requirement to our votes on Officers, Bylaws, and the IGC itself. As noted earlier the IGC only requires a majority of the Directors to form a quorum and does not presently require a majority of Directors to take any action under 9.03. The failure to include the majority of Directors in section 9.04 conflicts with the statute on adding members or property and should be read as an additional requirement to those imposed by statute. Once again, the current abstention policy will effectively make it easier to get the 2/3 vote required for supermajority votes as long as the vote is not deemed to require an absolute majority.

**Samples of Abstention/Recusal/Excusal Rules:**

At the request of the Board I reviewed the abstention rules of other public entities in New Mexico and related materials on Abstentions. The term "recusal" is often reserved for conflicts of interest. Excusal appears to be a term most often used to describe situations where the full body allows or requires a member to not vote where they would otherwise be required to vote. I was unable to locate specific rules for the Town of Taos, Taos County, Rio Arriba County, and Los Alamos County.

Here is a brief summary of how some others handle abstentions.

The 50 States have a variety of rules for their legislatures. New Mexico's rule is
Every senator shall vote on each question stated from the chair, unless he has a direct personal or pecuniary interest in the event of such question. If any senator refuses to vote, unless he is excused by the senate or unless he has such interest, his refusal shall be deemed a contempt of the senate. Senate Rule 7-5. A senator desiring to be excused from voting may, when his name is called, make a brief statement, not occupying over five minutes, explaining his reasons for desiring to be excused. Senate Rule 7-6.

Every member of the house shall vote on each question or motion coming up before the house when requested to do so by the speaker, unless excused by a majority vote of those members present. House Rule 7-5.

The full 50 State Table: Voting Recusal Provisions can be found at:

file:///C:/Users/peterd/Desktop/50%20State%20Table_%20Voting%20Recusal%20Provisions.html

Santa Fe County

Santa Fe County has no general abstention policy. It does have a "Recusal/Excusal" rule for potential conflicts of interest and improper bias. The Recusal/Excusal rule was adopted as part of Ordinance 2011-9 and calls for Commissioners to explain why they do or do not believe they have a conflict and to decide for themselves on recusals. But the Commission can overrule the individual Commissioners and "Excuse" them from the proceeding if the Commission finds that the Commissioner has a conflict or bias.

City of Santa Fe:

**Policy on Abstention:**

1. If one or more Governing Body members abstain, then the abstentions (except for recusals or disqualifications due to conflicts of interest) shall be counted as "no" votes if the action being voted on is passage of an ordinance or resolution. If counting the abstention as a "no" vote results in a tie, then the motion fails.

2. If one or more Governing Body members abstain, and the action being voted on is other than the passage of an ordinance or resolution, then abstentions (except for recusals or disqualifications due to conflict of interest) shall be counted as acquiescence with the majority. If there is no majority because the vote is tied before the abstentions are taken into
account, then the abstentions shall not be counted at all and the motion fails.

3. A recusal or disqualification for conflict of interest purposes shall not be counted as a "yes" or "no" vote.

The New Mexico Municipal League's Model Rules of Procedure are as follows:

A. Each councilor in attendance must vote for or against all measures before the Governing Body, unless there is a conflict of interest, for which abstention is recognized. Such conflict of interest disclosure shall be recorded in the minutes.
B. A member shall not explain his vote during voting, which would be the same as debate at such a time.
C. Except for procedural matters, voting shall be by roll call and each councilor's vote shall be recorded in the minutes. Roll call votes shall be at random. Actions declared as procedural by the presiding officer may be decided by a show of hands or voice vote.

The State of New Mexico Public Education Commission uses "recusals" for conflicts of interest and "Abstentions" for not conflict of interests as follows:

Recusal. A Commissioner shall recuse himself or herself from the consideration and voting on any issue for which he or she has a pecuniary interest not common to other members of the Commission, or a conflict of interest or the appearance of a conflict of interest.

a. A Commissioner who recuses him or herself shall not influence consideration of an item or decision making on an item. Therefore the Commissioner shall not participate in the discussion, questioning, or commenting on the item. The Commissioner shall leave the meeting room during all proceedings related to the item.

b. A Commissioner who recuses him or herself shall not participate in voting on the item.

A Commissioner who does not have adequate information on which to judge the merits of a matter or who is simply unable to make a decision in the matter may abstain from voting.

i. Although a member cannot be compelled to vote, abstentions generally should be the exception.

ii. Any abstention shall be noted to the body. An abstention must be noted before any Commissioners begin voting. An explanation for the abstention can be given at the time the Commissioner indicates the abstention.

iii. Abstentions shall not be counted in the tally of the vote unless the vote requires approval based on the number of the entire body.

A wide variety of approaches are utilized by local bodies. For example, in Washington State here are four different approaches by four cities:

- **Issaquah** does not permit abstentions unless a councilmember has an obvious conflict of interest or appearance of fairness issue involving the matter. Unless there is such a legal disqualification, the
member is excused from voting only by majority vote of the council. Absent a valid disqualification, a member not voting is counted as voting “yes.” See Issaquah Municipal Code Sec. 2.06.110.

- The Poulsbo City Council allows abstentions only where the member is disqualified for a conflict of interest or under the appearance of fairness doctrine. Members may also be granted leave to abstain by the council if they provide a stated reason for their abstention. Absent a valid disqualification, an abstention is counted as a “yes.” If the vote of a disqualified councilmember is necessary for the council to be able to take action, then in some circumstances the councilmember can still vote. See Poulsbo City Council Rules of Procedure, Rule 5.3.

- The Port Townsend City Council follows Robert’s Rules, with some exceptions. Councilmembers must vote on matters unless the council moves to excuse a member for “special stated reasons.” A member who is not excused from voting and who does not vote is counted as a “no” vote. See City of Port Townsend City Council Rules of Procedure, Rule 3.6.

- The Shoreline City Council counts a member’s silence as a “yes” vote. If a member abstains, it shall be recorded as an abstention and not included in the vote tally. See City of Shoreline City Council Rules of Procedure, Rule 7.16.

It is noteworthy that many local bodies do require an absolute majority for Resolutions:

In addition, to pass an ordinance or resolution you must have enough members voting in the affirmative to constitute a majority of all members of the governing body. In a mayor-council municipality, since the mayor may vote only in case of a tie, if you had to count the mayor to achieve a bare quorum you will not be able to pass an ordinance or resolution at that meeting.

New Mexico Municipal League's Guidance on "Governing Body Meetings."

The absolute majority requirement is relevant to any discussion of abstentions because where there is an absolute majority requirement an abstention is always effectively a "no" vote due to the fact that it reduces the number of Directors and voting units available to support the proposition.

**Analysis of Abstentions:**

There has been a recent trend to reconsider traditional assumptions about abstentions. In two Law Review Articles I read the Author concludes that abstentions are misunderstood and that even Robert's Rules of Order has mistakenly discounted the actual impact of abstentions. The authors identify some false assumptions and counterintuitive results of abstention. The primary false assumptions is that abstentions are neutral. The counterintuitive impact of abstentions is that abstaining has the same effect as casting a vote in favor of the proposition weighted at the level of the quota.

One key to understanding the impact of abstentions is to recognize the difference between "absolute quotas" versus "relative quotas." An absolute quota would be a requirement that 9 of the Board's 16 members approve a proposition. A relative quote would be a requirement
that a majority of those present and voting such as 5 of the 9 members required to form a quorum approve a proposition. In an absolute quota system abstentions are less of a problem because they generally have the impact of a straight "no" vote. But in a relative quota system they do not have such a simple impact.

Abstentions are NOT neutral in a super-majority context and they actually favor the proposition. In other words an abstention on a vote requiring a two thirds majority is weighted 2/3 in favor of the proposition even though the supermajority requirement is generally intended to make it harder to approve important decisions.

Robert’s Rules of Order Newly Revised, along with its brief guide and online resources, gives quite a bit of guidance on the subject of abstentions. With respect to withholding a vote in situations with an absolute quota (generally disfavored by Robert’s Rules),79 it accurately notes that such an abstention functions as a vote against the proposition.80 The rest of its advice about abstentions assumes they are made in the more favored relative quota situations, and complies with the commonplace understanding that abstentions are neutral with respect to outcome. For example, members with are counseled to abstain on questions in which they have a direct personal or pecuniary interest.81 This advice wouldn’t make sense if the abstention were thought to affect the outcome. More straightforwardly, and more troubling, Robert’s Rules of Order supplementary guides advise that, for all relative quotas, abstentions have no effect on the outcome. Take, for example, the manual’s advice when it comes to the all important step when the chair puts a question to the group: “Most motions require a majority of those present and voting to pass. Some require a two-thirds vote. (Abstentions—instances in which members who are present do not vote—are not counted and have no effect on the result.)”82 The online guide contains similar advice, noting that “abstentions have absolutely no effect on the outcome of the vote since what is required is either a majority or two thirds of the votes cast.”83 This advice, as we now know, is wrong.


The author goes on to conclude that:

The counterintuitive effects of abstention are real-world features of democratic decisionmaking. When voters fall victim, they vote, or fail to vote, against their best interests (by their own measures). When this happens to legislators, it can, of course, have an immediate effect on the course of the law. But more troubling is the fact that the procedures of hundreds of thousands of “ordinary societies,” many of which have significant influence over the lives of their members, are vulnerable. … Abstaining, then, carries with it real legal consequences that are often at odds with the intentions of many voters. These counterintuitive effects of withholding votes are exacerbated by the lack of competent guidance about the consequences of abstaining in many
common situations. Indeed, the American bible of parliamentary procedure, Robert’s Rules of Order, gives mistaken advice about the effect of abstention in some of the most significant decisions that may be made under the rules. While there are not any voting procedures immune from all of the perverse effects of abstention, voters need to be aware of the possibilities to avoid being taken by surprise. Consider this Article the first attempt to remedy that situation. (emphasis added)

Id. at p.443.

One potential solution to this problem is to count abstentions as splitting the vote (and in the NCRTD's case the Voting Units) evenly so that the abstention is truly neutral as to the proposition.

**Recommendation:**

The scholarly articles recommend the following:

Changing the reality of how abstentions are counted is also a possibility. The most straightforward way to do so would be to adopt procedures that count abstentions as equally splitting the weight of one's potential vote among the alternatives. This would ensure that a potential voter's indifference—whether honest, feigned in favor of some other value, or forced by a conflict of interest—is appropriately weighted in the outcome. This would allow us to avoid the kind of anomalous situations that occur, for example, at the intersection of supermajority requirements and conflict-of-interest rules. It makes absolutely no sense for a voter with a conflict of interest in a matter that requires supermajority approval to effectively cast a weighted vote in favor of his own position. A simple adjustment of the way abstentions are weighted in the outcome would align the perceived and actual effect of withholding your vote.


Staff will defer to the board on how to best deal with abstentions. They can count as a yes vote, a no vote, or as concurring with the majority. They can be permitted, permitted by a vote, or prohibited. The board could use recusals and excusals for conflicts of interest cases or just allow or required affirmative disclosures. As the analysis above shows, many entities take many different approaches to abstention and the impacts are different depending upon the voting requirements.

Staff recommends that the Finance Committee discuss specific concerns and establish a specific goal for the Abstention rule. There may need to be different rules for different types of votes rather than a single catch all rule.

Scenarios that should be considered are:
1. How to handle conflicts of interest or impermissible bias by Directors before or during a vote.
2. How to handle supermajority votes where abstention helps achieve the supermajority.
3. Which if any of the Board's votes should be subject to an absolute majority requirement that effectively makes abstention and automatic no vote.
Memorandum

To: Finance Committee
From: Peter Dwyer, Legal Counsel
Thru: Anthony J. Mortillaro, Executive Director
Date: November 20, 2018
Re: Code of Conduct

Background:

The Governmental Conduct Act (NMSA 1978, Section 10-16-1 et seq.) imposes mandatory minimum standards for the conduct of District Employees and authorize the creation of this Code of Conduct pursuant to NMSA 1978, Section 10-6-11 (C ).

The November 6, 2018 ballot includes Constitutional Amendment 2. The amendment is "to create an independent State Ethics Commission with jurisdiction to investigated, adjudicate and issue advisory opinions concerning civil violations of laws governing ethics, standards of conduct and reporting requirements...." The ballot question was approved by a strong majority of voters receiving 75% of the voting public's approval.

In anticipation of this new Ethics enforcement agency the District staff has determined it may be advisable to adopt a specific Code of Conduct policy. Such a policy is permitted but not required by the Governmental Conduct Act.

At it's October meeting the Finance Committee postponed detailed consideration of the draft code of conduct policy pending the election results.

There is still some time before the new Constitutional Amendment number 2 is implemented because the State Legislature will now have to enact specific statutes and regulations to implement the Constitution's new mandate.

Current Rules:

Currently the District has specific Personnel Rules regarding employee conduct, a Collective Bargaining Agreement that provides specific employee rights, and District "Professional Standards and Values" that define professionalism for our employees. But there is no comprehensive ethics policy that addresses the Governmental Conduct Act or various other ethical constraints for both employees and Board Members.
**Proposed Code of Conduct:**

The attached Code of Conduct Policy is intended to be a comprehensive regulation of ethical behavior by District Employees and "Officers" (meaning all Board Members not just the Board Officers). Different standards are proposed for Officers and Employees in part due to the fact that there are express statutory provisions on "Conflicts of Interest" for Board members but no comparable provisions for Employees.

**Recommendation:**

The Staff recommends that the Finance Committee critically review and discuss the attached draft policy. Some changes may be needed or desirable. In particular the sections on: Weapons (13); gifts (14); and political activity (17); Outside employment (22); Hiring and Contracting Employees and Officers (23); require a delicate balancing of practical problems against desirable behaviors.

**Attachments:**

- Draft Code of Conduct policy.
1.0 **Objective:**

The goal of this policy is to establish in clear and simple terms the District's expectations for its Employees, Officers and agents. Nothing herein is intended or shall be deemed to alter minimum legal requirements of the Governmental Conduct Act, or any other state or federal laws imposing standards of conduct upon the District, its Employees, Officers and agents.

2.0 **Coverage:**

The district is a “local government agency” within the meaning of NMSA 1978, Section 10-16-2 (G) and its Employees and board members are "public Officers or Employees" within the meaning of NMSA 1978, Section 10-6-2 (I). The Governmental Conduct Act (NMSA 1978, Section 10-16-1 et seq.) imposes mandatory minimum standards for the conduct of District Employees and authorize the creation of this Code of Conduct pursuant to NMSA 1978, Section 10-6-11 (C) and shall be reviewed "at least once every four years" pursuant to NMSA 1978, Section 10-6-11 (D). For purposes of this Policy an "Officer" is an elected or appointed official who serves on the District Board and an "Employee" is a person employed by the District as further defined in the District's Personnel Rules.

3.0 **Roles and Responsibilities:**

Each Officer and Employee of the District is responsible for familiarizing themselves with this Code of Conduct and complying with the Code of Conduct. Training, and responses to questions and concerns will be the responsibility of the Executive Director, the Human Resources Director and the District's legal counsel.

4.0 **Guiding Principles:**

The Guiding Principles for conduct are established in the District's Mission and Vision statements and Long Range Strategic Plan. The District's mission is "to provide safe, secure and effective public transportation within North Central New Mexico in order to enhance the quality of life of our citizens by providing mobility options and spur economic opportunities throughout the region." The District's vision is "to be the leading rural public transportation
organization connecting communities and enhancing cultural, environmental, social, and economic opportunities for
the betterment of our region." In order to achieve our mission and live up to our vision of the District we need to
conduct ourselves in a caring and professional manner that inspires public trust and confidence that the District is
enhancing the community and striving to be a leader in rural public transit.

All District related actions by Officers and Employees of the District shall aim to advance the District's mission and
vision and shall not be performed for personal gain excepting such compensation or payments as may be called for
by the District's employment policies and rules. In performing acts on behalf of the District, Officers and Employees
shall act in a "public trust" capacity pursuant to NMSA 1978, Section 10-6-3 (A) of the Governmental Conduct Act.
This means that Officers and Employees shall use the powers and resources of the District only to advance the public
interest and not to obtain personal benefits or pursue private interests.

5.0 Compliance with Law:

The minimum standard for all persons covered by this Code of Conduct is that they comply with the law. District
Officers and Employees are expected to comply with all safety and fair dealing laws, and to be ethical and responsible
when dealing with the District's finances, property, and in dealing with riders. Specific laws that should be
considered include but are not limited to the following state laws:

The Governmental Conduct Act, NMSA 1978, Sections 10-16-1 et seq, 10-16-6 through 10-16-9, 10-16-11, 10-16-13.1 through 10-16-14 and 10-16-17.
The traffic laws of the State of New Mexico, NMSA 1978, Section 66-7-2 et seq.
The Human Rights Act, NMSA 1978, Section 28-1-1 et seq.

6.0 Prescribed Employee Conduct:

It is the policy of the District that certain rules and regulations regarding Employee behavior are necessary
for efficient business operations and for the benefit and safety of all Employees and the public. Conduct that
interferes with operations, discredits the District, is in violation of District policy, is unsatisfactory or is
offensive will not be tolerated. Employees are expected at all times to conduct themselves in a positive manner
to promote the best interests of the District. Examples of behavior that may result in disciplinary action, up to
and including possible termination, are:

6.1 treating others in a discourteous manner;

6.2 wearing clothing inappropriate for the work being performed;

6.3 failing to report to work punctually at the assigned times, or failing to be at the proper work station
ready for work as scheduled;

6.4 failing to maintain cleanliness and order in the workplace and work areas;

6.5 fighting with or assaulting others;

6.6 threatening or intimidating others;
6.7 falsifying or altering any District record or report, such as an application for employment, a medical report, a time record, a financial record;

6.8 stealing, destroying, defacing or misusing District property or another's property;

6.9 engaging in acts of insubordination including, but not limited to, refusing to follow managements instructions concerning a job-related matter;

6.10 using profanity or abusive language;

6.11 sleeping on the job;

6.12 gambling on District property;

6.13 playing malicious or dangerous pranks or practical jokes, or engaging in horseplay.

6.14 alcohol and substance abuse;

6.15 dishonesty;

6.16 sexual and any other form of illegal harassment;

6.17 possession of weapons on District property;

6.18 poor work performance;

6.19 violation of District leave policies; and

6.20 violation of other District policies or directives.

7.0 Respect:

All District Officers and Employees should show respect for one another, for riders, and for all persons having business dealings with the District. Basic standards for showing respect require that Employees refrain from harassment, and treat colleagues equally regardless of class or classifications including such things as race, age and gender. Refraining from the use of profane language and limiting discourse to topics that will elicit anger, hostility and argument are the most basic ways in which to show respect. Refraining from comments that demean others and condemning the ideas or beliefs of another are also signs of respect.

8.0 Professionalism:

All District Employees shall maintain a high level of professionalism. The fundamental requirements of professionalism are set forth in the District's Professional Standards and Values. Additional considerations are as follows:

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1 Refusal to follow instructions based upon alleged safety issues, or in the event the instruction is alleged to require a violation of the law or of a Collective Bargaining Agreement shall be handled through the District's Personnel Rules.
8.1 Personal Appearance shall be maintained through proper attire and hygiene in accordance with the District's dress code;

8.2 Officers and Employees shall familiarize themselves with their authorized role and job duties and shall refrain from actions beyond their authority or outside the scope of their job duties;

8.3 Officers and Employees shall fulfill their duties in a timely manner;

8.4 Employees shall accept and take direction from those persons having direct authority over them including supervisors, managers, directors, the Executive Director,

8.5 Employees shall not take direction from the Board Chair or individual Directors unless expressly authorized by the Executive Director or a written law or policy;

8.6 Officers and Employees shall at all times attempt to mentor and assist persons with less experience by providing useful suggestions and guidance rather than through orders or directions;

8.7 Supervisors and managers shall refrain from abusing their authority and shall delegate work according to the competence and workload of the Employees;

8.8 Employees shall arrive to work on time, prepared for work and shall not absent themselves from work at a time or in a manner that causes their colleagues to have to take on additional work, shifts or work tasks.

9.0 District Property:

All District Officers and Employees should treat District property including vehicles, equipment, tools, money, buildings, data, documents and information, with care and protect it against improper use or damage. District property shall be kept clean and in good repair and District tools shall only be used for their intended purposes.

10.0 Corruption:

All actions or transactions by Employees and Board Members which are illegal and/or corrupt are strictly prohibited and will result in referring the matter to the appropriate law enforcement agency.

11.0 Gambling:

"Gambling" shall have the meaning given by New Mexico law regarding regulated or illegal gaming. Gambling on District property is prohibited. Fund raising activities that involve raffling off of items to generate funds for Employee benefits is permitted. Other forms of gambling as a fund raising activity are prohibited.

12.0 Drugs and Alcohol:

The use of drugs and alcohol by District Employees are regulated under the District's Personnel Rules and specific Drug and Alcohol related policies. In addition to those requirements all District Employees shall refrain from any use of illegal drugs and shall take care in the use of legal drugs to ensure the public safety.
13.0 **Weapons:**

District Officers and Employees shall refrain from bringing any weapon prescribed under the District's Personnel Rules onto District property without the prior written approval of the Executive Director. The Executive Director may permit weapons upon District property if the Officer or Employee discloses the weapon and demonstrates to the Executive Director's satisfaction that the weapon will be securely stored (in the person's vehicle or otherwise) in such a manner as to ensure that the presence of the weapon on District property will not create a risk to the District or the public and that the presence of the weapon on the District property will not constitute intimidation or harassment of District Officers, Employees, or the public. Weapons in the possession of Public Safety Officers and Security Officers contracted by the District are exempt.

14.0 **Gifts and Favors:**

Gifts and favors by and from public Officers and Employees are generally regulated by the State of New Mexico Gift Act (NMSA 1978, Section 10-16B-1 et seq.) Gifts of District property are generally forbidden by the "Anti-donation" provisions of the State of New Mexico Constitution (Article IX, Section 14). Nothing in this Code of Conduct shall be construed to violate those provisions of law and the requirements of this Code of Conduct shall be deemed supplemental to, and more restrictive than, the existing legal requirements.

14.1 Officers and Employees must not accept or permit any member of their immediate family or household to accept any gifts or favors from anyone in exchange for promised performance of an official act.

14.2 Employees shall not accept any gratuity offered for performance of existing job duties including honoraria for job related presentations, tips for District services, or any other form of compensation excepting only compensation for meals, lodging or travel expenses incurred for District related activities.

14.3 Subordinate Employees are prohibited from making any gift or gifts to any supervisory Employee that exceed $100.00 in value in any single calendar year and are expressly prohibited from making a gift of any value to any supervisor that would create an appearance of impropriety including but not limited to gifts intended to secure favorable reviews, evaluations, promotions, or other conditions of employment.

14.4 Employees are prohibited from donating or making gifts of District property to private entities or individuals.

14.5 District Officers and Employees are prohibited from granting favors to any vendor, contractor, or customer of the NCRTD where the favor would result in a significant cost or expense to the District or would result in unequal treatment of similarly situated vendors, contractors, or customers.

14.6 Prohibited gifts do not include gifts by Employees to food drives, charitable organizations or other similar fund raising activities so long as the gifts do not incur a cost or expense to the District. Nothing herein shall be deemed to amend or alter any District policy regarding solicitations in the workplace.

14.7 Prohibited gifts do not include any reward or incentive given to an Employee by the NCRTD as an employer.

14.8 Prohibited gifts do not include gifts by and between district Employees in recognition of birthdays, holidays or for non-work related reasons.
14.9 Prohibited gifts do not include promotional materials given to persons attending a conference or training on behalf of the District.

14.10 Prohibited gifts do not include payment for another Employee's meal by a co-worker.

14.11 Prohibited gifts do not include meals permitted from financial services companies that are expressly exempted under NMSA 1978, Section 10-16-13.3 (C ).

14.12 Prohibited gifts do not include awards or other forms of recognition by or to the District or its Employees that are strictly commemorative and do not include cash or payments of any kind.

14.13 Prohibited gifts do not include honoraria of one hundred dollars or less.

15.0 **Board Conflicts of Interest:**

A Board Member Conflict of Interest shall mean any situation governed and regulated by NMSA 1978, Section 73-25-5 (E) that reads as follows:

"A director of the board shall not vote on an issue when the director has a conflict of interest. A director of the board, Officer of the board or Employee of the board shall not:

1) acquire a financial interest in a new or existing business venture or business property of any kind when he believes or has reason to believe that the new financial interest will be directly affected by his official act;

2) use confidential information acquired by virtue of his office or employment for his or another's private gain; or

3) contract with the district without public notice and competitive bidding and full disclosure of his financial or other interest in the business that is party to the contract."

Board conflicts of interest shall be addressed and disclosed pursuant to 9.08 of the Board's Bylaws and by annual compliance through the filing of a Conflict of Interest disclosure form a copy of which is attached Hereto as Exhibit A.

16.0 **Employee Conflicts of Interest/Appearance of Impropriety Standard:**

Conflict of interest is difficult to define. The legal definition of conflict of interest, is very specific and covers relatively few situations. Most conflicts fall into a gray area where ethics and public perception are more relevant than statutes or precedents. Conflict of interest arises whenever the personal or professional interests of an Employee are potentially at odds with the best interests of the organization. Transactions that may constitute a conflict of interest are nevertheless acceptable if they benefit the organization and if approved by the Board or the Executive Director in an objective and informed manner. Even if an action or transaction is legal it may still be improper if action or transaction is vulnerable to legal challenges and public misunderstanding. Loss of public confidence and a damaged reputation are to be avoided even where the action or transaction is legal because public confidence is important to the District. Therefore, it is the policy of the District to avoid even the appearance of impropriety.

17.0 **Political Activity:**
17.1 Board members and Employees of the District shall not solicit any contribution of funds, goods or services in aid of any political campaign while on District property. Board members and Employees shall also refrain from using any District property, information obtained through District employment or service and any other District resources in aid of any political campaign. Nothing herein shall prohibit the District, its board members and Employees from providing information regarding ballot issues involving the District.

17.2 Board members and Employees shall refrain from any action that expressly or impliedly compels other District Employees or Officers to support a candidate or to contribute goods, money or services to a political fund or effort including but not limited to union related associations and activities. For purposes of this Policy a request to sign a nominating petition or similar requests for aid in a political campaign shall be prohibited upon District Property. Voluntary participation in any political activity including but not limited to union membership and contribution to or payment of union dues, fees and contributions shall be permitted and appropriately documented.

17.3 Employees may run for elected office to the extent permitted by state and federal laws including but not limited to the Hatch Act and the District's Personnel Rules.

17.4 District Employees shall refrain from dissemination of partisan media while in the workplace.

17.5 Political activity by Employees and Officers that is in aid of the District and is authorized and approved by the Board is expressly permitted. However, any such political activity shall be subject to the direction and prescription of the Board and the Executive Director. District Employees shall refrain from engaging in lobbying or other political activities on behalf of the District unless they are expressly authorized and directed to take such actions.

18.0 Solicitations:

Non-political solicitations by Employees of the District on behalf of the District are permitted to the extent authorized by the Board or the Executive Director. Non-political solicitations of Employees by other Employees for charitable organizations shall be permitted only to the extent authorized by the Executive Director and shall not be permitted where the solicitation identifies specific individuals and singles them out in front of their peers in a manner which compels participation or causes express or implied pressure to donate to a cause, charity or fund.

19.0 Travel:

Travel paid for by the District shall be scheduled and conducted in a manner that optimizes the benefits to the District. Officers and Employees shall refrain from conduct that creates the appearance of a lack of professionalism when on District travel. Such conduct includes unruly behavior, public intoxication, improper or unprofessional dress or appearance and any other inappropriate conduct that reflects poorly upon the Distirct.

20.0 Confidentiality:

All District Business is public business and the District's Officers and Employees shall strive to optimize transparency in the performance of District work to the maximum extent practicable. Notwithstanding the District's commitment to open and transparent government, it remains essential that certain aspects of public employment and public service be performed in a manner that respects the confidential information and
privacy of individuals and mitigates the risk to tax-payer assets caused by disclosure of confidential information. Confidential information includes all personal identification information that might be used for identity theft, all attorney-client privileged communications, all proprietary information of third-party vendors, all disciplinary personnel actions, all Employee evaluations and such financial information as may be deemed confidential under New Mexico law.

It is the responsibility of all Officers and Employees to maintain confidentiality of confidential information and the disclosure of such information to the public, the press, or the community at large is prohibited.

21.0 **Accuracy of Books, Records and Reports:**

It is incumbent upon all District Officers and Employees to ensure that the records, reports and District data is maintained in a current format and accurately reflects the facts regarding the business and operations of the District. All District Officers and Employees are required to cooperate with any internal or external auditor, compliance Officers, regulators and other agencies who have regulatory authority over the District. Affirmative disclosure is required for any fact or information that is likely to materially alter a review of the District's finances and operations. Destruction and alteration of District records shall be performed only to the extent permitted by the District's Record Retention and Disposition policies. Alteration of draft documents or dynamic records such as databases, route maps and iterative documents is permitted as necessary but District records shall not be altered or amended in a manner that omits or elides material facts about the District.

22.0 **Outside Employment:**

Pursuant to the Governmental Conduct Act, all Officers and Employees of the District are charged with duties as trustees of the public's resources. As public trustees the Officers and Employees shall only use the powers and resources of public office and employment to advance the public interest and shall not obtain personal benefits or pursue private interests using District resources.

22.1 All outside employment by District Employees shall be reported to the Executive Director consistent with the District's Personnel Rules.

22.2 All outside employment by District Officers shall be reported to the Board to the extent that the employment may create a conflict of interest.

22.3 Outside employment by Employees that requires the Employee to respond to phone calls, texts, or other forms of communication during their regular work hours at the District is prohibited.

22.4 Outside employment that creates scheduling conflicts or unreasonably limits the availability of District Employees during hours when they can reasonably be expected to be available for District business or operations is prohibited.

22.5 Outside activity by District Employees, whether as an Employee, contractor or a volunteer, that seeks to obtain goods, services, grants, or other aid from the District for a third party (and not the general public) is prohibited.

23.0 **Hiring and Contracting Employees and Officers:**
The District may consider applications from existing and former Officers but shall not hire as an Employee any sitting Board Member. Board Members may volunteer pursuant to the District's Personnel Rules. The District may contract with former Employees and Officers to the extent that said contract is in the District's best interest as determined by the Board provided that:

23.1 The former Officer or Employee has no actual or apparent conflict of interest;

23.2 The contract is disclosed to the Board;

23.3 The Former Officer or Employee does not receive a direct financial benefit from prior actions taken in their capacity as an Officer or Employee of the District.

24.0 **Reporting Violations:**

All Officers and Employees shall report violations of this policy to the Executive Director or the Board.

25.0 **Retaliation Prohibited:**

It shall be deemed a violation of this policy for any Officer or Employee of the District to retaliate against another Officer or Employee for reporting or alleging a violation of this policy.

26.0 **Sanctions:**

Employees may be sanctioned for a violation of this policy pursuant to the relevant provisions of the District Personnel Rules or any applicable Collective Bargaining Agreement. Officers may be sanctioned for a violation of this policy only by action of the Board of Directors. Officer violations of the Conflict of Interest provision of this policy may be sanctioned pursuant to section 9.08 (e) of the Board's Bylaws.