North Central Regional Transit District (NCRTD)

Resolution No. 2017-21

A RESOLUTION ADOPTING A POLICY FOR INCIDENTAL USE OF DISTRICT PROPERTY SUPERSEDING AND REPEALING RESOLUTION 2012-29

WHEREAS, the NCRTD was created through legislative enactment (NMSA 1978, Sections 73-25-1 through 73-25-19); and

WHEREAS, the NCRTD is a subdivision of the State of New Mexico with all the authority and duties of the same; and

WHEREAS, the Board has the authority to make and pass resolutions necessary for the execution of the powers vested in the District; and

WHEREAS, the federal government has a role in regulating the use of certain property acquired with federal funds; and

WHEREAS, the general federal policy is "to permit grantees maximum flexibility in determining the best and most cost-effective use of FTA-funded property;" and

WHEREAS, the Board has previously adopted a specific policy for the use of the Jim West Regional Transit Center; and

WHEREAS, the Board now wishes to adopt a more general policy on the incidental use of District Property.

NOW THEREFORE THE NCRTD BOARD, hereby adopts the attached policy on the Incidental Use of District Property and supersedes and repeals Resolution 2012-29.

Daniel R. Barrone, Chair

Approved as to form:

Peter Dwyer, Counsel
1.0 Purposes

The North Central Regional Transit District (N CRTD) ("District") owns certain real and personal property that may, from time to time, be used by persons or organizations other than the District and its employees. Incidental use of said property may be permitted pursuant to this policy. The goal and purpose of the policy is to recover costs of incidental uses of district property; not to generate profit.

2.0 Scope of Policy

This policy covers only the incidental use of District property by persons or organizations who are not the District, its employees or agents. It does not cover long term leasing, sale or conveyance of District property. Nothing herein shall limit the District’s own use of its property in any manner. Where Federal Transit Administration (FTA) money has been used to acquire District property, "incidental uses" shall mean the authorized use of real property and equipment for purposes of transit service but which also has limited non-transit use due to transit operating circumstances. Where the property in question was acquired using FTA funds, and to the extent that the property in question is subject to federal restrictions, such use must be compatible with the approved purposes of the project funded and not interfere with intended public transportation uses of project assets. The federal policy as stated in FTA circular 5010 1D is "to permit grantees maximum flexibility in determining the best and most cost-effective use of FTA-funded property." The District has adopted this policy in order to effect that goal.

3.0 Oversight Responsibility:

This policy shall be administered by the Fleet and Facilities Manager or by such other staff person as the Executive
Director may designate.

4.0 General Prohibition:

Incidental use of District property by persons or organizations other than the District itself, its employees and agents (including contractors) is prohibited unless expressly authorized by the Executive Director or the Fleet and Facilities Manager. District property is generally reserved for the sole and exclusive use of the District, its officers, employees and agents. Activities involving fund raising, advertising, promoting or selling of merchandise or services, for profit or not for profit (excluding professional training sessions offered on a fee basis) are generally prohibited. Use of District property by persons or organizations for campaign purposes or any other purpose contrary to law are generally prohibited. However, nothing herein is intended to limit the use of publicly accessible District property (such as bus stops and transit amenities) by the general public for transit uses.

5.0 Exceptions to General Prohibition:

5.01 Public Safety

Use of District property by state, federal and local agencies including but not limited to law enforcement agencies shall be permitted in emergency situations and during the course of public safety operations. The District is prepared to assist in activities such as emergency staging of fire control, disaster relief and sheltering, staging for emergency operations, and assistance with law enforcement where such assistance is in the public interest and either will not unduly interfere with District operations or is deemed by the District to warrant an interference with District operations (such as disaster relief or emergency assistance.)

5.02 Transit Uses

Any use of District property for collaborative purposes by other publicly controlled transit service providers such as "Park and Ride" may be permitted without the formal requirements of section 6.0 regarding discretionary uses.

6.0 Discretionary Incidental Uses:

The District may, in its sole discretion, elect to permit incidental uses of District Property where the following criteria are met:

6.01 General Requirements:

(a.) the use will not interfere with District operations.
(b.) the use will not violate any law
(c.) the use will not adversely impact the District’s contractual agreements including but not limited to any relevant grants.
(d.) The use will not harm District property or cause the District to incur unrecoverable costs.

6.02 Specific Requirements for FTA funded property to the extent the District is regulated under the Federal Relocation Assistance Act:
Incidental use will be permitted if:

(a) The incidental use does not interfere with the grantee’s project or public transportation operations;
(b) The grantee fully recaptures all costs related to the incidental use from the non-transit public entity or private entity, including all applicable excise taxes on fuel for fueling facilities and wear and tear to capital improvements;
(c) The grantee uses revenues received from the incidental use for capital and/or operating expenses that were or will be incurred to provide the public transportation; and
(d) Private entities pay all applicable excise taxes on fuel.

7.0 Requirements for Discretionary Incidental Uses:

Any person or organization seeking a discretionary incidental use shall be required to meet the following standards and requirements prior to the District's approval of the use:

7.1 Written Request Requirement:

The user must provide the District with a prior written request at least two weeks prior to the use containing the following:
(a) name and legal status of the person or organization
(b) contact information on the applicant
(c) the date, time, and location of the proposed use
(d) the number of hours anticipated for the use
(e) the specific District property proposed for use
(f) name and policy number of person or organizations insurance carrier

7.2 Review of Requests:

The District will review all requests on a first come first serve basis and may grant or deny the request in its sole discretion. The Executive Director shall review and may approve uses of District property consistent with this policy. Requests to use the District's Board room shall be assessed as follows:

First priority shall be given to the District usage for Board Meetings, Committee Meetings, and professional meetings hosted by the District Board or Staff.
Second priority shall be Member entities or their Boards or Committees.

Third priority shall be other public service agencies such as tribal, state, federal, city, county or local agencies deemed to be subdivisions of the state by state statue.
Fourth priority shall be agencies or boards or delegated committees of state, municipal or county entities.

Fifth priority shall be special events as deemed to be incidental uses by the Executive Director.
The Fleet and Facilities Manager shall review all applications and shall forward to the Executive director for approval a recommendation on the approval or denial of the application based upon District needs and this policy. The Fleet and Facilities manager shall recommend what conditions of approval and fees and charges should be imposed with the goal of ensuring the protection of District property and the recovery of District Costs.

The Executive Director shall review and approve or deny all applications and may impose such conditions of approval, fees and charges, as deemed necessary and proper.

7.3 Conditions of Approval:

The District may impose restrictions or requirements upon the proposed user including but not limited to the following:

(a) Special events, liability or property insurance;
(b) Trash removal or clean up;
(c) Payment of a refundable security deposit for any damage to District property.

7.4 Fees and Charges

The District may impose fees and charges sufficient to recover all district costs associated with the use including but not limited to:

(a) Rental fees for use of District buildings in an amount indicated on the attached Schedule A;
(b) Rental fees for use of District equipment at a rate equal to the then prevailing market rate;
(c) Utility fees for the costs of any District gas, electric, water, sewer or other utility costs;
(d) prorated staff costs for any District staff time required to access or use District property; (Proration of staff costs are in the sole discretion of the District.)
(e) Audio visual fees for the time and equipment costs of any use of District audio visual systems;
(f) Copying fees shall be at the rate the District uses for its own internal cost allocation;
(g) Phone/Internet fees shall be at the rate the District uses for its own internal cost allocation;
(h) Refundable damage deposit equal to 2 times the rental fee.