

**MEMORANDUM OF AGREEMENT
BETWEEN SANTA FE COUNTY
AND THE
NORTH CENTRAL REGIONAL TRANSIT DISTRICT
TO PROVIDE INCREASED PASSENGER-CAPACITY TRANSIT BUSES
ON THE EDGEWOOD – SANTA FE ROUTE**

THIS MEMORANDUM OF AGREEMENT (hereinafter referred to as the “Agreement”) is entered into on this 14th day of February 2012, by and between Santa Fe County (hereinafter referred to as the “County”), a New Mexico political subdivision, and the North Central Regional Transit District (hereinafter referred to as “NCRTD”), a New Mexico political subdivision created pursuant to Section 73-25-3(F) NMSA 1978, located at 3600 Rodeo Lane, Suite B-6, Santa Fe, NM 87507.

RECITALS

WHEREAS, in the spirit of cooperation and service to the residents of Santa Fe County, this Agreement confirms the parties’ commitment and mutual cooperation which recognizes that the partnering activities between the parties is in the interest of Santa Fe County and its residents who reside in southern Santa Fe County and in the vicinity of Edgewood, New Mexico;

WHEREAS, pursuant to the authority in §74-25-1 NMSA 1978 (Regional Transit District Act), NCRTD’s mission is the safe, secure and effective public transportation within north central New Mexico;

WHEREAS, NCRTD currently operates a regional public transportation system that includes a shuttle bus transit route (Edgewood to Santa Fe) that serves the needs of the communities in southern Santa Fe County, including Edgewood, New Mexico;

WHEREAS, a Regional Transit Gross Receipts Tax is levied in Santa Fe County which provides funding for regional transit services provided in Santa Fe County;

WHEREAS, in the interest of serving the needs of residents of southern Santa Fe County the County desires to provide additional funding assistance to NCRTD to enable NCRTD to provide increased passenger-capacity transit buses for the NCRTD’s Edgewood to Santa Fe Route;

NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. SCOPE OF UNDERSTANDING

The NCRTD shall perform the following services:

- a. Use increased passenger-capacity buses (18 passenger or more) on the NCRTD’s Edgewood - Santa Fe Route.

- b. Ensure that such increased passenger-capacity buses are driven by Driver/Riders who are properly trained and licensed.
- c. Upon NCRTC's introduction and regular use of increased passenger-capacity transit buses on the Edgewood-Santa Fe Route, submit periodic invoices to the County for NCRTD's costs to implement and provide increased passenger-capacity transit service on the Edgewood-Santa Fe Route.

The County shall perform the following services:

- a. Upon receipt of periodic invoices from NCRTD, compensate NCRTD for provision of increased passenger-capacity transit buses on the Edgewood-Santa Fe Route.
- b. Payment under this Agreement shall not foreclose the right of the County to recover excessive payment in the event Contractor fails to complete the service under this Agreement or otherwise breaches this Agreement.

2. EFFECTIVE DATE AND TERM

This Agreement shall, upon due execution by all parties, become effective as of the date first written above and shall terminate June 30, 2012 unless terminated earlier pursuant to Section 3 (TERMINATION) or Section 14 (APPROPRIATIONS AND AUTHORIZATIONS).

3. TERMINATION

Each party shall have the right to terminate this Agreement upon written notice, in the event of the other party's (the "Breaching Party") material breach hereof which is not cured within thirty (30) days after notice specifying such breach. By such termination, no party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. No party shall be relieved of liability to the other party for damages sustained because of any breach of the Agreement. The County reserves the right to

4. ASSIGNMENT

Neither party shall assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the other party.

5. NO THIRD-PARTY BENEFICIARIES

The NCRTD and the County are the only parties to this Agreement. Nothing in this Agreement provides any benefit or right, directly or indirectly, to third parties. This Agreement was not intended to and does not create any rights in any persons or party not a party to this Agreement. The parties shall cooperate fully in opposing any attempt by any third person or entity to claim any right, benefit, protection, release, or other consideration under this Agreement.

6. LIABILITY

Each party shall be solely responsible for fiscal or other sanctions occasioned as a result of its own violation or alleged violation of requirements applicable to the performance of the Agreement. Each party shall be liable for its own actions in accordance with this Agreement. Neither party shall be responsible for liability incurred as a result of the other party's negligence, acts or omissions in connection with this Agreement. Any liability incurred by the County in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, § 41-4-1, *et seq.*, NMSA 1978, as amended.

7. NO WAIVER OF IMMUNITIES, DEFENSES OR PROTECTIONS

Nothing in this Agreement waives or alters any immunities, defenses or protections provided to the County, and their respective employees, agents, board members, commissioners or officers, under New Mexico or federal law.

8. NEW MEXICO TORT CLAIMS ACT

No provision of this Agreement modifies or waives any sovereign immunity or limitation of liability applicable to the County and its respective employees, agents, board members, commissioners or at common law or under the New Mexico Tort Claims Act, NMSA 1978, § 41-4-1, *et seq.*

9. DISPUTE RESOLUTION

Disputes on any matter relating to this Agreement shall be discussed and resolved by authorized representatives of each party who have the authority to bind the party that they represent. The parties shall use their best efforts to amicably and promptly resolve the dispute. If the parties are unable to resolve the dispute within a reasonable time period as determined by the representatives, the parties may pursue any other legal means for resolving disputes which may arise from or under this Agreement.

10. ACCOUNTABILITY

During the term of this Agreement and for a period of three (3) years thereafter, each of the parties will maintain accurate and complete records of all disbursements made and monies received by each under this Agreement; and, upon receipt of reasonable written request, each shall make such records available to the other party and to the public, including any federal, state or local authority during regular business hours.

11. AMENDMENT

This Agreement shall not be altered, changed or amended except by an instrument in writing executed by the parties hereto.

12. INTEGRATION CLAUSE

This Agreement incorporates all the covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants and understandings have been merged into this Agreement. No prior covenants or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

13. APPLICABLE LAW; VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico. The parties agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be the State District Court of New Mexico, First Judicial District, located in Santa Fe County.

14. APPROPRIATIONS AND AUTHORIZATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Santa Fe County Board of County Commissioners and, if state funds are involved, the Legislature of the State of New Mexico. If sufficient appropriations and authorization are not made by the Legislature in this or future fiscal years, this Agreement shall terminate upon written notice being given by the County to NCRTD and the County shall have no duty to reimburse the NCRTD for expenditures made in the performance of this Agreement incurred after written notice to the NCRTD is provided by the County pursuant to this paragraph. The County is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the County. The County's decision as to whether sufficient appropriations are available shall be accepted by the NCRTD and shall be final and not subject to challenge by the NCRTD.

15. REQUIRED APPROVALS

This Agreement will not be final or binding upon the NCRTD until or unless approved by both parties.

16. FACSIMILE SIGNATURES

The parties hereto agree that a facsimile signature has the same force and effect as an original for all purposes.

17. EQUAL OPPORTUNITY COMPLIANCE

Each party agrees to abide by all federal and state laws, rules and regulations, pertaining to equal employment opportunity. In accordance with all such laws, each party assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any activity performed under this Agreement. If a party is found not to be in compliance with these requirements during the life of this Agreement, that party agrees to take appropriate steps to correct these deficiencies.

18. INVALID TERM OR CONDITION

If any term or condition of this Agreement shall be held void, invalid or unenforceable, such provision shall be severed from the remainder of the Agreement and the remainder of this Agreement shall not be affected and shall be valid and enforceable.

19. NOTICES

Any notice required by this Agreement shall be given in writing to the parties designated below. Notice shall be effective when delivered personally to any party, or three business days after deposited, postage fully prepaid, registered or certified, in an official receptacle of the U.S. Postal Service.

For NCRTD: North Central Regional Transit District
3600 Rodeo Lane #B-6
Santa Fe, New Mexico 87507
Attn: Anthony J. Mortillaro
(505) 438-3257

For County: Katherine Miller
Santa Fe County Manager
102 Grant Avenue
Santa Fe, New Mexico 87501

20. COMPLIANCE WITH STATE AND FEDERAL REQUIREMENTS

The NCRTD and the County shall assure compliance with all applicable state and federal statutes and regulations in the performance of this Agreement.

21. FORCE MAJEURE

Neither party shall be liable for any delay in the performance of this Agreement, nor for any other breach, nor for any loss or damage arising from uncontrollable forces such as fire, theft, storm, war, or any other force majeure that could not have been reasonably avoided by exercise of due diligence.

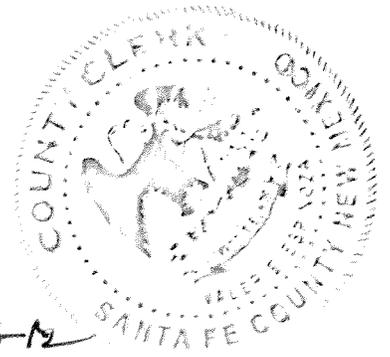
IN WITNESS WHEREOF the parties have duly executed this Agreement as of the dates written below.

SANTA FE COUNTY:

Liz Stefanics
Liz Stefanics, Chair
Santa Fe Board of County Commissioners

ATTEST: *Valerie Espinoza* by *VT*
Valerie Espinoza
Santa Fe County Clerk

Date: 2-14-12



APPROVED AS TO LEGAL FORM:

Stephen C. Ross
Stephen C. Ross, County Attorney

Date: 2/10/12

FINANCE DEPARTMENT:

For County: Katherine Miller
Santa Fe County Manager
102 Grant Avenue
Santa Fe, New Mexico 87501

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SANTA FE COUNTY:

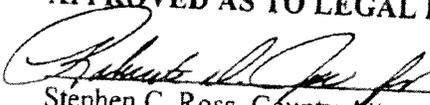
Liz Stefanics, Chair
Santa Fe Board of County Commissioners

ATTEST:

Valerie Espinoza
Santa Fe County Clerk

Date: _____

APPROVED AS TO LEGAL FORM:



Stephen C. Ross, County Attorney

Date: 2/10/12

FINANCE DEPARTMENT:

Teresa Martinez Date: *2/13/12*
Teresa Martinez, Finance Director

NORTH CENTRAL REGIONAL TRANSIT DISTRICT:

Anthony J. Morillaro Date: *2/13/12*
Anthony J. Morillaro, Executive Director