



RIO METRO
REGIONAL TRANSIT DISTRICT

BOARD OF DIRECTORS MEETING

Friday, February 15, 2019

12:00 p.m.

809 Copper Ave. N.W., Albuquerque, NM 87102

AGENDA

Call to Order

(The presence of a quorum will be noted.)

Approval of the February 15, 2018 Agenda

Tab 1 **Approval of the November 16, 2018 Action Summary**

PUBLIC COMMENT

Tab 2 Anyone who wishes to address the RMRTD Board must register with the Secretary of the Board

FINAL ACTION ITEMS

Tab 3 **Approval of Employment Agreement Amendment for the MRCOG Executive Director**
(Closed Session)

Tab 4 **Approval of RMRTD having Ownership Interest in the Positive Train Control System until such time as RMRTD's State Infrastructure Bank Loan debt for PTC Implementation is retired- INTERGOVERNMENT AGREEMENT REGARDING POSITIVE TRAIN CONTROL IMPROVEMENTS**

DISCUSSION / INFORMATIONAL ITEMS

Tab 5 **RMRTD Budget and Finance Committee Report**

- **FY2019 Q2 Financials**
- **Capital Outlay Requests**
- **TIP Requests**
- **LFC Evaluation of NMRX**

REPORTS

Tab 6 **Staff Reports:**

- ABQ RIDE, NCRTD, Rio Metro RTD
 - Performance Report
 - Potential Exhibit involving NMRX

OTHER BUSINESS AND NOTES

Next Meeting: Friday, March 15, 2019 at 12:00 p.m.

Anyone requiring special accommodations is requested to notify Barbara Thomas at (505) 247-1750 at least three days prior to the meeting.



RIO METRO
REGIONAL TRANSIT DISTRICT

RMRTD Board of Directors
ACTION SUMMARY
 Friday, November 16, 2018
 12:00 noon
 809 Copper Ave. N.W.
 Albuquerque, NM 87102

Diane Gibson, Chair

Wayne Ake, Vice Chair

ORGANIZATION		MEMBER		ALTERNATE
Bernalillo County	X	Debbie O'Malley, Commissioner		Ron Lopez
	X	Maggie Hart Stebbins, Commissioner		Richard Meadows
		James Smith, Commissioner	X	Richard Meadows
Sandoval County		David Heil, Commissioner		Mark Hatzenbuehler
Valencia County		Charles Eaton, Commissioner		Orlando Montoya
City of Albuquerque	X	Isaac Benton, Councilor		Tom Menicucci
	X	Diane Gibson, Councilor, Chair		Charlotte Chinana
	X	Klarissa Peña, Councilor		Cherise Quezada
		Cynthia Borrego, Councilor	X	Susan Vigil
		Don Harris, Councilor	X	Tom Menicucci Bonnie Suter
	X	Lawrence Rael		Patrick Montoya
City of Belen		Jerah Cordova, Mayor	X	Steven Tomita
City of Rio Communities		Mark Gwinn		
City of Rio Rancho		Dawnn Robinson, Councilor		Peter Wells
		Jim Owen, Councilor	X	Peter Wells
Town of Bernalillo		Jack Torres, Mayor		Andy Edmondson
Village of Bosque Farms	X	Wayne Ake, Councilor		
Village of Corrales		David Dornburg		Pat Clauser
Village of Los Lunas		Charles Griego, Mayor	X	Michael Jaramillo
Village of Los Ranchos de Albuquerque		Donald Lopez, Mayor	X	Mary Homan
ASSOCIATE MEMBERS				
Isleta Pueblo		Kathy Trujillo		Vacant
NON-VOTING ADVISORY MEMBERS				
ORGANIZATION		MEMBER		ALTERNATE
NCRTD		Anthony Mortarillo		Jim Nagle
MRCOG STAFF PRESENT				
Dewey Cave, Barbara Thomas, Tony Sylvester, Jerry Bowe, Grant Brodehl, Liz Carter				

AGENDA

Call to Order

The meeting was called to order at 12:05 p.m. by Chair Diane Gibson, City of Albuquerque. A quorum had not been reached so discussion began on the non-action agenda items. A quorum was reached shortly thereafter.

Approval of Agenda for November 16, 2018

Action Taken:

Isaac Benton, City of Albuquerque, made a motion to:

APPROVE THE AGENDA FOR NOVEMBER 16, 2018 AS PRESENTED

The motion was seconded by Steven Tomita, City of Belen, and passed unanimously.

Tab 1

Approval of Action Summary of October 19, 2018

Action Taken:

Mr. Tomita made a motion to:

APPROVE THE ACTION SUMMARY OF OCTOBER 19, 2018 AS PRESENTED

The motion was seconded by Mr. Ake and passed unanimously.

PUBLIC COMMENT

Tab 2

There were no public comments.

ACTION ITEMS

Tab 3
R-18-15
RMRTD

Approving Adjustments to the Rio Metro Regional Transit District (RMRTD) Short-Range Plan Addendum 6 to Include Revenues from the Consolidated Railroad Infrastructure and Safety Improvements (CRISI) Grant Program and Related Changes (1st Adjustment)

Grant Brodehl, RMRTD Special Projects Manager, explained that changes to the RMRTD Short-Range Plan Addendum 6 must be approved by the Board of Directors prior to approving changes to the current fiscal year budget. The changes are necessary to incorporate \$29,359,208 in CRISI Grant funding into the RMRTD Rail Budget and Projections and to make other related changes to accurately reflect revenues and expenditures over the life of the plan. As well, the CRISI Grant funds eliminate the need for additional debt contemplated in the original budget.

Mr. Brodehl went on to say that the RMRTD staff has prepared a project cost budget for the PTC implementation project totaling \$60 million (\$55 million with a \$5 million contingency). The TIP/STIP amendment to reflect this project budget, including the CRISI Grant, was considered and approved by the MTB at their October meeting. The adjustments will bring the FY 2019 budget and budget projections in line with expected revenues and expenditures.

Mr. Brodehl then stood for questions.

Action Taken:

Chair Gibson made a motion to:

APPROVE R-18-15 RMRTD APPROVING ADJUSTMENTS TO THE RIO METRO REGIONAL TRANSIT DISTRICT (RMRTD) SHORT-RANGE PLAN ADDENDUM 6 TO INCLUDE REVENUES FROM THE CONSOLIDATED RAILROAD INFRASTRUCTURE AND SAFETY IMPROVEMENTS (CRISI) GRANT PROGRAM AND RELATED CHANGES (1ST ADJUSTMENT)

The motion was seconded by Lawrence Rael, City of Albuquerque, and passed unanimously.

Tab 4
R-18-16
RMRTD

Approving Adjustments to the Rio Metro Regional Transit District (RMRTD) Fiscal Year 2019 Rail Budget to Include Revenues from the Consolidated Railroad Infrastructure and Safety Improvements (CRISI) Grant Program and Related Changes (1st Adjustment)

Mr. Brodehl explained that changes to the RMRTD Budget must be approved by the Board of Directors and the proposed changes are necessary to incorporate \$29,359,208 in CRISI Grant Funding into the RMRTD Rail Budget and to make other related changes to accurately reflect RMRTD Rail revenues and expenditures. The funds from the CRISI Grant eliminate the need for additional debt contemplated in the original budget and reflect current expected revenues and expenditures.

The RMRTD staff has prepared a project budget for the PTC Implementation project totaling \$60M. The TIP/STIP amendment to reflect this project budget, including the CRISI Grant funding, was considered and approved by the MTB at their October Meeting. The contemplated adjustments will bring the FY 2019 budget in line with expected revenues and expenditures, and will allow RMRTD to access the CRISI Grant funds for the project.

Chair Gibson made a motion to:

APPROVE R-18-16 RMRTD APPROVING ADJUSTMENTS TO THE RIO METRO REGIONAL TRANSIT DISTRICT (RMRTD) FISCAL YEAR 2019 RAIL BUDGET TO INCLUDE REVENUES FROM THE CONSOLIDATED RAILROAD INFRASTRUCTURE AND SAFETY IMPROVEMENTS (CRISI) GRANT PROGRAM AND RELATED CHANGES (1ST ADJUSTMENT)

The motion was seconded by Mary Homan, Village of Los Ranchos de Albuquerque, and passed unanimously.

Tab 5
R-18-17
RMRTD

Approving the Rio Metro Regional Transit District (RMRTD) Application for Congestion Management Air Quality (CMAQ) Funds to the New Mexico Department of Transportation (NMDOT) to Support Operations of the New Mexico Rail Runner Express

Mr. Brodehl presented R-18-17 RMRTD and said that the NMDOT had issued a statewide call for CMAQ-eligible projects and that approximately \$10 million per year is available between FFY 2020 and FFY 2025. Based on clauses in federal law specific to or alluding to the New Mexico Rail Runner Express, CMAQ funds may be spent on operations without time limitation.

The RMRTD, he said, is submitting a CMAQ application requesting \$1 million per year for \$6 million total for NM Rail Runner operating assistance. These funds would free up gross

receipts tax revenue that would be used, for example, to leverage other federal funds to improve the Rail Runner system or to sustain existing Rail Runner related programs that have received past CMAQ funding. NMDOT's CMAQ guidance requires applicants to provide a resolution of sponsorship that indicates proof of match, ability to pay all project costs up front, and the capability to maintain the project. The resolution, for the most part, mirrors the template provided by NMDOT.

This CMAQ program, Mr. Brodehl explained, is unique because it is one of the few federal programs in which funds may be spent on operating assistance, which are typically start-up costs incurred during the first 3 to 5 years of a new transit operation. However, through the past efforts of New Mexico's congressional delegation, federal law allows the CMAQ program to fund Rail Runner operations with time limitations.

Because of this peculiarity, any CMAQ funds awarded by NMDOT would be applied toward existing NMRX operating costs. This action would free up GRT—one of the few funding sources that can otherwise pay for NMRX operations—to serve as the local match for readily available federal funds that can only be spent on *capital* projects. For example, RMRTD receives more Section 5337 funding from FTA than it can match with GRT in any given year. Therefore, if NMDOT's CMAQ infusion displaced \$1 million in GRT, that GRT could leverage up to \$4 million in Section 5337 funding to complete significant capital projects now. The Main 2 Extension, Centralized Traffic Control (Abajo to Hahn), Los Lunas Siding, and NMRX Maintenance Facility projects are all projects that could take advantage of this unique opportunity.

RMRTD may also use a portion of any CMAQ award to fund other NMRX-related activities. For example, when the Albuquerque Metropolitan Planning Area received its own CMAQ allocation, the region allocated a portion of these funds (approximately \$250,000) to RMRTD's travel demand management (TDM) program. Operated out of the Marketing Division, the TDM program includes activities like the Smart Business Partnership, which offers tools and incentives to employers to encourage the use alternative modes of transportation like the Rail Runner.

Ultimately, RMRTD's CMAQ request is a potential win-win for RMRTD and NMDOT. The application presents NMDOT with a creative way to dramatically improve the performance and attractiveness of a state-owned asset at no cost to the state and with minimal federal investment.

A brief discussion followed.

Mr. Rael made a motion to:

APPROVE R-18-17 RMRTD APPROVING THE RIO METRO REGIONAL TRANSIT DISTRICT (RMRTD) APPLICATION FOR CONGESTION MANAGEMENT AIR QUALITY (CMAQ) FUNDS TO THE NEW MEXICO DEPARTMENT OF TRANSPORTATION (NMDOT) TO SUPPORT OPERATIONS OF THE NEW MEXICO RAIL RUNNER EXPRESS

The motion was seconded by Mr. Benton and passed unanimously.

INFORMATION AND DISCUSSION ITEMS

Tab 6

RMRTD Performance Presentation

Mr. Brodehl reviewed the tables included in the September 2018 Performance Report which includes ridership numbers, environmental measures and service quality measures and

productivity and fuel savings. Also included are customer complaints and incidents reported.

Mr. Brodehl thanked Jerry Bowe and Vera Taylor for their assistance with the report. He asked that any input or questions about the report be addressed to him or Terry Doyle.

Mr. Brodehl stood for questions. Maggie Hart Stebbins asked about tracking the number of break-ins at the stations. Mr. Brodehl said that these figures are not tracked by RMRTD but they may be available from police reports. Mr. Rael requested that more information on break-ins be made available to the Board.

The chair thanked Mr. Brodehl for the report and Mr. Rael suggested a “field trip” on the train for board members.

Following the report, a quorum was achieved and the Action Items were addressed.

Tab 7

Staff Reports

RMRTD:

Dewey Cave noted that the FRA was pleased with the Risk Mitigation Plan and he recognized Robert Gonzales and his staff at Herzog for their work on the Plan

ABQ Ride:

There was no report from ABQ Ride.

North Central RTD:

Liz Carter, RMRTD Assistant Transit Director, gave brief remarks for the North Central Regional District, saying that the NCRTD has submitted a letter to Triad National Security expressing concern that the Los Alamos National Labs contractor’s tax status may change and adversely impact budgets of both NCRTD and the RMRTD.

It was suggested that another letter be sent to the new governor and the New Mexico Department of Taxation and Revenue as it is imperative that revenues for operations must stay intact.

The meeting adjourned at 1:10 p.m.

Diane Gibson, Chair
Rio Metro Regional Transportation Board

ATTEST:

Dewey V. Cave, Executive Director



TAB 3

STAFF ANALYSIS OF Approval of Employment Agreement Amendment for the MRCOG Executive Director

The RMRTD Board of Directors Passed R-16-09 RMRTD “**Resolution Naming the Executive Director of the Mid-Region Council of Governments (“MRCOG”) as the Chief Executive Officer of the Rio Metro Regional Transit District (“RMRTD”), Establishing Procedures for the Annual Review of the Chief Executive Officer and Requiring Approval of the RMRTD Board of the Chief Executive Officer’s Contract, Contract Amendments or Extensions**” at their December 9, 2016 Board Meeting. The passing of R-16-09 RMRTD made the following official changes to the relationship between RMRTD and MRCOG:

- 1) Named the Executive Director of MRCOG as the Chief Executive Officer of RMRTD
- 2) The RMRTD Board is tasked with establishing and providing the Chief Executive Officer with annual goals and objectives.
- 3) RMRTD is given equal say in contract negotiations, salary discussions, decision to extend and renew the contract of the Executive Director.
- 4) The chair and vice chair of RMRTD shall meet at least once per year with the Chair and Vice-Chair of the MRCOG Board to review the performance of the Executive Director and to make recommendations regarding the continued employment of the Executive Director.
- 5) An ad hoc committee made up of the Chair and Vice-Chair of both entities is created and shall meet as needed to discuss issues that may impact both entities. The committee members will then report and make recommendations to their respective boards.
- 6) Any contract, amendment or extension of the contract of the Executive Director must be approved by both the board of RMRTD and MRCOG.

The ad-hoc committee comprised of the Chair and Vice Chair of both the RMRTD Board of Directors and the MRCOG Executive Board completed the annual evaluation of Dewey V. Cave on October 19, 2018. At that meeting, the committee also agreed to extend the term of the Executive Director Employment Agreement and to provide a cost of living adjustment annually as part of the extension. The “Third Amendment to the Executive Director Employment Agreement between the Mid-Region Council of Government and Dewey V. Cave” is attached hereto. The MRCOG Executive Board approved the “Third Amendment to Executive Director Employment Agreement between the Mid-Region Council of Governments and Dewey V. Cave” at their December 13, 2018 meeting. Approving **Approval of Employment Agreement Amendment for the MRCOG Executive Director**

will complete the required approval by RMRTD to execute the Third Amendment.

THIRD AMENDMENT TO
EXECUTIVE DIRECTOR EMPLOYMENT AGREEMENT
BETWEEN THE
MID REGION COUNCIL OF GOVERNMENTS
AND
DEWEY V. CAVE

This Third Amendment (“Amendment”) to the Executive Director Employment Agreement (“Agreement”) made and entered into by and between Mid Region Council of Governments (“MRCOG”) and Dewey V. Cave (“Executive Director”), hereby referred to as “Parties”.

1. Recitals.

A. The Parties entered into the Agreement on September 9, 2010 under which the Executive Director was appointed for a period of three (3) years. The Agreement was amended in the First Amendment on January 15, 2013 to extend the term of the Agreement for an additional three years through September 8, 2016. A Second Amendment was executed on January 14, 2016 to extend the contract for an additional three (3) years through September 8, 2019. The Second Amendment also provided for a salary increase of 1%.

B. The Parties wish to amend the Agreement to extend the term for an additional two (2) years and to add additional compensation in the form of a cost of living increase for the extended term.

2. Amendments.

A. **Section 1** is amended by adding the following paragraph:

“The Parties wish to extend the term of this Agreement for an additional two (2) year period. The two (2) year extension shall be effective from September 9, 2019 through September 8, 2021, unless the Agreement is terminated as provided herein. Thereafter, the contract may be extended upon mutual written agreement of the parties.”

B. **Section 16** is amended by adding the following paragraph:

“Effective September 9, 2019, the Executive Director’s salary shall increase one-and one-half percent (1.5%) as a cost of living adjustment to be paid in equal monthly installments pursuant to MRCOG’s regular pay schedule. Each year thereafter during the extension of the Contract, on the Executive Director’s anniversary date of September 9th, the Executive Director shall receive a one and one-half percent (1.5%) cost of living adjustment in salary.”

3. Effect of Amendment. Except as amended by this Amendment, the terms and conditions of the Agreement remain unchanged and continue in full force and effect unless there is a conflict

between the terms and conditions of this Amendment and the Agreement, in which case, the terms and conditions of the Amendment shall control.

4. Effective Date. This Amendment is effective upon execution of all signatories below.

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the dates indicated below.

Mid Region Council of Governments

By: _____
Greggory D. Hull, Chair
Mid Region Council of Governments

Dated: _____, 2018

Dewey V. Cave, MRCOG Executive Director

By: _____

Dated: _____, 2018

APPROVED AS TO FORM

By _____
Larry Horan, General Counsel
MRCOG



TAB 4

STAFF ANALYSIS OF Approval of RMRTD having Ownership Interest in the Positive Train Control System until such time as RMRTD's State Infrastructure Bank Loan debt for PTC Implementation is retired - INTERGOVERNMENT AGREEMENT REGARDING POSITIVE TRAIN CONTROL IMPROVEMENTS

The RMRTD Board of Directors Passed R-18-04 RMRTD “Authorizing the Rio Metro Regional Transit District to enter into a State Infrastructure Bank Loan Agreement with the New Mexico Department of Transportation to Provide Financing for the Necessary Local Match of the New Mexico Rail Runner Express Positive Train Control Project” at their April 20, 2018 Board Meeting. R-18-04 RMRTD Included the following resolving clauses:

“Section 1: that RMRTD is authorized to enter into a Loan Agreement with NMDOT for receipt and repayment of a SIB loan in the amount of \$10,900,000.00 at 1% interest over 18 years with principal payments differed for the first three years to provide funding for PTC, and the Chief Executive Officer has the authority to negotiate on behalf of the Board of Directors for more advantageous loan terms and to increase the loan amount by up to 10% based on actual PTC project costs; and

Section 2: that RMRTD pledges the proceeds from the county regional transit gross receipts tax as collateral and as the dedicated source of revenue to repay the SIB loan; and

Section 3: that RMRTD is authorized to enter into a loan Intercept Agreement with NMDOT whereby the revenues received from the county regional transit gross receipts tax may be intercepted by NMDOT to make payments due under the Loan Agreement in the event RMRTD fails to make timely payments on the SIB loan.”

The Memorandum of Agreement (MOA) between RMRTD and NMDOT governing the operations and maintenance of the New Mexico Rail Runner Express includes provisions that allow the following:

- NMDOT to sell the NMRX
- NMDOT to remove RMRTD as the operator

In order to protect RMRTD from having to service debt in the event that NMDOT exercises either one of these option, RMRTD Staff and NMDOT staff have developed an Intergovernmental Agreement Regarding Positive Train Control Improvement (see attached draft). To protect RMRTD's position, the following clause is being proposed:

"8. Ownership of PTC Improvements: RMRTD shall own the PTC improvements on the NMRX up to the principal amount of the SIB Loan (\$10,900,000), and the NMDOT shall own the remaining proportion of PTC improvements. RMRTD's ownership percentage of the PTC improvements shall decrease over time in proportion to the payment schedule in the SIB Loan, until the SIB Loan is paid in full. Upon full repayment of the SIB Loan, ownership of the PTC improvements shall revert in full to the NMDOT. Prior to repayment, either party shall have the option to terminate its ownership interest by notifying the other party within thirty (30) days in writing, then the terminating side shall pay the other for its remaining ownership interest"

RMRTD general council believes the attached Intergovernmental agreement provides protection for RMTD in the event NMDOT makes a decision to sell the NMRX or to remove RMRTD as the operator.

INTERGOVERNMENT AGREEMENT REGARDING POSITIVE TRAIN CONTROL IMPROVEMENTS

This AGREEMENT between the Rio Metro Regional Transit District (“RMRTD”) and the New Mexico Department of Transportation (“NMDOT”), collectively the “Parties”, establishes certain representations between the Parties regarding Positive Train Control (“PTC”) improvements to the New Mexico Rail Runner Express regional commuter rail service between Belen and Santa Fe, New Mexico (“NMRX”).

WHEREAS, the NMDOT owns the NMRX and all related property; and

WHEREAS, RMRTD serves as the administrative entity that is responsible for the operation, maintenance and management of the NMRX pursuant to an agreement between the Parties; and

WHEREAS, in October 2008, Congress enacted the Railroad Safety Improvement Act of 2008, setting a deadline for the implementation of PTC on all Class I railroads and each railroad providing or hosting intercity or commuter passenger service by December 31, 2015; and

WHEREAS, the implementation deadline for installation of PTC was extended by Congress from December 31, 2015 to December 31, 2018, and the Federal Railroad Administration conditionally approved a Temporary Mainline Track Exclusion from PTC for the NMRX to allow for implementation by December 31, 2020; and

WHEREAS, as memorialized in a letter dated March 3, 2016, by mutual agreement of the Parties, RMRTD assumed the lead role in PTC implementation for the NMRX; and

WHEREAS, the parties’ agreement does not contemplate RMRTD being paid any financial consideration for its efforts other than the ability to continue to operate, maintain and manage the NMRX, which ability is subject to cancellation by the NMDOT; and

WHEREAS, in order for RMRTD to implement the PTC, certain capital expenditures will be required for the purchase and installation of capital equipment and other modifications to the NMRX-related property in the NMRX Corridor property; and

WHEREAS, all PTC improvements made to the NMRX will become the property of the NMDOT; and

WHEREAS, RMRTD has secured the necessary funding package to fully implement the PTC improvements including a \$10,900,000 loan from the NMDOTs State Infrastructure Bank (SIB) to be repaid with the proceeds of a county regional gross receipts tax imposed by the members of RMRTD; and

~~WHEREAS, RMRTD will remain responsible for making required debt service payments on the PTC SIB loan for the term of the loan regardless of the continued ownership~~

~~and operation of the NMRX by the NMDOT and the continued operation, maintenance and management of the NMRX by RMRTD; and~~

WHEREAS, the Parties have agreed to make certain modifications to the terms set forth in the March 3, 2016 letter and to further formalize their understanding relating to the implementation of the PTC;

NOW THEREFORE the Parties hereby agree as follows:

1. Incorporation of Recitals: The above recitals are hereby incorporated herein by reference as if the same were set forth fully herein.
2. Purpose: The purpose of this Agreement is to place the primary responsibility on the RMRTD for designing, installing and implementing a PTC system in accordance with 49 CFR Part 236 subpart I for the NMRX Corridor.
3. Scope of RMRTD's Responsibilities: RMRTD shall design, install and implement a PTC system in accordance with 49 CFR Part 236 subpart I for the NMRX Corridor. The design, installation and implementation work includes all design, engineering, installation, testing, commissioning and training as well as development and implementation of a PTC Safety Plan which will require approval by the Federal Railroad Administration (FRA) for the entire NMRX Corridor (the "Work"). The Work includes all wayside, communications, onboard vehicle equipment and system interoperability. RMRTD may engage contractors to perform portions of the Work. Notwithstanding the engagement of any contractor, RMRTD shall remain responsible for the successful performance of the Work. RMRTD shall be solely responsible for paying each contractor for services, equipment, material or supplies in connection with the Work. Design, installation and implementation of the PTC system shall be accomplished in accordance with the terms of the Parties' August 12, 2013 Memorandum of Agreement (the "Memorandum of Agreement") including, but not limited to, obtaining all necessary consents and approvals from the NMDOT as required under the terms of the Memorandum of Agreement. RMRTD shall identify and secure the necessary funding and financing sources to successfully complete the Work.
3. Scope of the NMDOT's Responsibilities: The NMDOT shall participate in the selection of the design and construction contractor(s), and will have the same number of members on the contractor selection team as RMRTD. The Parties will work collaboratively during the design and construction phases of the Work to assure their mutual satisfaction of the PTC system. The NMDOT will cooperate with RMRTD in pursuing alternatives to the full systemwide installation of PTC to the extent the alternatives can reasonably be expected to be approved by the FRA. The NMDOT will cause to be used all reasonable efforts to expedite consideration of all required approvals and consents.
4. Effective Date/Term/Retroactive Application: This agreement will become effective when both parties have signed it. The date this agreement is signed by the second party to sign it (as indicated by the date associated with that party's signature) will be deemed the date of this agreement and it shall remain in force until the parties fulfill all their obligations

hereunder. If a party signs but fails to date a signature, the date that the other party receives the signing party's signature will be deemed to be the date that the signing party signed this agreement. Upon execution by both Parties, this agreement shall be deemed retroactively effective to the date of the Parties' letter agreement.

5. Property: Any and all tangible and intangible property acquired by RMRTD in the implementation and installation of the PTC system shall be subject to Section Twenty-One of the Memorandum of Agreement.

6. Surplus Funds: RMRTD shall keep such records as will fully disclose the amount and disposition of the total funds from all sources budgeted for the PTC system, the purposes for which such funds were used, and such other records as the NMDOT may require. If, upon the completion of the Work or the termination date of this Agreement, any surplus funds are possessed by the RMRTD, the RMRTD shall account for and distribute any such funds in accordance with any applicable grant agreement or funding program.

7. Strict Accountability of all Receipts and Disbursements: RMRTD shall be strictly accountable for all receipts and disbursements required for the design, installation and implementation of the PTC system.

8.

8. Ownership of PTC Improvements: RMRTD shall own the PTC improvements on the NMRX up to the principal amount of the SIB Loan (\$10,900,000), and the NMDOT shall own the remaining proportion of PTC improvements. RMRTD's ownership percentage of the PTC improvements shall decrease over time in proportion to the payment schedule in the SIB Loan, until the SIB Loan is paid in full. Upon full repayment of the SIB Loan, ownership of the PTC improvements shall revert in full to the NMDOT. Prior to repayment, either party shall have the option to terminate its ownership interest by notifying the other party within thirty (30) days in writing, then the terminating side shall pay the other for its remaining ownership interest.

~~Contingent Payment/Appropriation. Pursuant to the terms and subject to the conditions set forth herein, RMRTD shall be eligible to receive a contingent payment from the NMDOT as deferred consideration for RMRTD's services in implementing the PTC in the amount of \$10,900,000 plus any accrued interest. The contingent payment will be payable to RMRTD only in the event that NMDOT transfers NMRX or all of its NMRX Corridor property to another entity besides RMRTD, or in the event that NMDOT ceases operation of the NMRX without transfer of the NMRX property to another party, or terminates the Memorandum of Agreement either of which must occur between NMDOT and RMRTD prior to August 1, 2036. The contingent payment shall be reduced annually by the sum of \$725,000 plus accrued interest on each anniversary of the effective date of this Agreementthe closing and funding of the SIB Loan Agreement. The right of RMRTD to receive the contingent payment shall not be transferable, in whole or in part, or pledged as security, to any other person or entity. Notwithstanding anything contained herein to the contrary, the NMDOT shall not be obligated to make the contingent payment if, and then only to the extent that, making such contingent payment would cause the NMDOT to violate any state of New Mexico constitutional or statutory provision. If it is reasonably determined that making such contingent payment would cause the NMDOT to violate any state of New Mexico constitutional or statutory provision, the NMDOT may declare the~~

~~obligation to be null and void and of no further force and effect. All remaining provisions of this Agreement shall remain in full force and effect. Any obligation on the part of the NMDOT to make the contingent payment shall automatically terminate if no transfer or sale of NMRX or NMRX Corridor property to another entity besides RMRTD occurs by August 1, 2036.~~

~~It is an overriding consideration and determination of the NMDOT that its operating and general funds shall not be used, impaired or otherwise affected by this Agreement. The amount due pursuant to this Agreement shall not be a general obligation of the NMDOT or the State of New Mexico. Any payment of the contingent payment is contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico or the State Transportation Commission. The NMDOT is expressly not committed to the payment until such time as it is programmed, budgeted, encumbered and approved for expenditure by the NMDOT. If sufficient appropriations and authorization are not made by the Legislature or the State Transportation Commission, the NMDOT may declare the obligation to be null and void and of no further force and effect by giving written notice of such declaration. All remaining provisions of this Agreement shall remain in full force and effect. The NMDOT's decision as to whether sufficient appropriations are available shall be accepted by RMRTD and shall be final. RMRTD hereby waives any rights to assert an impairment of contract claim against the NMDOT, the State Transportation Commission, or the State of New Mexico in the event of termination of this Agreement by the NMDOT.~~

9. Amendment: This Agreement shall not be altered, changed, or amended except by instrument in writing executed by the parties.

10. Governing Law: This Agreement shall be governed by the laws of the State of New Mexico.

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

13. Severability: Each provision, sentence, or portion of this Agreement shall be separate and distinct from any other provision, sentence, or portion of this Agreement. In the event of the invalidity of any portion of this Agreement, the other portions of this Agreement set forth herein shall be deemed independent and divisible and shall remain in full force and effect.

14. Further Assurances: Each party will fully cooperate with the other and their respective counsel or representatives in connection with any steps required to be taken under this Agreement, and will do all acts and things necessary or appropriate to consummate the transactions contemplated by this Agreement, including but not limited to executing and

delivering instruments and documents to effect the transactions, promises, and agreements made herein.

15. Notices, Principal Contacts: Any notice required to be given to a Party by this Agreement shall be in writing and shall be delivered in accordance with the Memorandum of Agreement. The principal contacts for the administration of this Agreement are those designated in the Memorandum of Agreement.

NEW MEXICO DEPARTMENT OF TRANSPORTATION (NMDOT)

By: _____
Michael Sandoval, Cabinet Secretary Designee

Date: _____

APPROVED AS TO FORM

By: _____
Acting General Counsel

RIO METRO REGIONAL TRANSIT DISTRICT (RMRTD)

By: _____
Dewey V. Cave, Chief Executive Officer

Date: _____

APPROVED AS TO FORM

By: _____
RMRTD Legal Counsel