EMPLOYMENT AGREEMENT FOR DAVID ARMIJO TO SERVE AS EXECUTIVE DIRECTOR OF THE SOUTH CENTRAL REGIONAL TRANSIT DISTRICT

This Agreement, to employ David Armijo as Executive Director, is entered into between the South Central Regional Transit District (SCRTD) through its Board (hereinafter referred to as the “Board”) and David Armijo (hereinafter referred to as “Executive Director”).

Whereas, David Armijo will continue to serve the South Central Regional Transit District as Executive Director as an unclassified employee consistent with Article X of the SCRTD By-Laws;

Whereas, the parties desire to document their mutual understanding of the employment agreement for a period of twenty-four months beginning January 1, 2019;

Now, therefore, in consideration of the mutual promises and agreements contained in this Employment Agreement, the parties mutually agree to the above recitals and further agree as follows:

**Article 1. Services to be provided:** The Executive Director shall provide professional services to the Board. The Executive Director shall have all duties assigned to this agreement and pursuant to any specific job description, *exhibit A* and/or instructions received from the Board.

1. Non-interference clause. The Board stipulates that the Executive Director has authority over the SCRTD contractors and employees. Except for the purpose of inquiry (i.e., those situations where employees serve as staff support to committees, task forces, working groups, etc., with the Board); the Board agrees to deal with the administrative and operational services under the jurisdiction of the Executive Director solely and to work through him instead of giving orders directly.
2. The Executive Director serves as an unclassified employee, appointed by the Board in accordance with Article X of the SCRTD By-Laws and in accordance with the other terms and conditions of the SCRT Procedural Guidelines, to the extent they apply. The normal SCRTD work hours are 8:00 a.m. to 5:00 p.m. However, the parties recognize that the Executive Director’s work projects may require him to start before 8:00 a.m. and extend beyond 5:00 p.m. The Executive Director may also be required to work occasionally on weekends.

**Article 2. Term of Agreement:** The term of the Agreement shall be from January 1, 2021, to December 31, 2023. The Agreement may be extended and/or modified by mutual consent of the parties as permitted by law.

**Article 3. Place of Performance:** The Executive Director shall perform the required services primarily at the Las Cruces MVITT Center. The Executive Director will, however, be required to provide representation of services at locations other than the MVITT Center. SCRTD agrees to provide the Executive Director with office facilities and necessary supplies to carry out the duties of the Executive Director. The Executive Director will be required to travel intra- and inter-state from time to time.

**Article 4. Compensation:** The SCRTD shall pay an annual base salary of ninety-four thousand, two hundred fifty dollars ($94,250) payable in 24 equal increments to coincide with the SCRTD’s bi-monthly pay periods. The SCRTD shall be responsible for withholding state and federal taxes and social security from the Executive Director’s wages. The Executive Director is a an FLSA exempt employee, and as such, is not eligible to receive overtime compensation. The Executive Director’s salary may include annual wage adjustments provided to other SCRTD employees provided on an annual basis subject to Board action for all employees.

**Article 5. Benefits:** This Article, not the Human Resources (HR) Policies and Procedures, governs the benefits granted to the Executive Director. The Executive Director will be entitled to sick leave, holidays, vacation, health, dental, vision, disability insurance, life insurance, and PERA.

1. Auto allowance: The Executive Director will receive a monthly stipend of three hundred dollars ($300.00) for the use of his personal vehicle for travel within the limits of Dona Ana County and the City of El Paso, TX. For travel outside of Dona Ana County and the City of El Paso, TX, the Executive Director’s travel will be governed by the relevant state law and travel policy.
2. Accrued Annual Leave. The Executive Director is entitled to accrue 1.5 days annual leave per month or 12 hours. If the Executive Director leave service for any reason, all unused annual leave will be paid to the Executive Director at the time of separation, at the current rate of pay. Upon death of the Executive Director, compensation for unused total annual leave shall be payable to the Executive Director’s estate. The Executive Director may accumulate no more than 36 days or 288 hours maximum of annual leave.
3. Sick Leave. The Executive Director may accrue a maximum of four hundred eighty (480) hours of sick leave. Sick leave will accrue at the rate of 1 day or eight hours per month. When sick leave benefits have been exhausted, the Executive Director may use paid annual leave which he has accumulated, or he may take leave without pay when it has been properly authorized.
4. Leave Transfer to Deferred Compensation. The Executive Director may transfer up to 80 hours of leave to the NM PERA deferred compensation program once each fiscal year.
5. Health/Dental/Vision Insurance. The Executive Director will be eligible for health insurance. The health care benefits will be fully paid by the SCRTD for the Executive Director. (e.g., no bi-monthly reduction). The Executive Director will be responsible for the out of pocket costs of the health care plan, an 80/20 plan. This plan will be comparable to the plan currently in use for other SCRTD employees.
6. PERA Benefit. The SCRTD shall pay 7.4 percent of the Executive Director’s salary as the employer’s share toward PERA monthly. The Executive Director will pay 8.5 percent of salary as the employee’s share toward the monthly contribution to PERA.

**Article 6.** **Performance Evaluation:** The Executive Director’s performance will be reviewed and evaluated by the Board annually. The Executive Director will be afforded an opportunity to meet and discuss the evaluation with the Board. Performance goals should be reviewed and approved on an annual basis in conjunction with the Executive Director’s performance review. The goals will be the basis for the Executive Director’s review.

**Article 7. Notice:** Any correspondence relating to the Agreement including notice requirement by the Agreement shall be mailed to the parties at the following addresses by certified mail:

David Armijo, 694 Stone Canyon Drive, Las Cruces, NM 88011

SCRTD, P.O. Box 2104, Las Cruces, NM 88004

**Article 8. Assignment of Claims:** The Executive Director shall not assign or delegate any interest in the Agreement nor transfer any interest or assign any claims for money due or for money that becomes due under the Agreement without the written consent of the SCRTD.

**Article 9. Insurance:** The SCRTD shall provide professional liability insurance coverage for the Executive Director to the same extent as it does for its employees and officials.

**Article 10. Termination of Agreement:** For the purpose of this Agreement, termination shall occur when:

1. The majority of the Board votes to terminate the Executive Director at a duly authorized public meeting.
2. If the Board reduces the base salary, compensation or any other financial benefit of the Executive Director, such action shall constitute a breach of this Agreement and will be regarded as a termination.
3. If the Executive Director resigns following an offer to accept resignation, whether formal or informal, by the Board as representative of the majority of the Board that the Executive Director resigns, and then the Executive Director may declare a termination as the date of the suggestion.
4. Breach of contract declared by either party with a 30-day cure period for either the Executive Director or Board. Written notice of a breach of contract shall be provided in accordance with the provisions of this Agreement.

**Article 11. Severance:** If the Executive Director is terminated prior to the expiration of this Agreement, the Board shall provide a minimum severance payment equal to two months compensation of this Agreement. This severance shall be paid in a lump sum unless otherwise agreed to by the Board and the Executive Director.

1. If the Executive Director is terminated because of a conviction of a felony, misdemeanor, or Board’s work rule violation, then the Board is not obligated to pay severance under this Section.
2. If the Executive Director voluntarily resigns or terminates employment, the Board is not obligated to pay severance under this Section.

**Article 12. Conflict of Interest.** The Executive Director warrants that he presently has no interest and shall not acquire any interests which would conflict with the performance of the services required under the Agreement. The Executive Director’s failure to inform the SCRTD of the existence of a conflict or the potential for a conflict constitutes grounds for termination of the Agreement.

**Article 13. Amendment:** The Agreement shall not be altered, changed, or amended except by a written instrument signed by both parties.

**Article 14. Sovereign Immunity:** By entering into this Agreement, the SCRTD and its “public employees” as defined in the New Mexico Tort Claims Act, NMSA 1978, section 41-4-1 *et. seq*. do not waive sovereign immunity, do not waive any defense, and do not waive any limitation of liability available by law.

**Article 15. Waiver:** Any waiver of any breach of any term or condition of this Agreement shall not be deemed or considered as a continuing waiver and shall not operate to prevent the SCRTD or the Executive Director from declaring a default for any succeeding breach of the same term or condition.

**Article 16. Merger of Prior Agreement(s):** This Agreement incorporates all the understandings of the parties concerning the hiring of the Executive Director into this written document. No prior understanding, verbal or otherwise, shall be valid or enforceable unless embodied in this Agreement.

**Article 17. Personal Liability:** No elected or appointed official or employee or agent of the SCRTD shall be held personally liable under this Agreement or any extension or renewal thereof because of its enforcement or attempted enforcement provided they are acting within the course and scope of their employment or government duty and responsibility.

**Article 18. Governing Law:** The Agreement shall be construed in accordance with New Mexico law. The Executive Director shall comply with all applicable federal, state, and local laws, including ordinances, resolutions, and rules and regulations of the SCRTD.

**Article 19. Severability:** If any clause or provision of the Agreement is held to be illegal, invalid, or unenforceable, the remainder of the Agreement shall remain in full force and effect. However, in the event that neither party can reasonably perform pursuant to the remaining Agreement terms or if the purpose of the Agreement can no longer be carried out by either party, the Agreement is voidable, and no damages shall accrue to either party.

**Article 20. Confidential Information:** Any information given to or developed by the Executive Director in the performance of this Agreement that is not public record will be kept confidential and will not be made available to any individual, organization, or other entity by the Executive Director without prior written approval by the Board.

**Article 21. Dispute Resolution:** In the event that a dispute arises with respect to any of the provisions contained in this Agreement or any other matter affecting this contractual relationship between the SCRTD and the Executive Director, it shall be resolved by private mediation and/or arbitration. If informal attempts to resolve the dispute have not been successful, either party may submit a written demand for mediation. The Board and the Executive Director shall agree on the selection of a mediator. The mediator may be the SCRTD’s Director of Human Resources (HR), if both parties agree. If the parties have not mutually agreed upon a mediator within ten (10) working days from the date the request is received, HR will provide the parties with a list of suitable mediators, and the matter will be decided by the parties making alternate strikes from the list until one is left. That person shall serve as mediator.

A similar process shall be followed in the event mediations fails to resolve the matter. Any dispute resolution session shall take place in Las Cruces, New Mexico. With regard to arbitrations, the rules of the American Arbitrations Association pertaining to arbitration procedures and evidence will apply. The arbitrator’s decision will be binding, and that judgment may be entered in any court of competent jurisdiction. All attorney’s fees and associated expenses, including the arbitrator’s fees, shall be paid under the American rule where each part pays its own expenses and one half of the arbitrator’s fees.

EXECUTIVE DIRECTOR SOUTH CENTRAL REGIONAL

TRANSIT DISTRICT

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David Armijo Date Javier Perea Date

Chairperson

ATTEST:

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Nora Barraza Date

Vice Chair