

Effective August 2, 2023



ADMINISTRATIVE POLICIES
AND PROCEDURES

NORTH SUMMIT RECREATION
SPECIAL SERVICE DISTRICT

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INTRODUCTION

The North Summit Recreation Special Service District (“NSRSSD” or “District”) Administrative Control Board (“Board”) shall operate directly under the general provisions of Utah Code 17D, governing Limited Purpose Local Government Entities aka “Special Service Districts,” and applicable provisions of Utah Code 17B governing Local Districts.

Personnel Policies, as they are reviewed annually and amended, are incorporated by reference. In addition, the general operating procedures of the District as they are written and modified from time to time shall apply.

These policies and procedures are intended to provide for a general understanding and uniformity in the practices and procedures in the operation of NSRSSD. They express the judgment and will of the NSRSSD Board and are binding on all District representatives and employees.

In the event that any part, or parts, of these policies and procedures are found to be in conflict with the law, then only such part, or parts, so found shall be null and void and the remainder thereof shall remain in full force and effect.

About North Summit Recreation:

The North Summit Recreation Special Service District (NSRSSD) was established by Summit County in 2009 to enhance the recreation opportunities for both youths and adults in the North Summit community.

Our stated purpose is:

To create opportunities that inspire fun, personal growth, and connection.

CHAPTER 1

SERVICE AREA

At the time of its creation, the District boundaries were coterminous with those of the North Summit School District and North Summit Sewer. The District serves the residents of northeastern Summit County.

LEGAL AUTHORITY

The District was originally formed under Utah Code, Title 17A, Chapter 2, Part 13, Utah Special Service District Act. In the 2007 and 2008 legislative sessions, substantial amendments to rewrite, reorganize, renumber, repeal and re-enact provisions of Utah Code related to Local Districts and Special Service Districts were signed into law, enacted as Utah Code, Title 17B and 17D. NSRSSD is a separate body politic and corporate, and a quasi-municipal public corporation distinct from Summit County, which is governed in accordance with Summit County Code, Title 2, Chapter 11. The purpose of NSRSSD is to provide recreational services to the residents of its service area. NSRSSD is governed by a five-to-seven member volunteer Board who are appointed by the Summit County Council. Summit County retains the power of annexation/de-annexation, the use of eminent domain, the oversight of a human resources or personnel system separate from the county, the acquisition or disposal of real property, the levy of taxes on taxable property within the District, the issuance of District bonds payable from taxes and the calling and holding of an election for the authorization of a property tax or the issuance of bonds, and authorization of any ordinance providing for collection of impact fees payable to the District. The District's general obligation bonds or other obligation or indebtedness, whether or not payable from taxes, may not be considered to be enforceable against Summit County. The Summit County Council may at any time modify, limit, or revoke any right, power, or authority delegated to the Board.

TAX IDENTIFICATION

Section I. Federal Tax ID

- A. **Federal Tax ID.** The Federal Tax ID of the District is 27-1615625.

Section II. State Sales Tax/Tax Exempt Status

- A. **State Sales Tax Number.** The District's State Sales Tax number is 13492255 002STC.
- B. **Sales Tax Exemptions.** Sales made to political subdivisions of the state, including special districts, are exempt from sales tax if the purchase is for use in the exercise of an essential governmental function.
- C. **Property Tax Exempt.** All property and assets of the District are exempt from taxation.
- D. **Changes in Utah law.** Changes in Utah Law or Tax Commission rules may supersede this policy. Current guidance related to state and local taxation may be reviewed on line at the Utah State Tax Commission website at www.tax.utah.gov

Section III. Procedures for Tax Exempt Purchases.

- A.** A sale is considered made to the District if the purchase is paid for directly by the District. If an employee of the District pays for a purchase with his own funds and is reimbursed by the District, that sale is not made to the District and does not qualify for the exemption.
- B.** Regardless of the amount of the purchase, to qualify for sales tax exemption, the District will prove a copy of form TC-721, Exemption Certificate, properly completed and signed by the District Administrator, at or before the time of the transaction. The District Administrator will retain copies of all TC-721 forms issued by the District for recordkeeping purposes.
- C.** Vendors making exempt sales to the District are subject to the recordkeeping requirements of Tax Commission rule R865-19S-23 and are required to keep a record of the District check or form TC-721 as evidence that the sale qualifies for the sales tax exemption.
- D.** Sales of construction materials are exempt from sales tax *only* if they are converted to real property by employees of the District.

CHAPTER 2

ADMINISTRATIVE CONTROL BOARD RULES & REGULATIONS

ARTICLE I - NAME AND AUTHORIZATION

Section 1. The name of this Board shall be the North Summit Recreation Special Service District Administrative Control Board (“NSRSSD Board” or “Board”).

Section 2. The Summit County Council in Ordinance 713, March 4, 2009, created and delegated to the Board the power to act as the governing authority of the Service District and to exercise all or any of the powers provided for in Utah Special District Act.

Section 3. The purpose of these Rules and Regulations is to provide a guide for operation of the NSRSSD Board.

ARTICLE II - PURPOSES AND AUTHORITY OF THE ADMINISTRATIVE CONTROL BOARD

Section 1. The NSRSSD is authorized to provide recreational services through the acquisition and/or construction of parks, recreational facilities, trails and recreational open space to be located within the District, together with necessary appurtenances and equipment therefor.

Section 2. The NSRSSD Board shall recommend to the Summit County Council policies, standards and rules governing the Special Service District and any future facilities or amenities consistent with Summit County regulations, other provisions of Utah law, and the Utah Special District Act.

Section 3. The NSRSSD Board shall seek to create opportunities that inspire fun, personal growth, and connection.

Section 4. The NSRSSD Board shall regularly assess the appropriateness and effectiveness of the Service District facilities, programs, activities and services as they relate to the needs of the District residents.

Section 5. The NSRSSD Board shall be authorized to budget, account for, and disburse Service District funds, including taxes levied, fees and charges imposed, and other revenues received. The NSRSSD Board shall be governed by the general laws relating to such matters applicable to Special Districts and Summit County.

Section 6. The NSRSSD Board shall appoint the District Director with the consent of the Summit County Council. The District Director shall have a written employment contract which is approved as to form by the Summit County Attorney. The District Director shall not be authorized to function on behalf of the NSRSSD Board in any manner except at the direction of the Board as a whole.

Section 7. The NSRSSD Board shall enter into contracts, agreements or take other action to further the purposes of the District and exercise the rights, powers and authority delegated to it by Summit County and other provisions of Utah law.

7.1 All contracts, agreements in excess of \$20,000 dollars or other legal documents shall be authorized by resolution of the Board, be signed by the District Director, Chairperson, or Vice-chairperson in case of Chair’s absence, and be attested by the Clerk unless otherwise provided by resolution of the Board. The District Director may not authorize change orders to any contracts previously authorized by resolution of the Board except as provided in paragraph 7.1a below or as specifically authorized by resolution of the Board.

7.1a The District Director may authorize a change order to a Capital construction contract previously authorized by resolution of the Board if waiting for the next regularly scheduled Board meeting will substantially delay the construction project, the change order does not exceed in an amount not to exceed 10% of the contract or \$50,000, whichever is less, and the total contract amount including the change order is within the adopted Capital budget. Any change order authorized by the District Director pursuant to this paragraph shall be formally actioned at the next regularly scheduled Board meeting. If the change order is greater than 10% of the contract or \$50,000 or would cause the project to exceed the adopted budget, then a special meeting will be called of the Board to approve the change order. The District Director may authorize multiple change orders to a single contract

pursuant to this paragraph. However, the cumulative amount of all such change orders may not exceed \$50,000 without prior Board approval.

7.2 For contracts or agreements from \$5,000 to \$20,000, the District Director shall have the authority to sign on behalf of the Board, budget permitting.

7.3 Contracts under \$5,000 dollars may be signed by the Procurement Officer with the approval of the District Director, budget permitting.

Section 8. The Board will seek professional services to advise on NSRSSD policies, general operations, and specific projects of the District.

8.1 The Board will select an independent auditor to perform an annual independent audit in accordance with Government Auditing Standards.

ARTICLE III - MEMBERSHIP OF THE NSRSSD ADMINISTRATIVE CONTROL BOARD

Section 1. The NSRSSD Board shall consist of five to seven persons, each of whom shall be a qualified elector of the District.

Section 2. The Summit County Council, as the Governing Body will oversee the appointment to, or removal of, members from the NSRSSD Board.

Section 3. Board member qualification:

3.1 A Board member must, during the term of office, reside within the boundaries of the District and be a registered voter at the location of the Board member's residence.

3.2 No elected or appointed member of the governing board of a special district may be a full or part-time employee of the District while serving on the District's Board.

Section 4. Except as otherwise provided in this section, the terms of office of members of the Board shall be (4) years, commencing upon their appointment. The terms shall be staggered so that each year, as nearly as may be, two Board terms shall expire. The new members (or re-appointed existing members) will take office after taking the oath at the next NSRSSD Board meeting.

Section 5. Vacancies, other than by expiration of term, shall be filled for the unexpired term by appointment of the Summit County Council. The newly appointed NSRSSD Board member's term shall expire when the term of the member replaced would ordinarily have expired.

Section 6. Regular attendance of Board members at regularly scheduled Board meetings, special meetings and Board retreats is closely linked to the District's ability to achieve annual goals established by the Board. Electronic and/or teleconference participation is generally available to members who cannot attend in person for good reason. Any Board member who accrues three or more absences in any ninety-day time period, or who fails to attend in-person at least 50% of all meetings and retreats held in any ninety-day time period, may be subject to a motion of removal from the Board. This motion may be made by any Board member present at a regularly scheduled meeting. All Board members are eligible to vote. If the motion for removal passes, the District Director will formally request action of the Summit County Council for removal and replacement of the subject Board member.

Section 7. Board Resignation. Board members who move out of the District will be required to submit a letter of resignation to the Summit County Council, as the Governing Body. Any Board member who chooses to resign before the end of his/her term for other personal or professional reasons shall submit a letter of resignation to the Summit County Council (c/o County Manager) thanking them for the opportunity to serve and stating his/her reason for leaving. The unexpired term will be filled in accordance with section 5, above.

Section 8. Board Per Diem – Compensation

8.1 NSRSSD Administrative Control Board members may receive annual compensation and per diem compensation within the limits established by law, for service on the board. (Utah Code 17B-1- 307)

8.1.1 The Board Chair may receive an additional \$50 for each District Board meeting and work session attended.

8.1.2 Total compensation may not exceed \$5,000 in any calendar year.

8.1.3 Per diem and compensation will be paid on a quarterly basis, generally at the first Board meeting following the close of the quarter. Records shall be kept by the Administrative office for each Board Member. Members may decline to receive per diem and/or compensation for their services.

8.1.4 Travel expenses may be paid to board members in accordance with Rule R25-7.

Section 9. General liability insurance through the Utah Local Governments Trust is provided for all NSRSSD Board Members while acting for or on behalf of the District. Further, all Board members shall be provided Errors and Omissions insurance for the duration of their Board term. “Public officials’ errors or omissions” means any actual or alleged error or misstatement or act or omission or neglect or breach of duty including misfeasance or nonfeasance by the Insureds in the discharge of their duties with the public entity, individually or collectively, or any matter claimed against them solely by reason of their being or having been Insureds. However, “public officials’ errors and omissions” does not include “malfeasance.”

ARTICLE IV - OFFICERS OF THE ADMINISTRATIVE CONTROL BOARD

Section 1. The officers of the NSRSSD Board shall be a Chairman, Vice-Chairman, Clerk, and Treasurer. All other NSRSSD Board members are listed as members at large. All officers shall be elected by the NSRSSD Board members at the January annual meeting and they shall hold office for one (1) year or at the pleasure of the NSRSSD Board.

Section 2. During any regular monthly meeting, the NSRSSD Board may elect another Board member to fill the remaining term of any officer who has vacated that seat.

Section 3. The Board Chairman shall preside at the Board meetings and shall be an ex-officio member of all committees except in any committee which is preparing nominations for Board officers.

Section 4. In the absence of the Board Chairman, the Vice-Chairman shall perform the Chair’s duties and, in the case of a vacancy in the office of the Chairman, shall serve as Chairman until such time as the NSRSSD Board shall select a new Chairman.

Section 5. The District Clerk will perform the following duties:

- 5.1 Monitor the minutes of the Board meetings and their adoption;
- 5.2 Monitor the execution of contracts entered into by the District;
- 5.3 Attest to all legal documents; and
- 5.4 Maintain the financial records for each fund of the District and all related subsidiary records, including a list of the outstanding bonds, their purpose, amount, terms, date, and place payable (Utah Code § 17B-1-632).

Section 6. The Treasurer’s responsibilities include, but are not limited to, the following:

- 6.1 Receiving and reviewing all public funds and monies payable to the District;
- 6.2 Signing of checks on behalf of the District;
- 6.3 Acting as custodian of all monies, bonds, or other securities of the District;
- 6.4 Investing public funds in accordance with the State Money Management Act;
- 6.5 Collecting all special taxes and assessments as provided by law and ordinance; and
- 6.6 Other duties as established by law (Utah Code § 17B-1-633).

ARTICLE V – COMMITTEES

- Section 1. The Board, at its discretion, may create and/or abolish its own committees or other organizational units. Committees shall serve to make recommendations to the Board unless otherwise specified by the Board.
- Section 2. Committees may be designated as STANDING committees or AD-HOC committees. Standing committees will be those which are formed for at least one year. The Ad-hoc committees will be appointed as needed.
- Section 3. Committee chairpersons must be Board members, recommended by the Board Chair, and approved by the Board. At the time of Committee formation, committee members must be approved by motion of the Board.
- Section 4. Committee membership shall not include a quorum of the Board, nor shall a committee meet with a quorum in attendance unless appropriately noticed as a public meeting.
- Section 5. The District Director shall be eligible to attend committee meetings unless otherwise informed by the Board Chair.

ARTICLE VI – MEETINGS

- Section 1. The NSRSSD Board shall meet in a regularly scheduled, publicly noticed, meeting at least once per month, unless otherwise determined by the Board. The annual meeting of the Board shall take place in January of each year, except where it may be impractical to hold said meeting, and said meeting will be held as soon as it is feasible to do so. Public notice of regularly scheduled Board meetings shall be sent to local news and radio outlets, and shall be posted to the District's website and Utah Public Notice Website. The meetings shall comply with the Utah Open and Public Meetings Act.
- Section 2. A majority of the current Board members shall constitute a quorum, and a majority of the members in attendance at any meeting shall, in the presence of a quorum, decide its action.
- Section 3. Any Board member may call a special or emergency meeting upon the request or approval of at least two additional Board members and notice of such meetings shall be given to the NSRSSD Board members by telephone call, electronic mail, fax, or personal notice and at such time prior to the meeting as under the circumstances may be practical. Minimum recommended notice is 24 hours. A special meeting of the Board shall be held at such time as the notice thereof may specify. In case of special meetings, the Chairman of the Board may designate a place other than the regular meeting place, provided such place is within the boundaries of the District. All special or emergency meetings shall comply with the Utah Open Meetings Act.
- Section 4. No more than three members of the Board shall meet to discuss business of the District, unless appropriately noticed as a public meeting.
- Section 5. Meetings of the Board shall be conducted under general rules of order of Robert's Rules of Order.

ARTICLE VII - AMENDMENTS TO THE RULES AND REGULATIONS

- Section 1. These Rules and Regulations shall be amended only by an affirmative vote of the Summit County Council, acting as the Governing Body, upon the receipt of a recommendation by the Board.
- Section 2. Written notice setting forth the proposed amendment(s) shall be mailed or given to each Board member in the Board packet prior to the meeting during which a recommending vote is called on the amendment.
- Section 3. The Board Rules and Regulations and any subsequent amendments shall become effective AFTER they are approved by the Summit County Council, unless dates are otherwise specified.

ARTICLE VIII - CONFLICT OF INTEREST

- Section 1. All members of the Board are expected to vote in the public interest and should not vote to support any private financial interest of a Board member. Any member of the NSRSSD Board who is present at a meeting where a matter in which he or she has, directly or indirectly, a private pecuniary or property interest shall declare that interest, be excused from attendance for that portion of the meeting, and shall leave the place of meeting, and shall not participate or vote on the issue.

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Section 2. Each member of the NSRSSD Board shall, at the time of his or her appointment to office and annually thereafter, indicate to the NSRSSD Board, in writing, any potential conflict of interest the member has knowledge of, as defined above, even though it may not be an issue at the time of appointment to office.

CHAPTER 3

RELATION OF NSRSSD TO OTHER AGENCIES

Section I. Summit County Council

- A.** The District was created by the Summit County Board of Commissioners, under the Utah Special Services District Act, to provide recreational services and facilities for residents of western Summit County residing in the unincorporated area outside of Park City.
- B.** The County created the NSRSSD Board to oversee the operation of the District. Board members are appointed to the Board by the Summit County Council.
 - a.** **Procedure for Board Member Advertisement**
 - i.** NSRSSD Board vacancies shall be advertised by Summit County.
- C.** The District is a separate body politic controlled by the Board, however, Summit County may at any time modify, limit, or revoke any right, power or authority delegated to the Board.
- D.** Debt issuance by the District must be approved by the Summit County Council as the Governing Body.
 - a.** The County Council has the power to cause taxes to be levied on all taxable property in the District for the carrying out of the purpose for which the District was created.
 - b.** The maximum rate of tax levy applicable to the District for operations and maintenance as authorized by the District's voters pursuant to the Act is .000104 per dollar of taxable value of taxable property within the District.
 - c.** The District may levy an unlimited tax levy to pay the principal of and interest on legally issued general obligation bonds.

Section II. Summit County Planning and Building

- A.** The District will work in alliance with the Summit County Planning Department as a service provider to Summit County to plan and provide for future parks and recreation facilities, recreational open space and non-motorized trails.
 - a.** In the review of development proposals, NSRSSD staff will identify opportunities for provision of community recreation, park and/or community trail facilities and bring them to the attention of the Board.
- B.** Any Recreation and Trails Master Planning documents created and adopted by the County Council as Governing Body from time to time function as the recreation elements of the North Summit General Plan.
- C.** The Summit County Building Department will require a District issued receipt from all residential and commercial development applicants documenting the payment of recreation facilities impact fees, if and when adopted, to the District, prior to the issuance of any building permit inside District boundaries.

Section III. Other Agencies

- A.** NSRSSD will work cooperatively with other agencies and their representatives, in the interest of providing for future recreational needs in the District.

CHAPTER 4

OPEN AND PUBLIC MEETINGS

Section I. Background

- A. **Policy:** This shall be known as the North Summit Recreation Special Service District Open and Public Meetings Policy.
- B. **Purpose:** The policy establishes guidelines for meetings of the Board, including how meetings are to be convened, how they are to be conducted and how minutes are to be prepared and approved.

Section II. Compliance with State Law

- A. **Application of the Open and Public Meetings Act:** All meetings of the NSRSSD Board must be open to the public unless specifically exempted by law. In order to be considered a meeting, a majority of the members of the Board (quorum of 4) must be present for the purpose of making a decision or deliberating toward a decision on any matter. If the meeting is less than a quorum, then it need not be open to the public and is not covered under the Open Meetings Act. In adopting this Policy, the District recognizes the application of the Open and Public Meetings Act, UTAH CODE § 52-4-101 et.seq. (the “Act”). Any inconsistency or conflict between this Policy and applicable provisions of the Act shall be governed by the Act, as amended from time to time. It is the policy of the District to provide Board member training on Utah’s Open and Public Meetings Act on an annual basis.
- B. **Definitions:** The definitions stated in UTAH CODE § 52-4-103 are incorporated here by reference.

Section III. Meeting Notice and Agenda

- A. **Required Annual Notice:** The Board will establish an annual meeting schedule, including the date, time and location of each regular Board meeting throughout the year, and give public notice of the annual meeting schedule prior to the start of the following calendar year. Notwithstanding the foregoing, any meeting may be rescheduled at the request and on the affirmative vote of a majority of the Board, with notice of the rescheduled meeting to be provided as stated in paragraph D. A copy of the annual meeting schedule shall be posted at the District office, on the District website.
- B. **Special and Emergency Meetings:** The Board shall hold such special and emergency meetings as desired by the Board, provided that notice of all such meetings is given as provided in paragraph D. A special or emergency meeting of the Board may be convened at the request of any Board member upon the approval of at least two additional Board members
- C. **Agenda:** An agenda shall be prepared for every meeting of the Board. Regular Board meeting agendas may include a “public comment” agenda item. A similar agenda item may, but need not, be included in the agenda of any special or emergency Board meeting. Any interested party may ask any Board member or the person responsible for the agenda to include a particular subject on an agenda which subject may, in the discretion of the Board Chair, be so included. Each agenda shall include subjects as requested by any Board member. While the agenda need not be detailed, it must nevertheless treat each subject with reasonable specificity, so as to place interested persons on notice of principal subjects anticipated to be considered at the meeting. At the discretion of the Board Chair, subjects not appearing on the agenda may be discussed but, absent an emergency, no action shall be taken.
- D. **Notice:** Meetings of the Board shall be noticed in accordance with law. The District shall give not less than twenty-four (24) hours advance public notice of the agenda, including the date, time and location of each regular and special meeting of the Board. Board members, key staff, individuals noticed on the agenda, and other interested individuals will receive an agenda by electronic mail, fax, postal service or personal delivery. The District Director is accountable for the public notice of regularly scheduled Board meetings, special meetings, Board retreats and the annual notice of meetings for publication in a newspaper having general circulation in the North Summit area. Whenever possible, public notice will be dated for release in the

newspaper issue preceding the meeting date. Notice will also be posted to the District's website and Utah Public Notice Website. The District will comply with requirements of the Utah Public Notice Website. The District Director shall appoint positions of District "owner" and "poster," who may be one and the same. The owner will be responsible for controlling all of the District's information on the UPNW. The poster will post public meeting notices and public bond hearing notices on behalf of the District.

- E. **Amendments to Agenda:** The agenda of a meeting of the NSRSSD Board may be amended to include additional subjects at the request of any Board Member, as authorized by the Board Chair, even though notice of the meeting has already been given as provided in paragraph D, provided that the amended notice is posted at the District's principal office and provided to a local media correspondent as set forth above.

Section IV. Conduct of Meetings

- A. **Quorum:** No action may be taken and no business may be conducted at a meeting of the Board unless a quorum, consisting of a simple majority of the membership of the Board (4) is present. A Board Member who is not present may nevertheless participate in the meeting through electronic means and be counted toward the required quorum in accordance with UTAH CODE § 52-4-207. Any Board Member participating via electronic means may make, second and vote on all motions and participate in the discussion as though present, except that the Board Member who chairs the meeting must be present at the anchor location.
- B. **Control of the Meeting:** Unless the Chair or Vice Chair, as appropriate, is participating in the meeting via electronic communication, each meeting of the Board shall be conducted by the Chair, if present, by the Vice Chair in the absence of the Chair, or by any Board Member selected for that purpose by a majority vote of the Board Members present when neither the Chair nor the Vice Chair is present. The Board Member chairing the meeting may relinquish the Chair to any other Board Member, other than a Board Member participating via electronic communications, at any time during the meeting. The Board Member chairing the meeting may discuss every matter coming before the Board, make, second and vote on motions, and otherwise fully participate in the meeting.
- C. **Expulsion From a Meeting:** Any person who willfully disrupts a Board meeting to the extent that the orderly conduct of the meeting is seriously compromised may be removed from the meeting. Should the person refuse to leave the meeting when asked to do so by the Chair, law enforcement officials may be called to remove the person.
- D. **Closed Meetings:** Except as otherwise provided in this paragraph D, all meetings of the Board are to be open to the public and all decisions must be made in public. Closed meetings must be held during publicly noticed meetings of the District. A meeting, or a portion of a meeting, may be closed to the public upon the affirmative vote of two-thirds of the Board Members present at the meeting. A meeting may be closed for any of the reasons specified in UTAH CODE § 52-4-205 as follows:
1. The character, professional competence or physical or mental health of an individual (including personnel issues regarding employment or discipline of public officers and employees, performance evaluations, contract negotiations).
 2. Strategy session to discuss pending or reasonably imminent litigation.
 3. Strategy session to discuss the sale, purchase, exchange, or lease of real property if such discussion prevents the District from completing the transaction on the best possible terms.
 4. Discussion regarding deployment of security personnel, devices, or systems.
 5. Investigative proceedings regarding allegations of criminal misconduct.
 6. Discussions required to be confidential in accordance with the Utah Procurement Code.
- E. **Conduct of a Closed Meeting:** Board Members may not approve any resolution, rule, regulation, contract or appointment during a closed meeting. The identity of the specific person whose character, competence or health is to be discussed, the identity of the parties to pending or reasonable imminent litigation, or the identity of property which the Board is considering purchasing, exchanging or leasing need not be stated in the motion to close the meeting or in the public portion of the meeting where such disclosure might infringe on the confidence necessary to fulfill the purpose of closing the meeting. Upon a motion to enter executive session, general public and press shall be dismissed from the room. Only District Board members and those person(s) designated by the Board may be present during a closed meeting. All final decisions must be made outside of the executive session. The public must have a chance to be made aware of the final decision. A vote of the NSRSSD Board relating to information discussed in the executive session can satisfy this requirement.

- F. Recording of Meetings:** A complete and unedited audio recording of all open portions of the meeting shall be kept by the District from commencement through adjournment and be properly labeled with the date, time and place of the meeting. Any other person in attendance may record all or any part of an open meeting, provided that the recording does not interfere with the conduct of the meeting. A recording of an open meeting shall be available to the public for listening within three business days after the end of the meeting. Notwithstanding other parts of this paragraph, a recording is not required to be kept of an open meeting that is a site visit or traveling tour, if no vote or action is taken by the Board.
- G. Electronic Meetings:**
1. Definitions. The following terms are defined as follows:
 - i. “Anchor Location” means the usual meeting place of the NSRSSD Board at the offices of the District at Summit County Courthouse in Summit County, Utah.
 - ii. “Meeting Administrator” means the Chair of the Board, the Director of the District, or another employee of the District specifically assigned and designated to operate the electronic conference equipment at the anchor location to assure that all members of the Board are continuously able to participate in the electronic meeting and to advise the party conducting the meeting of the initiation, recess, if appropriate, or adjournment of the meeting.
 - iii. “Electronic Meeting” means a public meeting of the Board convened and conducted by means of a telephonic conference device or other electronic means, allowing each member of the Board to call to the anchor location and participate concurrently with all other members of the Board in the conduct of the meeting.
 2. Notice of Electronic Meetings. The Board shall convene electronic meetings when necessary pursuant to specific public notice of an electronic meeting by posting written notice of the electronic meeting at the Anchor Location and providing written or electronic notice to the media as otherwise provided by law. Notice of the electronic meeting shall also be provided to each member of the Board at least 24 hours before the meeting, including a description of how members will be connected to the electronic meeting. The notice to members of the Board shall indicate the telephone number required for participation and any access codes necessary to make an electronic meeting conference available to members of the Board.
 3. Quorum Verification. Before an electronic meeting may be called to order, all members of the Board shall be given an opportunity to participate in the meeting and no electronic meeting shall be convened unless the quorum of the Board is able to participate either in person or electronically in the meeting.
 4. Public Attendance. Each electronic meeting shall be convened by the meeting administrator by announcing the parties present at the meeting and by making available to members of the public at the Anchor Location an amplified speaker enabling members of the public to hear the comments of Board members and the conduct of the meeting.
 5. Conduct of the Meeting. Upon determining that a sufficient number of the Board are present for the electronic meeting to be convened and members of the public can adequately hear the comments of all members of the Board, the Chair or other Board member conducting the meeting shall formally convene the meeting and take a roll call of those participating. The Chair or other Board member conducting the meeting shall provide opportunity for each matter on the agenda to be presented and shall, in an order determined by the Chair, request comments one at a time from those members of the Board participating by name to enable each Board member an opportunity to comment, question, or otherwise, participate in the meeting. Individual Board members may request permission to be recognized for further comments, questions, or statements as the meeting progresses.
 6. Compliance with Law. In all other respects, electronic or telephonic meetings shall be conducted, recorded, and minutes shall be kept as required by law for all other open and public meetings, or for all other record keeping purposes of the District.

Section V. Minutes

- A. **Open Meetings:** Written minutes shall be kept of all open meetings of the Board. Written minutes need only be a summary of the meeting and shall be the official record of action taken at the meeting. Draft minutes shall be prepared by the person designated by the Board. The minutes are to include the date, time, and place of the meeting; the names of Board Members present and absent; the substance of all matters proposed, discussed or decided which may include a summary of comments made by Board members, and a record, by individual member, of votes taken; the name of each person who is not a member of the Board and, after being recognized by the Board Chair, provided testimony or comments and the substance in brief of his/her testimony; and any other information that is a record of the proceedings of the meeting that any Board Member requests be entered in the minutes.
- B. **Closed Meetings:** The reason or reasons for holding a closed meeting and the vote of the Board Members, cast by each member by name, either for or against the proposition to close the meeting, is to be entered in the minutes of the meeting. The minutes shall also include the date, time, and place of the closed meeting; the names of Board Members present and absent during the closed meeting; and the names of all others present during the closed meeting except where such disclosure would infringe on the confidence necessary to fulfill the original purpose of closing the meeting as, for example, the identity of an employee whose character, competence or physical or mental health is being discussed. No other detail regarding a closed meeting need be included in the minutes, except as otherwise provided in paragraph D.
- C. **Sworn Statement:** If the Board closes a meeting to discuss the character, professional competence or physical or mental health of an individual or to discuss the deployment of security personnel, devices or systems, the person presiding at the closed meeting shall sign a sworn statement (affidavit) affirming that the sole purpose for closing the meeting was to discuss either (a) the character, professional competence or physical or mental health of an individual; or (b) the deployment of security personnel, devices or systems. Said form shall be filed with the official meeting minutes.
- D. **Tape Recording or Detailed Minutes of a Closed Meeting:** If the Board closes a meeting for any purpose other than as specified in paragraph C, the closed portion of the meeting will be recorded, with recorded reference to date, time, place and general topics of discussion. Tapes shall be sealed and cataloged by the Records Officer by meeting date and general topic. Notwithstanding anything to the contrary in this Policy, in the District's GRAMA policy or in the Government Records Access and Management Act, UTAH CODE § 63G-2-101 *et seq.*, tape recordings of closed meetings are protected records to be disclosed only pursuant to a court order as provided by UTAH CODE § 52-4-304. Recordings of a closed meeting, or a closed portion of a meeting, shall be maintained separately from any open meeting minutes. Recordings of Executive Session will be used for the express purpose of review by a judge, in case of a legal challenge. Any person who violates UTAH CODE § 63G-2-305(32) regarding the protected status of such minutes and tape recordings may be subject to criminal penalties.
- E. **Approval of Minutes:** A draft of written minutes will be distributed to the Board as soon as practicable following each Board meeting. Written minutes that have been prepared in a form awaiting only formal approval by the Board are a public record, and shall be clearly identified as "draft awaiting formal approval." Minutes shall not be considered the "official record" until they have been formally approved by the Board. Official meeting minutes, signed by the Secretary or another Board members present, shall be kept in a safe place by the Records Officer. With the exception of minutes that are "protected" as provided in paragraph D, a copy of all approved minutes of the District shall be kept in a notebook maintained at the District office for inspection by the public during normal business hours. A copy of the approved minutes shall be posted to the District's website.
 - 1. **Procedure for Board Approval of Minutes.** Draft minutes shall be prepared and sent to Board members in advance of the business meeting at which they are placed on the agenda for approval. Minutes distributed in advance shall be clearly identified as "draft awaiting formal approval." If written minutes are unavailable until the noticed meeting time, the Board Chair may allow adequate time to review minutes during the meeting before calling for a motion to approve. If, due to unforeseeable circumstances, minutes are unavailable at the time they are noticed for approval, the item will be tabled until the next business meeting. When a Board member requests a correction or amendment to the draft minutes, the request shall be reflected in the motion to approve, and the amended or corrected and approved minutes shall be retained. Meeting minutes shall be approved

by Board motion, signed by the Clerk, or another Board member in the Clerk's absence, and turned over to the Records Officer.

Section VI. Application of this Policy

- A. **Emergency Meetings.** Emergency meetings of the Board shall be noticed in accordance with State law. An actual emergency must exist, and the minutes must describe the reason for the emergency. NSRSSD will make an effort to contact the media and issue public notice, even in an emergency.
- B. **Board Retreat(s).** The NSRSSD Board shall have one or more annual retreat(s). The retreat will be designed to facilitate the discussion of philosophical direction, and determine long range plans for the District. Board retreats will be publicly noticed, but may occur outside the District boundaries.
- C. **Committee meetings.** Committee meetings are not covered under the Open Meetings Act because they do not require a quorum, and because committee representatives simply make recommendations to the Board, which is the policy making body. If, however, a Committee meeting includes enough Board members so as to constitute a quorum, then it must be open to the public and appropriately noticed.
- D. **Chance and Social Meetings.** Board members may discuss public policy during chance or social meetings as they occur from time to time, however members constituting a quorum are strongly encouraged to avoid discussions of the business of NSRSSD during social gatherings.
- E. **Budget, Tax Rate and Bond Election Hearings.** Budgetary hearings, tax increases, and bond elections shall be noticed in accordance with NSRSSD Fiscal Policies and Procedures and Utah law.

CHAPTER 5

RECORDS ACCESS AND MANAGEMENT POLICY (GRAMA)

Section I – Background

- A. **Policy:** This shall be known as the North Summit Recreation Special Service District Government Records Access and Management (“GRAMA”) Policy.
- B. **Purpose:** The policy establishes guidelines for open government information recognizing the need to maintain and preserve accurate records, respect the public’s right to access information concerning the conduct of the public’s business, and preserve the right of privacy in relation to personal data gathered by the District.

Section II - District Policy

In adopting this policy, the District recognizes the enactment of the Government Records Access and Management Act (Sections 63G-2-101 et seq.) and the application of that Act to District records. The purpose of these policies is to conform to Section 63G-2-701 which provides that each political subdivision may adopt an ordinance or a policy relating to information practices including classification, designation, access, denials, segregation, appeals, management, retention, and amendment of records. The intent of this policy is to provide modifications to the general provisions of State law, where allowed, to best meet the public needs, operation, management capabilities, and resources of the District.

Section III - Compliance with State Law

In adopting the policy, the District recognizes the following sections of the Government Records Access and Management Act apply to the District and adopts by reference these provisions as part of this policy. Any inconsistency or conflict between this policy and the following reference statutes shall be governed by the statute.

Part 1 General Provisions

ss 63G-2-101	Title
ss 63G-2-102	Legislative intent
ss 63G-2-103	Definitions
ss 63G-2-104	Admin. Procedures Act not applicable
ss 63G-2-105	Confidentiality agreements
ss 63G-2-106	Records of security measures
ss 63G-2-107	Disclosure of records subject to federal law
ss 63G-2-108	Certification of records officer

Part 2 Access to Records

ss 63G-2-201	Provisions relating to records-Public records-Private, controlled, protected, and other restricted records-Disclosure and nondisclosure of records-Certified copy of record-Limits on obligation to respond to record request
ss 63G-2-202	Access to private, controlled, and protected documents
ss 63G-2-203	Fees
ss 63G-2-204	Record request–Response-Time for responding
ss 63G-2-205	Denials
ss 63G-2-206	Sharing records
ss 63G-2-207	Subpoenas – Court ordered disclosure for discovery

Part 3	<u>Classification</u>	
	ss 63G-2-301	Public records
	ss 63G-2-302	Private records
	ss 63G-2-303	Private information concerning certain government employees
	ss 63G-2-304	Controlled records
	ss 63G-2-305	Protected records
	ss 63G-2-306	Procedure to determine classification
	ss 63G-2-307	Duty to evaluate records and make designations and classifications
	ss 63G-2-308	Allowing or denying access based on status of information in a record
	ss 63G-2-309	Confidentiality claims
	ss 63G-2-310	Records made public after 75 years
Part 4	<u>Appeals</u>	
Part 5	<u>State Records Committee</u>	
Part 6	Collection of Information and <u>Accuracy of Records</u>	
	ss 63G-2-601	Rights of individuals on whom data is maintained- Classification statement-Notice to provider of information
	ss 63G-2-602	Disclosure to subject of records - Context of use
	ss 63G-2-603	Request to amend-Appeals
Part 7	<u>Applicability to Political Subdivisions: The Judiciary and the Legislature</u>	
	ss 63G-2-701	Political subdivisions to enact ordinances in compliance with chapter-Appeal process
Part 8	<u>Remedies</u>	
	ss 63G-2-801	Criminal penalties
	ss 63G-2-802	Injunction - Attorney's Fees
	ss 63G-2-803	No individual liability for certain decisions of a governmental entity
	ss 63G-2-804	Violation of provision of chapter – Penalties for intentional mutilation or destruction – Disciplinary action

Section IV - Definitions

As used in this ordinance, the following definitions shall be applicable.

- A. “Act” shall refer to the Government Records Access and Management Act, §§ 63G-2-101, et seq., Utah Code.
- B. “Audit” means a systematic examination of financial, management, program, and related records for the purpose of determining the District’s fair presentation of financial statements, adequacy of internal controls, or compliance with laws and regulations; or a systematic examination of program procedures and operations for the purpose of determining their effectiveness, economy, efficiency, and compliance with statutes and regulations.
- C. “Computer software program” means the series of instructions or statements that permit the functioning of a computer system in a manner designed to provide storage, retrieval, and manipulation of data from the computer system, and any associated documentation, manuals, or other source material explaining how to operate the software program. “Software” does not include the original data or records which is manipulated by the software.

- D. "Classification," "classify," and their derivative forms mean determining whether a record series, record, or information within a record is public, private, controlled, protected or exempt from disclosure under Subsection 63G-2-201.
- E. "Computer program" means software that permits the functioning of a computer system; it does not mean the original data, compilation, and other manipulated forms of original data produced by use of the program.
- F. "Contractor" means any person who contracts with the District to provide goods or services to the District.
- G. "Controlled record" means a record containing data on individuals that is controlled as provided by Section 63G-2-304.
- H. "Data" shall refer to individual entries (for example, birth date, address, etc.) in records.
- I. "Designation" is the primary classification that a majority of records in a record series would be given if classified and the classification that other records typically present in the record series would be given if classified.
- J. "Dispose" means to destroy, or render irretrievable or illegible, a record or the information contained in it by any physical, electronic, or other means, including unauthorized deletion or erasure of electronically recorded audio, visual, non-written formats, data processing, or other records.
- K. "District" shall refer to the North Summit Recreation Special Service District or any public or private entity which, pursuant to contract with the District, has agreed to produce and maintain public records.
- L. "Private record" means a record containing any data on individuals that is private as provided by Section 63G-2-302.
- M. "Protected record" means a record that is classified protected as provided by Section 63G-2-305.
- N. "Public record" means a record that is not private, controlled or protected as provided by Section 63G-2-302.
- O. "Record" means a book, letter, document, paper, map, plan, photograph, film, card, tape, recording, electronic data, or other documentary material regardless of physical form or characteristics, prepared, owned, used, received, or retained by the District where all the information in the original is reproducible by some mechanical, electronic, photographic or other means.
 - (1) "Record" does not mean:
 - (a) A personal note or personal communication prepared or received by an employee or officer of the District in the employee's or officer's private capacity.
 - (b) A temporary draft or similar material prepared for the originator's personal use or prepared by the originator for the personal use of a person for whom the originator is working;
 - (c) Material that is legally owned by an individual in the individual's private capacity;
 - (d) Materials to which access is limited by the laws of copyright or patent unless the copyright or patent is owned by the District;
 - (e) Junk mail or commercial publication received by the District or by an officer or employee of the District;
 - (f) A daily calendar or personal notes prepared by any District employee for personal use or the personal use of a supervisor or such notes, calendars or internal memoranda prepared for the use of an officer or agency acting in a quasi-judicial or deliberative process of pursuant to matters discussed in a meeting closed pursuant to Utah Open Meetings Act; or
 - (g) Proprietary computer software programs as defined in subsection 4.C. above that are developed or purchased by or for the District for its own use.
 - (h) A telephone number or similar code used to access a mobile communication device that is used by an employee or officer of the District, provided that the employee or officer of the District has designated at least one business telephone number that is a public record as provided in Section 63G-2-301.
- P. "Record Series" means a group of records that may be treated as a unit for purposes of designation, description, management or disposition.
- Q. "Records Officer" means the individual appointed by the District to work with state archives in the care, maintenance, scheduling, designation, classification, disposal, and preservation of records.
- R. "Schedule" or "scheduling" means the process of specifying the length of time each record series should be retained by the District for administrative, legal, fiscal, or historical purposes and when each record series should be transferred to the state archives or destroyed.
- S. "State Archives" means the Division of Archives and Records Service created in Section 63A-12-101.

Section V - Public Right to Records

- A. Every person has the right to inspect a public record free of charge, and the right to take copies, in any format maintained by the District, of all District governmental records defined as “public” under the provisions of this Policy, upon the payment of the lawful fee and pursuant to the provisions of this Policy and the Act.
- B. The District has no obligation to create a record or record series in response to a request from a member of the public, if the record requested is not otherwise regularly maintained or kept.
- C. When a record is temporarily held by a custodial District agency, pursuant to that custodial agency’s statutory functions, such as records storage, investigation, litigation or audit, the record shall not be considered a record of the custodial agency for the purposes of this Policy. The record shall be considered a record of the District and any requests for access to such records shall be directed to the District, rather than the custodial agency, pursuant to these procedures.

Section VI - Public, Private, Controlled and Protected Records

- A. Public records shall be those District records as defined in the Act, ss 63G-2-201 (U.C.A., 1953, as amended). Public records shall be made available to any person. All District records are considered public unless they are (1) expressly designated private, controlled or protected by the District in accordance with policies and procedures established by this Policy, (2) are so designated private, controlled or protected as defined by the Act, or (3) are made non-public by other applicable law.
- B. Private records shall be those District records classified as “private”, as defined in the Act ss 63G-2-302 (U.C.A., 1953, as amended) and as designated, classified, or defined in procedures established pursuant to this Policy. Private records shall be made available to the following persons: The subject of the record, the parent or legal guardian of a minor who is the subject of the record, the legal guardian of an incapacitated individual who is the subject of the record, any person who has a power of attorney or submits a notarized release from the subject of the record or the individual’s legal representative dated no more than 30 days before the date of the request is made, or any person to whom the record must be provided pursuant to court order signed by a judge from a court of competent jurisdiction, or any person serving a legislative subpoena.
- C. Controlled records shall be those District records classified as “controlled,” as defined in the Act, ss 63G-2-304 (U.C.A., 1953, as amended) and as designated, classified, or defined in procedures established in this Policy. Controlled records shall be made available to a physician, psychologist, or licensed social worker who submits a notarized release from the subject of the record or any person presenting a legislative subpoena or a court order signed by a judge of competent jurisdiction.
- D. Protected records shall be those District records classified as “protected”, as defined in the Act, ss 63G-2-305 (U.C.A., 1953, as amended) and as designated, classified or defined in procedures established in this Policy. Protected records shall be made available to the person who submitted the information in the record, to a person who has power of attorney or notarized release from any persons or governmental entities whose interests are protected by the classification of the record, or to any person presenting a legislative subpoena or a court order regarding the release of the information and signed by a judge of competent jurisdiction.

Section VII - Privacy Rights

- A. The District recognizes and upholds the personal right of privacy retained by persons who may be the subject of governmental records.
- B. The District may, as determined appropriate by the Director, notify the subject of a record that a request for access to the subject’s record has been made.
- C. The District may require that the requester of records provide a written release, notarized within thirty (30) days before the request, from the subject of the records in question before access to such records is provided.

Section VIII - Designation, Classification and Retention

- A. Procedure to determine Classification. If more than one provision of this policy could govern the classification of a record, the District shall classify the record by considering the nature of the interest intended to be protected and the specificity of the competing provisions.
- B. The District has adopted the Classification Schedule Guidelines below, but may classify a particular record, record series, or information within a record at any time. The District recognizes it is not required to classify a particular record, record series, or information until access to the record is requested.
- C. The District may re-designate a record series or reclassify a record or record series, or information within a record at any time.

CLASSIFICATION SCHEDULE GUIDELINES

Code ref.	Classification	
63G-2-301	Public	A record is presumed public unless otherwise expressly prohibited by statute. Public records include but are not limited to minutes from open meetings; contractor compensation; names, gender and gross compensation paid to public employees; records relating to formal charges or disciplinary actions of a government employee.
63G-2-302	Private	- Records concerning an individual's eligibility for unemployment insurance benefits, social services, welfare benefits or the determination of benefit levels. - Records containing data on an individual describing medical history, diagnosis, condition, treatment, evaluation, or similar medical data. - Employment records concerning a current or former employee of, or applicant for employment with, the District that would disclose that individual's home address, home telephone, social security number, insurance coverage, marital status, payroll deductions, performance evaluations, and personal status information (race, religion, disabilities). - Medical records, including medical reports, records, statements, history, diagnosis, condition, treatment, and evaluation.
63G-2-304	Controlled	Records containing medical, psychiatric or psychological data about an individual when the District reasonably believes that releasing the information in the record to the subject of the record would be detrimental to the subject's mental health or to the safety of any individual.
63G-2-30	Protected	- Records the disclosure of which would impair District procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement, including requests for bids, request for proposals, or other similar document [Once the contract has been awarded this information is re-classified Public.] - Records that would identify real property or the appraisal or estimated value of real or personal property under consideration for public acquisition before any rights to the property are acquired, unless the estimated value of the property has already been made public by other means, or the public interest outweighs the District's need to acquire the property on the best terms possible. - Records the disclosure of which would jeopardize the security of District property, programs or record-keeping systems. - Records prepared by or on behalf of a governmental entity solely in anticipation of litigation that are not available under the rules of discovery.

		- Records disclosing an attorney's work or other District representative's work concerning litigation. - Records of communication between the District and an attorney representing the District if communications would be considered privileged by law. - Transcripts, minutes, or reports of the closed portion of a meeting of the District, unless otherwise provided by law. - Accident reports, except as required by law. - Notification of workers' compensation insurance coverage.
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- D. All District records and records series, of any format, shall be designated, classified, and scheduled for retention according to the provisions of the Act and this Policy. Any records or record series generated in the future shall also be so designated, classified, and scheduled for retention. Records designation, classification, and scheduling for retention shall be conducted under the supervision of the District Records Officer.

Records Retention Schedule

Record	Classification	Retention
Meeting Minutes	Public	Permanent
Meeting Agenda	Public	Permanent
Annual Financial Reports	Public	Permanent
Budgets	Public	Permanent
Bank Statements	Public	4 Years
General Ledger	Public	10 Years
Timesheets	Public	3 Years
A/R & A/P	Public	4 Years
Deposit Slips	Public	3Years
Check Register	Public	7 Years
Receipt Books	Public	3 Years
Fixed Asset Lists	Public	10 Years

Section IX - Procedures for Records Request

- A. Under circumstances in which a District is not able to immediately respond to a records request, the requester shall fill out and present to the District a written request on forms provided by the District. The date and time of the request shall be noted on the written request form and all time frames provided under this Policy shall commence from that time and date.
- B. The Request Form shall be referred directly to the District Director, or designee. Requesters of non-public information shall adequately identify themselves and their status prior to receiving access to non-public records.
- C. As soon as reasonably possible, but no later than ten (10) business days after receiving a written request, or five (5) business days after receiving a written request if the requester demonstrates that expedited response to the record request benefits the public rather than the person, the District shall respond to the request by: approving the request and providing the records, denying the request, or such other appropriate response as may be established by policies and procedures.
- (1) The following "extraordinary circumstances" shall justify the District's failure to respond to a written request for a public record within ten (10) business days and shall extend the time for response thereto that time reasonably necessary to respond to the request, as determined by the District Director. Extraordinary circumstances shall include but not be limited to the following:
- Another governmental entity is currently and actively using the record requested, in which case the District will promptly request its return.
 - Another governmental entity is using the record as part of an audit, and returning the record before the completion of the audit would impair the conduct of the audit.

- (c) The record requested is for either a voluminous quantity of records or records series and requires the District to review a large number of records or perform extensive research to locate the materials requested;
 - (d) The requester seeks a substantial number of records or record series in requests filed within five (5) working days of each other.
 - (e) The District is currently processing either a large number of records requests or is subject to extraordinary seasonal workloads in the processing of other work;
 - (f) The request involves an analysis of legal issues to determine the District's proper response to the request;
 - (g) The request involves extensive editing to separate public data in a record from that which is not public; or
 - (h) Providing the information request requires computer programming or other format manipulation.
- (2) When a record request cannot be responded to within ten (10) days, the District Director shall give the requester an estimate of the time required to respond to the request.
- D. The failure or inability of the District to respond to a request for a record within the time frames set out herein, or the District's denial of such a request, shall give the requester the right to appeal as provided in Section 11.

Section X - Fees

- A. Applicable fees for the processing of information requests under this Policy shall generally be set at actual cost or as otherwise established by policies adopted under this Policy. District representatives are encouraged to fill a GRAMA request without charge when (1) releasing the record will benefit the public; (2) the requester is the subject of the records, or; (3) the requester's legal rights are implicated, and they claim hardship. If none of the preceding circumstances are applicable, the District will charge the following fees for requests relating to the Government Records Access and Management Act:

REQUEST	APPLICABLE FEE
Reviewing a record to determine whether it is subject to disclosure	No Charge
Inspections of record by requesting person	No Charge
Copy Fees – black and white (District prepared)	25 cents per page
Copy Fees – color (Offsite)	Commercial Rate
Computer Disk	\$10 per disk, plus Actual Cost*
Other Forms	Actual Cost*
Miscellaneous Fees	Actual Cost*
* Overhead and time of District staff in preparation of information request, billed at hourly charge of lowest paid employee who has the necessary skill and training to perform the request. No charge is made for the first quarter hour of staff time; thereafter, charge will be at a one hour minimum.	

Section XI - Appeal Process

- A. Any person aggrieved by the District's denial or claim of extraordinary circumstances may appeal the determination within 30 days after notice of the District's action to the District Director by filing a written notice of appeal. The notice of appeal shall contain the petitioner's name, address, daytime phone number, relief sought and if a petitioner desires, a short statement of the facts, reasons, and legal authority in support of the appeal.
- B. If the appeal involves a record that is subject to a business confidentiality claim or affects the privacy rights of an individual, the District Director shall send a notice of the requester's appeal to the affected person.
- C. The District Director shall make a determination on the appeal within the following period of time (1) within five (5) business days after the District Director's receipt of the notice of appeal; or (2) within twelve (12) business days after the District sends the requester's notice of appeal to the affected party. During this period the District Director may schedule an informal hearing or request any additional information deemed necessary to make a determination. The District Director shall send written notice to all participants providing the reasons for the District Director's determination.

- D. In addition, if the District Director affirms the denial in whole or in part, the denial shall include a statement that the requester has a right to appeal the denial to the State Records Committee within thirty (30) days in accordance with Section 63G-2-403 U.C.A.

Section XII - Reasonable Accommodation

- A. Reasonable accommodations regarding access to governmental records shall be provided to persons with disabilities in accordance with the Americans with Disabilities Act upon request of the applicant.

Section XIII - Records Amendments

- A. Government records held by the District may be amended or corrected as needed. Requests for amendments, corrections, or other changes shall be made in writing to the District having custody of the records and setting forth, with specificity, the amendment or correction requested. When an amendment or correction of a government record is made, both the original record and the amended or corrected records shall be retained, unless provided otherwise by the Act or other State or Federal law.

Section XIV - Penalties

- A. District employees who knowingly refuse to permit access to records in accordance with the Act and this Policy, who knowingly permit access to non-public records, or who knowingly, without authorization or legal authority, dispose of, alter, or remove records, or allow other persons to do so in violation of the provisions of the Act, this Policy or other law or regulation may be subject to criminal prosecution and disciplinary action, including termination.
- B. In accordance with the Act, neither the District nor any of its officers or employees shall be liable for damages resulting from the release of a record where the requester presented evidence of authority to obtain the record, even if it may be subsequently determined that the requester had no such authority.

Section XV - Records Officer

- A. There shall be appointed a District Records Officer to oversee and coordinate records access, management and archives activities. The Records Officer shall make annual reports of records services activities to the Board. The District Records Officer shall receive appropriate certification from the State.

Section XVI - Records Maintenance

- A. Records maintenance procedures shall be developed to ensure that due care is taken to maintain and preserve District records safely and accurately over the long term. The Records Officer shall be responsible for monitoring the application and use of technical processes in the creation, duplication, and disposal of District records. The Records Officer shall monitor compliance with required standards of quality, permanence, and admissibility pertaining to the creation, use, and maintenance of records.
- B. All District records shall remain the property of the District unless federal or state legal authority provides otherwise. Property rights to District records may not be permanently transferred from the District to any private individual or entity, including those legally disposable obsolete District records. This prohibition does not include the providing of copies of District records otherwise produced for release or distribution under this chapter.
- C. Custodians of any District records shall, at the expiration of their terms of office, appointment or employment, deliver custody and control of all records kept or received by them to their successors, supervisors, or to the District Records Officer.

CHAPTER 6

SPECIAL SERVICE DISTRICT ADVISORS

Section I. Background

- A. **Policy:** It is the policy of the Board to engage consulting services for professional and technical matters, including architects, engineers, attorneys, financial consultants, and technological support and budget annually for their services.
- B. **Purpose:** The policy identifies District advisors and expresses the relationship between the District and the advisor.

Section II. Advisors:

- A. **Insurance Agent of Record:** An insurance agent of record shall be selected by the Director.
 - 1. The District Director and the Board may request any advice that may be needed in handling insurance matters pertaining to the welfare of the NSRSSD.
 - 2. Individual Board members should direct requests through the District Director and/or the Chair.
 - 3. The current Insurance Agent of Record is:

Utah Local Governments Trust
55 South Highway 89
North Salt Lake, UT 84054
(801)936-6400

- B. **Legal Counsel:** The District Director shall select and consult with qualified legal advisors whose area of expertise is found to be in the best interest of the District.
 - 1. The District Director and any Board member may request counsel for legal advice that may be needed in relation to official NSRSSD business, or for opinions that may be needed in handling matters pertaining to the welfare of the NSRSSD Board, or District, as a whole.
 - 2. Private counsel will be selected and authorized by the Board based on the attorney's
 - i. Specific areas of expertise;
 - ii. Absence of identifiable conflict(s) of interest in representation of the District;
 - iii. Availability of time to complete the task, and;
 - iv. Consideration of fees
 - 3. The current general counsel to the District is:

Summit County Attorney
Attn: David L. Thomas, Chief Civil Deputy
Summit County Courthouse
60 N. Main
P.O. Box 128
Coalville, Utah 84017
435-336-3206
dthomas@summitcounty.org

CHAPTER 7

BUDGETARY/FISCAL POLICIES

Section I. Background

- A. **Policy:** This shall be known as the North Summit Recreation Special Service District Fiscal Policy, adopted to comply with Budgetary/Fiscal Procedures set forth in Utah Code, 17B-1 Part 6, “Uniform Fiscal Procedures for Local Districts Act.” The County Council, as the Governing Body, after receiving a recommendation from the Board, will adopt specific procedures for the efficient handling, spending, accounting, and reporting of public funds as prescribed by accepted accounting practices and state laws.
- B. **Purpose:** This part is intended to provide uniform accounting, budgeting, and financial reporting procedures in compliance with Utah state law. It is the purpose of this part to enable the District to make financial plans for both current and capital expenditures, to ensure that staff administers their respective functions in accordance with adopted budgets, and to provide the public and investors with information about the financial policies and administration of the District.
 - a. The County Council and the Board value honesty, integrity, and accountability in upholding their fiduciary responsibilities. The expectation of staff is to provide high quality information to the Board for effective decision making, striving for objectivity, accuracy, timeliness, clarity, and relevance in all matters of District finance.

Section II. Budgeting

- A. **Budget Intent:** The County Council, as the Governing Body, after receiving a recommendation from the Board, will approve an annual budget that will pay the District’s operating expenses; provide for repairs and depreciation of facilities owned and operated by the District; plan for capital project improvements; pay the principal and interest on any bonds issued by the District; establish fee schedules, and; provide, as much as practicable a Fund Balance within the limits allowed by law to meet the annual cash flow needs of the District. There will be no deficit spending (expenditures in excess of the total budget). Budget forms submitted to the State Auditor must present a balanced budget.
- B. **Budget Calendar:** The District Director shall prepare and present a budget calendar to the County Council and Board annually in August. The calendar will identify key dates including budget discussions, proper noticing, adoption of a tentative budget, public hearing date, formal adoption of budgets, and submittal of budget forms (within 30 days of adoption) to the State Auditor.
 - a. The District will provide notice to the Summit County Treasurer’s Office of the date, time and place of the budget hearing for publication with tax notices distributed annually in August.
- C. **Budget Preparation:** On or before the first regularly scheduled meeting of the Board in October, the Director shall prepare a tentative budget and present it to the Board for its recommendation to the County Council, as the Governing Body. On or before the first regularly scheduled meeting of the County Council in November, the Director shall present and the Council shall adopt a tentative budget for each of the following funds for which a budget is required (17B-1-607)
 - a. General Fund
 - b. Debt Service Fund
 - c. Capital Project Funds, to include a separate accounting for impact fees.
 - i. In compliance with Utah Code 17B-1-605, major capital improvements financed by general obligation bonds, capital grants, or interfund transfers shall use a capital projects fund budget unless the improvements financed are to be used for proprietary type activities.
 - ii. The County Council, in consultation with the District Director and the Board, may, in any budget year, give consideration to an appropriation from any fund balance to a reserve for

capital projects for the purpose of financing future specific capital projects, including new construction, capital repairs, replacement, and maintenance under a formal long-range capital plan adopted by the County Council following a recommendation from the Board (17B-1-612).

- D. Board Review and Recommendation:** The District Director will provide opportunity for Board review, discuss, and recommend a tentative budget to the County Council, as the Governing Body, as outlined in Policy EL-7 Financial Planning and Budgeting.
- E. Budget Hearing:** A public hearing on all tentatively adopted budgets will be held at the time and place established by the County Council during the meeting at which the tentative budget is adopted. Legal notice will be published on the District Website seven days in advance of the public hearing. The tentative budget will be made available for public inspection for at least seven days prior to the public hearing (17B-1-609).
- a. The District Director shall present the estimates of revenues and planned expenditures.
 - b. The County Council chair shall open the public hearing at which time all interested persons in attendance shall be given an opportunity to be heard on the estimates of revenues and expenditures or any item in the tentative budget of any fund (17B-1-610).
 - c. At the conclusion of the public hearing, the County Council may:
 - i. Continue to review the tentative budget;
 - ii. Insert any new items; or
 - iii. Increase or decrease items of expenditure that were the proper subject of consideration at the public hearing, and;
 - iv. Increase or decrease the total anticipated revenue to equal the net change in proposed expenditures to balance the budget.
 - d. At the conclusion of the public hearing, the County Council may not decrease the amount appropriated for debt retirement and interest (17B-1-611).
- F. Exceeding Certified Tax Rate:** The District may not levy a tax rate that exceeds its certified tax rate until it meets the notice requirements, public hearing requirements and the County Council, as the Governing Body, after receiving a recommendation from the Board, adopts a resolution in accordance with Utah Code §59-2-919, as amended.
- G. Adoption of Budgets:** A budget for the ensuing fiscal year for each of the three District funds shall be adopted by resolution of the County Council, as the Governing Body, prior to the beginning of the next fiscal year (17B-1-614). The General Fund budget for operations and maintenance shall be adopted by total appropriation, not by department. Staff shall not make or incur expenditures or encumbrances in excess of total appropriations in the budget as adopted or as subsequently amended (17B-1-613; 17B-1-620).

Section III. Accounting and Internal Controls

- A. Record Keeping Requirements.** The District shall maintain financial records in conformance with the Utah State Auditor's Office "Uniform Accounting Manual for Special Districts" and Utah Code, 17B-1-603, Uniform Accounting System.
- a. **Purchases.** All Purchases are to be made according to the purchasing policies and procedures adopted by the Board (Chapter 12).
 - b. **Pre-numbered Checks.** Expenditures shall not be made using cash. Pre-numbered checks shall be used and all checks, including those voided, will be accounted for.
 - c. **Check Signatures.** Dual signature by authorized individuals is required for all District checks. Authorized individuals include the Board Chair, Board Treasurer, District Director, and Board's

designee (17B-1-635). Disbursements in excess of \$5,000 require that one of the two signatures be that of either the Board Chair or Board Treasurer.

- d. **State Purchasing Cards.** All receipts for purchases made with a state purchasing card shall be turned in to the Finance Department to document the transaction. Cardholders are responsible for the proper coding of purchases to fund and account number by department. Personal purchases are expressly prohibited.
- e. **Authorization of Payables.** Individual invoices are to be signed by the Department Manager, Finance Department and District Director authorizing the expenditure within the approved budget.
- f. **Board review of expenditures.** A list of all expenditures paid shall be prepared and submitted for approval by Board motion at each regularly scheduled business meeting. Individual invoices shall be made available for Board inspection at the request of any Board member.
- g. **Bank Statements.** Bank statements shall be reconciled monthly and balanced to records of cash receipts and disbursements. The reconciliation shall be performed by a District employee who does not authorize or sign for cash receipts or disbursements.
- h. **Receivables.** Records shall be maintained of all receivables.
- i. **Collections/Deposits.** Board members are expected to have a good working understanding of District revenues. The Board Treasurer or his/her designee will ensure that all money due the District has been collected and deposited on a timely basis by staff. Deposits shall be made within a day of receipt when possible or within three (3) business days of their receipt if revenues are collected over a weekend (17B-1-633).
- j. **Assets.** Records shall be maintained of all assets owned by the District and managed with “Asset Keeper” or comparable software according to the provisions of GASB rules.
- k. **Debt Service.** Records shall be kept of all bonds or other debts owed by the District (17B-1-632). The District Director will ensure that principal and interest payments on GO bonds are made in a timely manner and understand that a delinquency in payment will constitute a “material event” which will be recorded with “Nationally Recognized Municipal Securities Information Repositories.” Delinquent payments may adversely affect the transferability and liquidity of the Bonds and their market price, and future NSRSSD bond ratings.
- l. **Interfund Loans.** Subject to restrictions imposed by bond covenants, statute, or other controlling regulations, Utah Code provides for loans by one fund to another (17B-1-626). Interfund loans must be authorized by the District Board, who shall prescribe interest rates, repayment terms, and any other conditions.
- m. **Impact Fees.** The District shall establish separate interest bearing ledger accounts for each type of public facility for which an impact fee is collected; deposit impact fee receipts in the appropriate ledger account; retain the interest earned on each fund or account in the fund or account; and at the end of each fiscal year, prepare a report on each fund or account showing:
 - i. the source and amount of all monies collected, earned, and received by the fund or account; and
 - ii. each expenditure from the fund or account.
- n. **Financial Records.** NSRSSD will maintain a financial records management program for the District in accordance with the Records Retention section of the Uniform Accounting Manual for Local Districts.

Annual Financial Reports	Public	Permanent
Budgets	Public	4 years
Bank Statements	Public	4 Years
General Ledger	Public	10 Years
Timesheets	Public	3 Years
A/R & A/P	Public	4 Years
Deposit Slips	Public	3 Years
Check Register	Public	7 Years
Receipt Books	Public	3 Years
Fixed Asset Lists	Public	10 Years

Section IV. Deposits and Investments

- A. The District shall comply with all of the provisions of the State Money Management Act and Rules of the State Money Management Council for all District operating funds. The Money Management Act governs how all public funds in the state are to be deposited and invested. The Board Treasurer is the custodian of all money, bonds, or other securities of the District and will keep current on all quarterly reports provided by the Utah Money Management Council, including:
- A current list of qualified depositories eligible to accept deposits of public funds, and
 - A current list of certified dealers authorized by statute to conduct investment transactions with public treasurers.
- B. The District shall file deposit and investment reports with the Utah Money Management Council, as requested (January and July).

Section V. Physical Controls

- A. **Protected Access to Automated Systems.** It is the policy of the District that those employees responsible for the processing of payments, transfers, payroll or other accounting functions have password protected access to the applicable automated functions necessary for the task assigned.
- B. **Computer Backup and Recovery.** It is the policy of the District that measures are taken to provide for daily backup of the computer network and that procedures are in place and periodically reviewed to prevent the loss or unauthorized use of resources.
- C. **Physical Restrictions.** Physical restrictions shall be used as a protective measure for safeguarding District assets and data. It is the policy of the District to implement and adapt physical controls based on continual risk assessment. Door locks, fences, cash registers, locked files, fireproof files, and controlled access to keys, equipment, and materials and supplies are recommended strategies.
- D. **Surveillance.** Surveillance cameras placed appropriately shall be used as a protective measure for monitoring cash handling and employee conduct, and as a means to deter and/or document vandalism of District facilities.
- E. **Independent Checks.** It is the policy of the District to provide independent checks on personnel performance. These checks are to be carried out by managers or employees who are not assigned to the task, or did not do the work, to ensure the reliability and efficiency of operations. Independent checks are intended to:

- a. Promote orderly, economical, efficient, and effective operations and to produce quality products and services consistent with the District's mission;
- b. To safeguard resources against loss due to waste, abuse, mismanagement, errors, and fraud ; and
- c. To ensure adherence to laws, regulations, contracts, and management directives.

Section VI. Reporting

- A. **Quarterly Financial Report.** In accordance with Utah Code, a quarterly financial report shall be prepared and presented to the Board showing the financial position and operations of the District for that quarter and the year to date status. (17B-1-638)
- B. **Deposit and Investment Report.** In accordance with Utah Code, the Board Treasurer or his/her designee shall file a semi-annual financial report with the State Money Management Council. (51-7-15)
- C. **Budget Certification.** The Board Treasurer shall certify a copy of the final budget for each fund and the District Director shall file such certified budget to the State Auditor within 30 days after adoption. (17B-1-614)
- D. **Impact Fee Report:** Utah Code requires the District to report on impact fee collections (11-36a-601), once authorized. The report shall be (1) submitted to the State Auditor's Office within 30 days following year end, (2) presented as a schedule in the supplementary information section of the District's financial statements, and (3) file as a public document in the District office. The annual report shall be in a format developed by the state auditor, certified by the District Director, and will identify:
 - a. Impact fee funds by the year in which they were received.
 - b. The project from which the funds were collected.
 - c. The capital projects for which the funds were budgeted
 - d. The projected schedule for expenditure; impact fees must be expended within six years from the time they are collected. (11-36a-602)
- E. **Continuing Disclosure.** In accordance with the provisions of paragraph (b) (5) (i.) (A) of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended (the "Rule"), if and when applicable the District will file or cause to have filed Financial Statements and Continuing Disclosure Memorandum by July 15th of each year. If the filing is delinquent, a "material event" will have occurred.

Section VII. Insurance

- A. The District will effectively managing risk and provide for the general liability insurance needs of the District (17B-1-113).
- B. The District will provide for Unemployment Insurance.
- C. The District will provide for Workers Compensation Insurance.
- D. The District will bond the Board Treasurer and employees who have the responsibility for the safekeeping and investment of public funds in keeping with Utah Code. (51-7-15)

Section VIII. Fund Balance Limitations

- A. It is the policy of the Board to maintain a Fund Balance in the general fund of 50% of the current year's property tax revenues. The accumulation of the Fund Balance in the general fund may not exceed 100% of the current year's property tax collections. (17B-1-612) In accordance with Utah Code, an accumulated fund balance may be used only:
- a. To provide cash flow to finance expenditures from the beginning of the budget year until general property taxes or other applicable revenues are collected;
 - b. To provide a resource to meet emergency expenditures under Utah Code Section 17B-1-623; and
 - c. To cover a pending year-end excess of expenditures over revenues from an unavoidable shortfall in revenues. (17B-1-612)

Section IX. Asset Capitalization

- A. In compliance with GASB Statement No. 34, the Board has adopted the following asset capitalization policy:
- a. **Threshold.** - Capital assets of the District include property, buildings, and equipment. Capital assets are defined by the District as assets with an initial, individual cost of \$5,000 or more and an estimated useful life in excess of two years.
 - i. Donated capital assets shall be recorded at estimated fair market value at the date of donation. The costs of normal maintenance and repairs that do not add to the capacity of the asset or materially extend the asset's life shall not be capitalized.
 - b. **Useful Life of Asset Class.** - Capital assets of the District shall be categorized into specific asset groupings that are then further classified into similar class lives. Examples of District's assets classes and associated useful life categories are as follows:

<u>ASSET</u>	<u>CLASS LIFE</u>
Land [Land includes property used for trailheads, parks, and land on which building structures are placed]	0 Years
Building Structures [Building structures include the architecture, construction, engineering, and other major costs associated with the creation of trailhead, park, recreation facility, and administrative building structures]	40 Years
Capitalized Subcomponents of Building Structures - Security/Phone Systems - Railings/Welding - Furniture/Fixtures - Concrete - Fitness Equipment	10 Years 20 Years 10 Years 20 Years 7 years
Trail Systems - Natural Backcountry Trails	0 years

	- Soft Surface Trails [Land] - Hard Surface Trails - Wooden Bridges - Other Bridges/Undercrossing/Overpasses - Trail Fencing - Trail Landscaping - Trail Parking Lots/Asphalt	15 Years 20 Years 20 Years 30 Years 15 Years 30 Years 20 Years
Parks	- Asphalt Pavings/Parking - Basketball Courts - Tennis Courts - Concrete Park Elements - Construction/Architecture/Engineering - Park Fencing - Landscape Construction Irrigation - Landscape Central Irrigation - Pavilions - Playground Equipment - Railings/Welding - Roller Rinks [Concrete] - Volleyball [Land/Sand] - Shade Structures - Drinking Fountains	20 Years 20 Years 20 Years 20 Years 40 Years 15 Years 40 Years 8 Years 20 Years 15 Years 20 Years 20 Years 0 Years 10 years 10 years
Vehicles/Equipment	- Fleet Vehicles - Office Equipment/Machines - Other Equipment/Vehicles	7 Years 10 Years 7 Years

- c. **Method of Depreciation.** - Capital assets of the District shall be depreciated using the straight-line method with a zero salvage value.

CHAPTER 8

CREDIT CARD POLICY

Section I. Overview

The District may allow the use of a District guaranteed credit card through a Board approved credit card program for eligible employees. District credit cards shall be used for official business only, and shall not be used for the personal convenience of an employee.

Section II. Credit Card Terms

- A. The Executive Director may assign District credit cards for the following purposes:
 - 1. Travel costs
 - 2. Business meetings
 - 3. On-line purchases
 - 4. Parts, supplies, and building materials and other items needed for operations, maintenance and repairs; and/or
 - 5. Emergency expenditures
- B. Credit accounts with local preferred vendors may also be established with approval of the Comptroller and Executive Director to purchase parts, supplies, building materials, and other items needed for operations, maintenance, repairs, and emergency expenditures.
- C. All credit card purchases are subject to all requirements of the District's Procurement Policy and Procedures, and to all applicable state and federal procurement laws that govern the District.
- D. District employees violating this policy must fully reimburse the District for any misuse of credit cards or accounts, and are subject to disciplinary and/or legal action.
- E. All credit card users will be required to sign a card-holder agreement and are subject to a credit check before being issued a card.

Section III. Credit Limits

The District Director may authorize credit limits up to \$10,000 per employee, except that the total District credit limit must be approved by the Board. Temporary credit line increases for travel or unusual purchases may be allowed with the approval of the Comptroller. These temporary credit limit increases will last no longer than the end of the billing cycle. Requests for a credit limit change must be made through a Credit Limit Change Request.

Section IV. Theft of Fraud

Employees shall maintain control over their District credit card at all times. In the event of theft or fraud, the employee will immediately notify the credit card issuer to open a theft or fraud case. The employee will also immediately notify the Comptroller. Replacement cards will be issued as quickly as possible if the theft or fraud was found to be out of the control of the employee.

Section V. Fraud Prevention

Due to the nature of the District credit card program, numerous fraud prevention practices have been instituted. There may be certain types of merchants banned from District cards and daily spending limits may be imposed at certain merchants that the credit card issuer sees as potentially fraudulent. This may result in a credit card being declined at a point of purchase even though there is adequate available credit. If you have any questions regarding why a transaction was declined, please contact the Comptroller directly.

Section VI. Credit Card Reconciliation

All users of a District credit card are required to retain all applicable documentation for each purchase including receipts, order verifications, invoices, etc. All receipts must be forwarded to the cardholder's approver at the end of the statement cycle.

Section VII. Statement Cycle

Credit card statement cycles close on the last day of the month. Credit limits are reset at this point.

CHAPTER 9

PURCHASING POLICY AND PROCEDURES

I. BACKGROUND

- A. **Policy:** This shall be known as the North Summit Recreation Special Service District (the “District”) Purchasing Policy (the “Policy”).
- B. **Purpose:** The purpose of this policy is to identify the procedure for approval and payment for all purchases or encumbrances by the District and to insure that all such payments and encumbrances are fair and reasonable and are not in conflict with applicable law. The Policy is applicable to all Board Members and employees.
- C. **Applicability of the Utah Procurement Code:** The District is subject to the Utah Procurement Code (Utah Code §§ 63G-6a-101 *et. seq.*) and, as such, purchases by the District shall be made in accordance with applicable sections of the Utah Procurement Code, as now constituted or as it may be amended and modified from time to time. For purposes of the application of the Utah Procurement Code and this Policy, the District is a Procurement Unit with independent procurement authority (63G-6a-106).
 - 1. **Exception-State or Federal Law or Regulations:** Whenever any purchase or encumbrance is made with state or federal funds and applicable state or federal law or regulations are in conflict with this Policy, to the extent that following the provisions of this Policy might jeopardize the use of those funds or future state or federal funds, such conflicting provisions of this Policy shall not apply and the District shall follow the procedure required by the applicable state or federal law or regulation.
 - 2. **Exception-Federal Funding/Grants:** When a procurement involves the expenditure of federal assistance or contract funds, the District shall comply with any mandatorily applicable federal law and regulations which are not reflected in this Policy. This Policy shall not prevent the District from complying with the terms and conditions of any grant, gift, or bequest that are otherwise consistent with law (63G-6a-107).

II. DEFINITIONS

As used in this Policy, the following definitions shall be applicable:

- A. **Board:** For purposes of the Utah Procurement Code and this Policy, the Administrative Control Board of the District is the Applicable Rulemaking Authority for the District (63G-6a-104(1)(l)).
- B. **Statutory Definitions:** The definitions of terms set forth in Utah Code §§ 63G-6a-103 and -104, as they may be amended from time-to-time are, to the extent applicable to this Policy and the activities of the District, incorporated herein by this reference.
- C. **Procurement Officer:** The District Director (also referred to as the District’s “General Manager”) shall be the District’s “Procurement Officer” and other employees of the District may act as Procurement Officers as authorized and delegated by the Board and/or the District Director (63G-6a-103(59)). References in this Policy to the Procurement Officer shall include any “designee” or “delegate” designated by the District Director or the Board.

D. Additional Definitions:

1. **Act or Procurement Code:** means the Utah Procurement Code found in Title 63G, Chapter 6a of the Utah Code.
2. **Actual Costs:** means direct and indirect costs which have been incurred for services rendered, supplies delivered, or construction built, as distinguished from allowable costs.
3. **Adequate Price Competition:** requires a minimum of two competitive bids, proposals, or quotes from responsive bidders or offerors.
4. **Bid Bond:** is either cash or an insurance agreement, accompanied by a monetary commitment, by which a third party (the Surety) accepts liability and guarantees that the bidder will not withdraw the bid. The bidder will furnish bonds in the required amount, and if the contract is awarded to the bonded bidder, the bidder must accept the contract as bid or the cash will be forfeited or the surety will pay the specified bond amount to the District.
5. **Bid Rigging:** is an agreement among potential competitors to manipulate the competitive bidding process, for example, by agreeing not to bid, to bid a specific price, to rotate bidding, or to give kickbacks.
6. **Bid Security:** means the deposit of cash or a certified check, cashier's check, bank draft, money order, or bid bond submitted with a bid and serving to guarantee to the District that the bidder, if awarded the contract, will execute such contract in accordance with the bidding requirements and the contract documents.
7. **Brand Name or Equal Specification:** means a specification which uses a brand name specification to describe the standard of quality, performance, and other characteristics being solicited, and which invites the submission of equivalent products.
8. **Brand Name Specification:** means a specification identifying one or more products by manufacturer name, product name, unique product identification number, product description, SKU or catalogue number.
9. **Collusion:** occurs when two or more persons act together to achieve a fraudulent or unlawful act. Collusion inhibits free and open competition in violation of law.
10. **Cost Analysis:** means an evaluation of cost data for the purpose of arriving at estimates of costs to be incurred, prices to be paid, costs to be reimbursed, or costs actually incurred.
11. **Cost Data:** means factual information concerning the cost of labor, materials, overhead, and other cost elements which are expected to be incurred or which have actually been incurred by the contractor in performing the contract.
12. **Cronyism:** is an anticompetitive practice that may violate federal and state antitrust and procurement laws. Cronyism in government contracting is a form of favoritism where contracts are awarded on the basis of friendship, association or political connections instead of fair and open competition.
13. **Favored Vendor:** applies to a situation wherein the Procurement Officer, an evaluation committee member, a contract administrator, or a District employee unfairly, by means of deceit or in violation of law, favors one vendor over another in the process of awarding a contract. Examples of ways in which District contracts may improperly be steered to a "favored vendor" include, but are not limited to:

- a. Collusion or manipulation of the procurement to steer a contract award to a particular vendor;
 - b. Illegal bribes or kickbacks paid by a vendor in exchange for a contract award;
 - c. Unjustified sole source contract awards to a vendor;
 - d. Bid rigging schemes;
 - e. Writing specifications that are overly restrictive or written in a way that gives an unfair advantage to a particular vendor;
 - f. Improperly splitting purchases to avoid use of a standard competitive procurement process;
 - g. Leaking bid or proposal information to a particular vendor to the exclusion of other vendors; or
 - h. Not following established policies and procedures when approving change orders.
14. **Immaterial Error**: means an irregularity or abnormality that is a matter of form that does not affect substance or an inconsequential variation from a requirement of a solicitation that has no, little or a trivial effect on the procurement process and that is not prejudicial to other vendors, and includes (a) a missing signature, missing acknowledgement of an addendum or missing copy of a professional license, bond or insurance certificate, (b) a typographical error, (c) an error resulting from an inaccuracy or omission in the solicitation, or (d) any other error that the Procurement Officer reasonably considers to be immaterial.
15. **Mandatory Requirement**: means a condition set out in the specifications/statement of work that must be met without exception.
16. **New Technology**: means any invention, discovery, improvement, or innovation that was not available to the District on the effective date of the contract, whether or not patentable, including, but not limited to, new processes, emerging technology, machines, and improvements to or new applications of existing processes, machines, manufactures and software. Also included are new computer programs, and improvements to, or new applications of, existing computer programs, whether or not copyrightable and any new process, machine, including software, and improvements to, or new applications of, existing processes, machines, manufactures and software.
17. **Participating Addendum**: means an agreement issued in conjunction with a State Cooperative Contract awarded by the Division of Purchasing and General Services (a “**Cooperative Contract**”) that authorizes a public entity such as the District to use the Cooperative Contract.
18. **Payment Bond**: is a bond that guarantees payment for labor and materials expended on the contract.
19. **Price Analysis**: means the evaluation of price data without analysis of the separate cost components and profit.
20. **Price Data**: means factual information concerning prices for procurement items.
21. **Record**: shall have the meaning specified in Utah Code § 63G-2-103.
22. **Retention Schedule**: refers to the record retention schedule applicable to the District as approved by the State Records Committee, or the model retention schedule maintained by the State Archivist if the District does not have its own approved retention schedule.
23. **Surety Bond**: (performance bond) means a promise to pay the District a certain amount if the principal (contractor) fails to meet some obligation, such as fulfilling the terms of a contract. The surety bond protects the District against losses resulting from the principal's

failure to meet the obligation. In the event that any obligation is not met, the District may recover its losses via the bond.

24. **Utah Resident Bidder**: means a bidder qualified under III(e)(2) of this Policy.

III. GENERAL PROVISIONS

- A. **Procurement Officer**: The Procurement Officer may (i) manage and supervise the procurement to ensure to the extent practicable that taxpayers receive the best value, (ii) prepare and issue standard specifications for procurement items, (iii) review contracts, coordinate contract compliance, conduct contract audits, and approve change orders, (iv) correct, amend, or cancel a procurement at any stage of the procurement process if the procurement is out of compliance with this policy, and (v) after consultation with the County Attorney, correct, amend or cancel a contract at any time during the term of the contract if the contract is out of compliance with this policy and the Procurement Officer determines that correcting, amending, or canceling the contract is in the best interest of the District.

Except as otherwise specifically authorized by the Board, no officer or employee of the District shall purchase for and on behalf of the District any material or supplies, goods, wares, merchandise, or services of any kind or character, except through the Procurement Officer or his/her designee, and no voucher, check or other method of payment shall be honored if this procedure is not followed; provided, however, that this Subsection shall not apply to emergency purchases as specifically provided in Subsection X.A.5 of this Policy.

- B. **Approval of Purchases**: The District Director shall sign all contracts of the District. Approval of contracts and purchases shall be as provided hereunder.

Category	Limitation	Authorization
Surplus Property	\$2,000.00 or Less	Procurement Officer
Surplus Property	Greater than \$2,000.00	Board
Small Purchases	\$5,000.00 or Less	Procurement Officer
Small Purchases - Architectural and Engineering Services	\$5,000.00 to \$20,000.00	District Director
Small Purchases - Construction	\$5,000.00 to \$20,000.00	District Director
Intermediate Purchases	\$5,000.00 to \$20,000.00	District Director
Major Purchases	Greater than \$20,000.00	Board
Sole Source Contracts	\$20,000.00 or less	District Director
Sole Source Contracts	Greater than \$20,000.00	Board
Emergency Procurement	Any amount	District Director
State and Federal Grants	Any amount	Board

Notwithstanding the foregoing, however, the Procurement Officer, and/or any other person designated by the Board to act as the “budget officer” and/or the “financial officer” of the District under the provisions of Utah Code §§ 17B-1-601 *et. seq.*, may issue payroll checks that are prepared in accordance with a schedule approved by the Board and pay routine expenditures such as utility bills, withholding deposits for federal, state and FICA, the District’s share of FICA, withholdings for health and life insurance, postage and bond payments when due, and make transfers from one fund to another as part of routine bookkeeping procedures. Notwithstanding anything contained in this Policy to the contrary, however, the Board will review all District expenditures on a quarterly or more frequent basis (17B-1-642).

- C. **Availability of Funds:** No purchase shall be made and no encumbrance shall be incurred unless funds sufficient to cover the purchase or encumbrance are available and the purchase is approved by the appropriate District officials as herein provided.
- D. **Delivery of Goods:** No officer or employee of the District shall request any merchant, dealer or other vendor to deliver goods to the District other than in compliance with the requirements of this Policy and pursuant to any required approval from the Board or the Procurement Officer, except in the case of an emergency purchase as provided in Subsection X.A.5 of this Policy.
- E. **Cooperative Purchasing and Purchasing Preferences:**
1. **Cooperative Purchasing:** Nothing contained in this Part III. shall be construed to limit the ability of the District to purchase a procurement item from another procurement unit or join with other units of government in centralized or cooperative purchasing plans or systems, with proper authorization, including participating in state or federal public cooperative procurement contracts, as provided in Part 21 of the Procurement Code, entitled "Interaction Between Procurement Units".
 - a. Cooperative purchasing will be conducted in accordance with the requirements set forth in Sections 63G-6a-2104 and 2105 of the Act.
 - b. A state cooperative contract may not be used for:
 - i. An anti-competitive practice such as:
 - (1) Bid rigging;
 - (2) Steering a contract to a preferred state cooperative contractor;
 - (3) Utilizing auction techniques where price quotations are improperly disclosed and contractors bid against each other's price;
 - (4) Disclosing pricing or other confidential information prior to the date and time of the opening; or
 - (5) Any other practice prohibited by the Procurement Code.
 2. **Preference for State Products and Resident Contractors:** Section 63G-6a-1002 of the Procurement Code provides for a reciprocal preference for the providers of procurement items produced, manufactured, mined, grown, or performed in Utah and Section 63G-6a-1003 provides a reciprocal preference for resident Utah contractors. In the event more than one equally low preferred bidder or contractor qualifies for the reciprocal preference, the Procurement Officer shall consider the preferred bidders or contractors to be tied and will award the bid utilizing the following ranked preferences: (a) bidder who is the provider of state products; (b) bidder who is closest to the point of delivery; (c) bidder who received the previous award; or (d) bidder who will provide the earliest delivery date. (63G-6a-608)
- F. **Purchase Records:**
1. **Invoices and Receipts:** Invoices prepared by the vendor, cash register receipts, and/or other written documentation to substantiate District expenditures will be maintained as part of the District's financial records in accordance with customary procedures for public entities such as the District. Whenever possible, original invoices will be used as supporting documentation for District purchases.
 2. **Penalty for Double Payment:** An intentional effort on the part of a supplier to obtain a double payment may serve as the basis for a "debarment" under which that supplier will

be precluded from providing materials, goods, and/or services to the District for a prescribed time not to exceed 3 years (63G-6a-904). Similarly, any intentional effort on the part of a District employee to receive a double reimbursement may result in sanctions, including termination.

3. **Use of Forms:** All departments are required to file with the Procurement Officer detailed requisitions for their requirements of supplies, contractual services, materials, and equipment.

G. Surplus Personal Property and Salvage:

1. **Disposal of Surplus Personal Property:** Surplus personal property having a value of **\$2,000.00** or less may be disposed of in a commercially reasonable manner as the Procurement Officer sees fit, with all proceeds of the disposal to be the property of the District. Depending on the nature of the surplus personal property, donation, disposal or destruction may be considered commercially reasonable. Surplus personal property with a value in excess of **\$2,000.00** may not be disposed of until the Board has declared the property to be surplus, after which it may be disposed of for the benefit of the District in a commercially reasonable manner as directed by the Board. This requirement shall not apply when the surplus property, such as a vehicle or equipment, is being “traded in” on the purchase of substitute property, provided that the acquisition of the substitute property is in conformance with the requirements of this Policy.
2. **Salvage:** Metal and other items of some residual value may be salvaged by employees of the District while working on District facilities and improvements. Such salvaged items continue to be the property of the District and are to be disposed of accordingly. As a consequence, all receipts from salvaging such items shall be the property of the District and shall be safeguarded and accounted for as such.

- H. Inspection:** The Procurement Officer shall cause to be inspected, or supervise the inspection of, all deliveries of supplies, materials and equipment to determine their conformance with the specifications set forth in any applicable contract. The Procurement Officer is to be notified by the responsible department head forthwith of any item not received within 30 days after a reasonable delivery time has elapsed.

- I. Technology Modification:** Any contract may be subject to a modification for technological upgrades if a provision to that effect was included in the solicitation or the contract. Any modification to a contract for upgraded technology should be substantially within the scope of the original procurement or contract. Then, if both parties agree to the modification, the contract may be modified for a technological upgrade without going through a new procurement process. A technological upgrade or modification may extend the contract term beyond the original term of the contract only as provided in the Procurement Code and this Policy.

IV. CONTRACTUAL TERMS

- A. Multi-Year Contracts:** The District may enter into multi-year contracts in accordance with Section 63G-6a-1204 of the Act. In particular, a contract for supplies or services may be entered into for any period of time, up to five years, deemed to be in the best interest of the District; provided that the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Prior to the utilization of a multi-year contract, it should be determined in writing that estimated requirements cover the period of the contract and are reasonably firm and continuing and that a multi-year contract will serve the best interest of the District by encouraging effective competition or otherwise promoting economies in District procurement.

1. **In Excess of Five Years:** Notwithstanding the foregoing, or anything to the contrary in this Policy, a contract may be entered into for a period in excess of five years, or for an indeterminate period that is terminable at-will by the District, with or without cause, based upon a written determination by the Procurement Officer, as provided in Section 63G-6a-1204(7), that:
 - a. A longer period is necessary in order to obtain the procurement item,
 - b. A longer period is customary for industry standards, or
 - c. A longer period is in the best interest of the District.

The Procurement Officer's written determination shall be included in the file for the subject procurement.
2. **Availability of Funds:** As allowed by law or the underlying contract, when funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, a multi-year contract may be canceled and the contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the contract. The cost of cancellation may be paid from any appropriation available for that purpose.
3. **Indefinite Term:** Based upon a written determination by the Procurement Officer as provided in paragraph IV(A)(1) above, with the concurrence of the contracting parties, a contract may be entered into as, or may be modified to become, an indefinite term contract terminable at will by the District.

B. Type of Contract:

1. **Generally:** Subject to the limitations of this Section IV(B), any type of contract which will promote the best interest of the District may be used; provided that, if a contract other than a firm fixed price contract is used, the Procurement Officer must make a written determination as required by Section 63G-6a-1205(3) of the Act that the proposed contractor's accounting system will permit the timely development of all necessary cost data in the form required by the specific contract type contemplated; the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles; and the use of a specified type of contract, other than a firm fixed price contract, is in the best interest of the District taking into consideration the criteria specified in Section 63G-6a-1205(3)(c). The various contract types that may be used are identified in Section 63G-6a-1205(4).
2. **Cost-Plus-a-Percentage-of-Cost:** As provided in Section 63G-6a-1205(5) of the Act, the District may not enter into a cost-plus-a-percentage-of-cost contract unless the contract form is approved by the Procurement Officer; it is standard practice in the industry to obtain the subject procurement item through a cost plus contract; and any percentage and the method of calculating costs stated in the contract are in accordance with industry standards.
3. **Cost Reimbursement:** As provided in Section 63G-6a-1205(6) of the Act, a cost reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the District than any other contract type or that it is impracticable to obtain the supplies, services, or construction required except under such a contract, and the proposed contractor has an adequate accounting system to timely develop cost data in the form necessary for the District to timely and accurately make payments under the contract and to allocate costs in accordance with generally accepted accounting principles.

- C. **Installment Payments:** The District may make installment payments in accordance with Section 63G-6a-1208 of the Act.

V. SMALL PURCHASES

- A. **General:** Small purchases shall be conducted in accordance with the requirements set forth in Section 63G-6a-506 of the Act. This Part V provides additional requirements and procedures and is to be used in conjunction with the Procurement Code.

1. **Definition:** A "Small Purchase" is a procurement conducted by the District without using a standard procurement process.
2. **Thresholds:** Small Purchase thresholds are as follows:
 - a. The "Individual Procurement Threshold" is a maximum amount of **\$5,000** for a procurement item;
 - i. For individual procurement item(s) costing up to **\$5,000**, the District may select the best source by direct award and without seeking competitive bids or quotes.
 - b. The "Single Procurement Aggregate Threshold" is a maximum amount of **\$10,000** for multiple procurement item(s) purchased from one source at one time; and
 - c. The annual cumulative threshold from the same source is a maximum amount of **\$50,000**.
3. **Vendor Prequalification:** Should the District elect to pre-qualify vendors for a small purchase, the District will follow the process described in Section 63G-6a-410 of the Act to prequalify potential vendors and Section 63G-6a-507 to develop an approved vendor list, or Part 15 of the Procurement Code for the selection of architectural and engineering services.
4. **Rotation System:** Whenever practicable, the District will use a rotation system or other system designed to allow for competition when using the small purchases process.

B. **Small Purchases Threshold for Architectural and Engineering Services:**

1. **Threshold:** The small purchase threshold for architectural or engineering services is a maximum amount of **\$100,000** per budget year.
2. **Procedure:** Architectural or engineering services may be procured, up to a maximum of **\$20,000**, by direct negotiation after reviewing the qualifications, experience and background of a minimum of three architectural or engineering firms. As part of the selection process, the District shall consider the specific individuals assigned by the firm to the project, the time commitments of each to the project, the project schedule and the approach to the project that each firm will take (17B-1-108(3)).
3. **Specifications:** The District will include minimum specifications when using the small purchase threshold for architectural and engineering services.

C. **Small Purchases Threshold for Construction Projects:**

1. **Threshold:** The small construction project threshold is a maximum of **\$175,000** for direct construction costs, including design and allowable furniture or equipment costs;
2. **Procedure:** The District will follow the process described in Section 63G-6a-410 of the Act to prequalify potential vendors and in Section 63G-6a-507 to develop an Approved Vendor List, or other applicable selection methods described in the Procurement Code for construction services.
3. **Specifications:** Minimum specifications will apply when using the small purchases threshold for construction projects.
4. **Up to \$20,000:** The District may procure small construction projects up to a maximum of **\$20,000** by direct award without seeking competitive bids or quotes after documenting that all building code approvals, licensing requirements, permitting, and other construction related requirements will be met. The awarded contractor must certify that the contractor is capable of meeting the minimum specifications of the project.
5. **From \$20,000 to \$100,000:** The District may procure small construction projects costing more than **\$20,000** up to a maximum of **\$100,000** by obtaining a minimum of two competitive quotes that include minimum specifications, and will award the work to the contractor with the lowest quote that meets the specifications after documenting that all applicable building code approvals, licensing requirements, permitting, and other construction related requirements will be met.
6. **Over \$100,000:** Between \$100,000 and \$175,000, the District may invite at least three contractors from the approved vendor list to submit quotes or bids that include minimum specifications, and may award the work to the contractor with lowest quote or bid that meets the specifications after documenting that all applicable building code approvals, licensing requirements, permitting and other construction related requirements will be met. If an approved vendor list is not established under Section 63G-6a-507 of the Act, the District will procure construction projects costing more than **\$100,000** using an invitation to bid or other approved source selection method outlined in the Procurement Code and may do the same for construction projects that cost less than **\$100,000**, in the District's discretion.

D. **Quotes for Small Purchases between \$5,000 and \$20,000:**

1. **From \$5,000 to \$20,000:** For such procurement item(s) costing more than **\$5,000**, up to a maximum of **\$20,000**, the District will obtain at least two price quotations, either through direct inquiry to vendors or other documented research, that include minimum specifications and may purchase the procurement item from the responsible vendor offering the lowest quote or best value that meets the specifications.
2. **Above \$20,000:** For procurement item(s) costing more than **\$20,000**, the District will conduct an invitation for bids or other procurement process outlined in the Procurement Code.
3. **Public Record:** The names of the vendors offering quotations or bids and the date and amount of each quotation or bid will be recorded and maintained as a governmental record (63G-6a-709.5).

E. **Small Purchases of Services of Professionals, Providers, and Consultants:**

1. **Up to \$100,000:** The small purchase threshold for professional service providers and consultants is a maximum amount of **\$100,000** per budget year.
2. **Procedure:** After reviewing the qualifications of a minimum of two professional service providers or consultants, the District may obtain professional services or consulting services:
 - a. Up to a maximum cost of **\$20,000** by direct negotiation; or
 - b. Over **\$20,000** up to a maximum of **\$100,000** by obtaining a minimum of two quotes.
3. **Cost Not Primary:** The District need not select the professional service provider presenting the lowest cost quotation, but may instead base the selection on other documented factors such as experience, knowledge, and reputation.

F. **Optional Competitive Bidding:** Notwithstanding the foregoing, the District may require any acquisition of supplies, materials or equipment to be competitively bid if, in the determination of the Board or the Procurement Officer, such action would be in the best interest of the District.

G. **Petty Cash:** A limited amount of “petty cash” may be maintained at the District office to be used for small purchases that are needed before regular purchasing procedures can be implemented. All petty cash slips or other proof of the amount of the petty cash expenditure must be signed by the employee responsible for the purchase and approved by either the Procurement Officer or the person responsible for accounts payable of the District. Whenever feasible, the items purchased are to be listed on the petty cash reimbursement check.

H. **Open Charge Accounts:** The District, for convenience, may maintain one or more open charge accounts with vendors who regularly provide supplies and materials. Purchases on the account must be approved by the Procurement Officer or an authorized designee prior to the purchase. Receipts are to be maintained for all credit card purchases and vendor statements are to be reconciled against those receipts prior to making credit card payments. Unless there is a dispute arising from the reconciliation or otherwise, or sufficient funds are not immediately available, all credit card charges are to be timely paid so as to avoid finance charges. No open charge account is to be utilized to circumvent the competitive requirements of this Policy.

VI. VENDOR PREQUALIFICATION

A. **Prequalification of Potential Vendors.** General procurement provisions, including prequalification of potential vendors, approved vendor lists, and small purchases, will be conducted in accordance with the requirements set forth in Sections 63G-6a-410, 506 and 507 of the Act. This Part VI provides additional procedures and is to be used in conjunction with the Procurement Code.

B. **Approved Vendor Lists.**

1. **Thresholds:** The District may establish approved vendor lists in accordance with the requirements of Sections 63G-6a-410 and 507 of the Act.
 - a. Contracts or purchases from an approved vendor list may not exceed the following thresholds:

- i. Construction Projects: \$175,000 per contract, for direct construction costs, including design and allowable furniture or equipment costs, awarded using an invitation for bids or a request for proposals;
- ii. Professional and General Services, including architectural and engineering services: \$100,000; and
- iii. Information Technology: \$500,000.

b. Thresholds for other approved vendor lists may be established by the Procurement Officer.

VII. SPECIFICATIONS

A. **Content:** The District will include in solicitation documents specifications for the procurement item(s) being sought.

1. **Economy and Competition:** Specifications will be drafted with the objective of clearly describing the District's requirements and encouraging competition (63G-6a-407).

- a. Specifications will emphasize the functional or performance criteria necessary to meet the needs of the District.
- b. All specifications prepared for the solicitation of bids or proposals will seek to promote over-all economy and best uses for the purposes intended and encourage competition in satisfying the District's needs, and not be unduly restrictive.
- c. The requirements of this Section VII(A) regarding the purposes and non-restrictiveness of specifications shall apply to all specifications including, but not limited to, those prepared for the District by architects, engineers, designers, and draftsmen.

2. **Conflicts Generally Prohibited:** Except as specifically provided in this Subsection VII(A)(2), persons with a conflict of interest, or who anticipate responding to the proposal for which the specifications are written, may not participate in writing specifications. A person may be retained to assist in writing specifications, scopes of work, requirements, qualifications, or other components of a solicitation. A person assisting in writing specifications shall not, at any time during the procurement process, be employed in any capacity by, nor have an ownership interest in, an individual, public or private corporation, governmental entity, partnership, or unincorporated association bidding on or submitting a proposal in response to the solicitation provided, however, that this restriction shall not apply to a design build construction project or other procurements as determined in writing by the Procurement Officer.

- a. A non-employee of the District (such as a consulting engineer) who has prepared specifications for use by the District may participate in a District procurement using those specifications only if the person declares, in a writing delivered to the District Director, an intent to do so and the District Director makes a written determination, which is placed in the bid or contract file, indicating that it is in the best interest of the District to allow the identified non-employee to participate in the procurement, including an identification of specific benefits that are expected to be received by the District and a determination that participation by the non-employee will not be prejudicial to the fair and equal conduct of the procurement process.
- b. Violations may result in:

- i. The bidder or offeror being declared ineligible to be awarded the contract (63G-6a-709(3) & (4));
- ii. The solicitation being canceled (63G-6a-902; 63G-6a-709(2) & (5));
- iii. Voiding of an awarded contract (63G-6a-2405); or
- iv. Any other action determined to be appropriate by the Board.

3. **Brand Name or Equal Specifications:**

- a. Brand name or equal specifications may be used when:
 - i. An "or equivalent" reference is included in the specification; and,
 - ii. As many other brand names as practicable are also included in the specification.
- b. Brand name or equal specifications should include a description of the particular design and functional or performance characteristics which are required. Specifications unique to the brands shall be described in sufficient detail to enable a vendor to respond with an equivalent product.
- c. When a manufacturer's specification is used in a solicitation, the solicitation will state the minimum acceptable requirements of an equivalent. When practicable, the District will name at least two manufacturer's specifications.

4. **Brand Name Sole Source Requirements:**

- a. If only one brand can meet the requirement, the District will conduct the procurement in accordance with Section 63G-6a-802 of the Act and solicit from as many providers of the brand as is practicable,
- b. If there is only one provider that can meet the requirement, the District will conduct the procurement in accordance with Section 63G-6a-802.
- c. Notwithstanding the foregoing, or anything to the contrary in this Policy, when the equipment or other procurement items designated by brand name for a construction project are projected to cost no more than ten percent (10%) of the total cost of the construction project, a designated brand may be identified in the specifications and the District will not be required to consider arguably equivalent products.

VIII. COMPETITIVE PROCUREMENT

- A. **Request for Information:** Before issuing an invitation for bids or a request for proposals, the District may issue a request for information to determine whether to issue an invitation for bids or request for proposals and generate interest in a potential procurement by the District as provided in Section 63G-6a-409 of the Act.
 - 1. A Request for Information is not a procurement process and may not be used to (i) solicit cost, pricing, or rate information, (ii) negotiate fees, (iii) make a purchase, or (iv) enter into a contract.
 - 2. The District is still required to use a standard procurement process or meet the statutory requirements for an exemption to make an actual procurement.
 - 3. A response to a Request for Information is not an offer and may not be accepted to form a binding contract.

4. Purpose of Request for Information: The purpose of a Request for Information is to:
 - (a) Obtain a wide range of information, including (a) the availability of a procurement item, deliver schedules, industry standards and practices, product specifications, training, new technologies, capabilities of potential providers of a procurement item, and alternate solutions from potential bidders or offerors before issuing an Invitation to Bid or Request for Proposals;
 - (b) Determine whether to issue an Invitation to Bid or a Request for Proposals; and
 - (c) Generate interest in a potential Invitation to Bid or a Request for Proposals.

A Request for Information may be useful in order to:

- (a) Prepare to issue an Invitation to Bid or a Request for Proposals for an unfamiliar or complex procurement;
 - (b) Determine the market availability of a procurement item; or
 - (c) Determine best practices, industry standards, performance standards, product specifications, and innovations relating to a procurement item.
5. Contents of a Request for Information: A Request for Information may seek a wide range of information, including:
 - (a) Availability of a procurement item;
 - (b) Delivery schedules;
 - (c) Industry standards and practices;
 - (d) Product specifications;
 - (e) Training;
 - (f) New technologies;
 - (g) Capabilities of potential providers of a procurement item; and
 - (h) Alternate solutions.

6. Response to Request for Information Protected:
Information submitted to or by a governmental entity in response to a request for information is protected under *Section 63G-2-305 UCA*, as amended.

B. Competitive Bids and Proposals-Over \$20,000.00: Except as otherwise allowed by law and this Policy, contracts for services, supplies, materials, or equipment where the amount to be paid annually by the District is more than **\$20,000.00** shall be awarded only after competitive sealed bids or proposals have been requested and received. Sealed written bids or proposals are to be obtained for all such purchases in excess of **\$20,000.00** from at least three suppliers (provided that there are at least three available suppliers willing to submit a bid or proposal). Documentation regarding the sealed written bids or proposals is to be maintained by the District and the purchase is to be documented as required by the District's applicable rules and regulations.

- C. **Bidding Procedure:** Competitive Sealed Bidding shall be conducted in accordance with the requirements set forth in Sections 63G-6a-601 through 63G-6a-612 of the Act and as provided in this Policy.

1. **Invitation for Bids:** Except as otherwise provided in this Policy, contracts will generally be awarded by competitive sealed bidding. When a contract is to be awarded by competitive sealed bidding, an invitation for bids will be issued.
 - a. The invitation for bids shall include the information required by Section 63G-6a-603 of the Act and may include a "Bid Form" or forms which provide lines for bidder information such as the following:
 - i. The bidder's bid price;
 - ii. The bidder's acknowledged receipt of addenda issued by the District;
 - iii. Identification by the bidder of other applicable submissions; and
 - iv. The bidder's signature
 - b. Bidders may be required to submit descriptive literature and/or product samples to assist in the evaluation of whether a procurement item meets the specifications and other requirements set forth in the invitation for bids.
 - i. Product samples must be furnished free of charge unless otherwise stated in the invitation for bids and, if not destroyed by testing, will upon written request within any deadline stated in the invitation for bids, be returned at the bidder's expense. Samples must be labeled or otherwise identified as specified in the invitation for bids.
 - c. Bid, payment, and performance bonds or other security may be required for procurement items as set forth in the invitation for bids. Bid, payment, and performance bond amounts shall be as prescribed by applicable law or be based upon the estimated level of risk associated with the procurement item and may not be increased above the estimated level of risk with the intent to reduce the number of qualified bidders.
 - d. Bids must be based upon a definite calculated price.
 - i. "Indefinite quantity contract" means a fixed price contract for an indefinite amount of procurement items to be supplied as ordered by the District and does not require a minimum purchase amount, or provide a maximum purchase limit;
 - ii. "Definite quantity contract" means a fixed price contract that provides for the supply of a specified amount of goods over a specified period, with deliveries scheduled according to a specified schedule; and
 - iii. Bids may not be based on using or referencing another bidder's price, including a percentage discount, a formula, any other amount related to another bidder's price, or conditions related to another bid.
2. **Addenda to Invitation for Bids:** Prior to the submission of bids, The District may issue addenda which may modify any aspect of the invitation for bids.
 - a. Addenda will be distributed within a reasonable time to allow prospective bidders to consider the addenda in preparing bids.
 - b. After the due date and time for submitting bids, at the discretion of the Procurement Officer, addenda to the invitation for bids may be limited to bidders that have submitted bids, provided the addenda do not make a substantial change

to the invitation for bids that, in the opinion of the Procurement Officer, likely would have impacted the number of bidders responding to the invitation for bids.

3. **Pre-Bid Conferences/Site Visits:**

- a. Pre-bid conferences and/or site visits may be conducted to explain the procurement requirements. If there is to be a pre-bid conference or a site visit, the time and place of the pre-bid conference/site visit should be stated in the invitation for bids.
- b. A pre-bid conference or a site visit may be mandatory, but only if the invitation for bids states that the conference/site visit is mandatory and provides the location, date and time of the conference/site visit and also states that failure to attend a mandatory conference/site visit shall result in the disqualification of any bidder that does not attend.
- c. Attendance at a pre-bid conference may be conducted via any of the following as determined by the Procurement Officer:
 - i. Attendance in person;
 - ii. Teleconference participation;
 - iii. Webinar participation; or
 - iv. Other approved electronic media.
- d. A site visit may generally only be attended in person provided, however, at the discretion of the Procurement Officer, an audio or video recording of a site visit may be used.
- e. Attendance and participation at all pre-bid conferences and site visits must be by an authorized representative of the vendor submitting a bid and as may be further specified in the invitation for bids.
- f. The District will maintain an attendance log including the name of each attendee, the firm the attendee is representing, the attendee's contact information, and any documents distributed to the attendees; and the District may maintain minutes of the pre-bid conference/site visit.
- g. The District may, as appropriate, publish as an addendum to the solicitation:
 - i. The attendance log;
 - ii. Minutes of the pre-bid conference and any documents distributed to the attendees at the pre-bid conference or site visit; or
 - iii. Any oral modification made to any of the solicitation documents, which shall be reduced to writing.

4. **Public Notice:** Public notice of the invitation for bids is to be given at least seven days prior to the date set forth therein for the opening of bids, in accordance with Section 63G-6a-406(1) of the Act. The notice shall be published using one of the following methods: in a newspaper of general circulation in the area, on the main website of the District, or on a state website that is owned, managed by, or provided under contract with, the Utah Division of Purchasing and General Services for posting a public procurement notice. (63G-6a-406(2))

5. **Bids and Modifications to a Bid Received After the Due Date and Time:**

- a. Bids and modifications to a bid submitted electronically or by physical delivery, after the established due date and time, will not be accepted for any reason, except as determined under 5d below.
- b. When submitting a bid or modification electronically, bidders must allow sufficient time to complete the online forms and upload documents. The solicitation will end at the closing time posted in the electronic system, if applicable. If a bidder is in the process of uploading a bid when the closing time arrives, the bid or modification of the bid will not be accepted.
- c. When submitting a bid or modification to a bid by physical delivery (U.S. mail, courier service, hand-delivery, or other physical means) bidders are solely responsible for meeting the deadline. Delays caused by a delivery service or other physical means will not be considered as an acceptable reason for a bid or modification to a bid being late.
 - i. All bids or modifications to bids received by physical delivery will be date and time stamped.
- d. To the extent that an error on the part of the District or an employee of the District results in a bid or modification to a bid not being received by the established due date and time, the bid or modification to a bid will be accepted as being on time.

6. **Opening and Recording of Bids:** Bids will be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid and any other relevant information specified by this Section C, together with the name of each bidder, shall be recorded. The record and each bid shall be open to public inspection. (63G-6a-604)

7. **Bid Correction; Withdrawal or Clarification:**

- a. The Procurement Officer may authorize in writing the correction or withdrawal of an inadvertently erroneous bid up to five (5) business days of receipt of the bid, but no later than one (1) business day after the submission deadline. A decision to permit the correction or withdrawal of a bid must be in writing and signed by the Procurement Officer.
- b. The Procurement Officer may allow a vendor to correct an immaterial error in a responsive solicitation response. The Procurement Officer may not allow a vendor to (i) correct a deficiency, inaccuracy or mistake in a responsive solicitation response that is not an immaterial error, (ii) correct an incomplete submission of documents that the solicitation required to be submitted with the solicitation response, (iii) correct a failure to submit a timely solicitation response, substitute or alter a required form or other document specified in the solicitation, (iv) remedy a cause for a vendor being considered to be not responsible or a solicitation response not responsive, or (v) correct a defect or inadequacy resulting in a determination that a vendor's solicitation response does not meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds established in the solicitation. Notwithstanding anything to the contrary, a vendor may not change the total bid price after the bid opening and before a contract is awarded. This does not apply to a change in the contract price during contract administration.

- c. The Procurement Officer may make a written request to a vendor to clarify information contained in a responsive solicitation response. A vendor's response may only explain, illustrate, or interpret the contents of the vendor's original solicitation response and may not be used to (i) address criteria or specifications not contained in the vendor's original solicitation response, (ii) correct a deficiency, inaccuracy, or mistake in a solicitation response that is not an immaterial error, (iii) correct an incomplete submission of documents that the solicitation required to be submitted with the solicitation response, (iv) correct a failure to submit a timely solicitation response, to substitute or alter a required form or other document specified in the solicitation, to remedy a cause for a vendor being considered to be not responsible or a solicitation response not responsive, or (v) correct a defect or inadequacy resulting in a determination that a vendor does not meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds established in the solicitation.

8. Re-solicitation of a Bid:

- a. Re-solicitation of a bid may occur if the Procurement Officer determines that:
 - i. A material change in the scope of work or specifications has occurred;
 - ii. Procedures outlined in the Procurement Code were not followed;
 - iii. Additional public notice is desired;
 - iv. There was a lack of adequate competition; or
 - v. Any other reason exists that causes re-solicitation to be in the best interest of the District.
- b. Re-solicitation may not be used to avoid awarding a contract to a qualified vendor in an attempt to steer the award of a contract to a favored vendor.

9. Bid Award: Unless the District elects to cancel the procurement or re-solicit bids, contracts are to be awarded with reasonable promptness by written notice to the lowest responsive and responsible bidder whose bid meets the requirements and objective criteria described in the invitation for bids.

- a. Bids shall be based on the lowest bid for the entire term of the contract, excluding renewal periods and, unless an exception is authorized in writing by the Procurement Officer, cost may not be divided or evaluated on any other basis than the entire term of the contract, excluding renewal periods.
- b. In the event all bids for a construction project exceed available funds as certified by the appropriate fiscal officer, and the low responsive and responsible bid does not exceed such funds by more than 5%, the Procurement Officer or Board is authorized, in situations where time or economic considerations preclude re-solicitation of work of a reduced scope, to negotiate an adjustment of the scope or bid price, including changes in the bid requirements, with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds. The Procurement Officer may not adjust the bid requirements under this provision where there is a substantial likelihood that, had the adjustment been included in the invitation for bids, a person that did not submit a bid would have submitted a responsive, responsible, and competitive bid. (63G-6a-607)

10. Only One Bid Received:

- a. If only one responsive and responsible bid is received in response to an invitation for bids, including multiple stage bidding, an award may be made to the single bidder if the Procurement Officer determines that the price submitted is fair and reasonable and other prospective bidders had a reasonable opportunity to respond, or there is not adequate time for re-solicitation. Otherwise, the bid may be rejected and:
 - i. A new invitation for bids solicited;
 - ii. The procurement canceled; or
 - iii. The procurement may be conducted as a sole source under Section 63G-6a-802 of the Act.

11. Multiple or Alternate Bids:

- a. Multiple or alternate bids will not be accepted, unless otherwise specifically required or allowed in the invitation for bids.
- b. If a bidder submits multiple or alternate bids that are not requested in the invitation for bids, the Procurement Officer will only accept the bidder's primary bid and will not accept any other bids constituting multiple or alternate bids.

12. Methods to Resolve Tie Bids:

- a. In accordance with Section 63G-6a-608 of the Act, in the event of tie bids, the contract shall be awarded to the bidder that qualifies as a Utah resident bidder, provided the bidder indicated on the invitation to bid form that it is a Utah resident bidder.
- b. If a Utah resident bidder is not identified, the preferred method for resolving tie bids is for the Procurement Officer to toss a coin in the presence of a minimum of three witnesses, with the firm first in alphabetical order being heads.
- c. Other methods to resolve a tie bid described in Section 63G-6a-608 of the Act may be used as deemed appropriate by the Procurement Officer.

13. Notice of Award:

- a. The District shall, on the day on which the award of a contract is announced, make available to each bidder and to the public a notice that includes:
 - i. The name of the bidder to which the contract is awarded and the price(s) of the procurement item(s); and
 - ii. The names and the prices of each bidder to which the contract is not awarded. (63G-6a-604(5))

14. Multiple Stage Bidding Process: Multiple stage bidding shall be conducted in accordance with the requirements set forth in Section 63G-6a-609 of the Procurement Code.

- a. The Procurement Officer may hold a pre-bid conference as described in Subsection C.3 above to discuss the multiple stage bidding process or for any other permissible purpose.

- D. **Unpriced Offers:** When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued under Section C above requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.
- E. **Competitive Sealed Proposals:** Whenever the Procurement Officer or other designated employee of the District determines that the use of competitive sealed bidding is either not practicable or not advantageous to the District, a contract may be entered into using competitive sealed proposals. A request for proposals (“RFP”) shall be subject to the Public Notice requirement of VIII(C)(4) of this Policy and conducted in accordance with the requirements set forth in Sections 63G-6a-701 through 63G-6a-711 of the Act and as provided below.

1. **Content of the Request for Proposals:**

- a. In addition to the requirements set forth under Section 63G-6a-703 of the Act, the request for proposals solicitation shall include:
- i. A description of the format that offerors are to use when submitting a proposal, including any required forms; and
 - ii. Instructions for submitting price.
- b. The District is responsible for all content contained in the request for proposals solicitation documents, including:
- i. Reviewing all schedules, dates, and timeframes;
 - ii. Approving content of attachments;
 - iii. Assuring that information contained in the solicitation documents is public information; and
 - iv. Understanding the scope of work and all evaluation criteria, requirements, factors, and formulas to be used in determining the scoring of proposals.

2. **Multiple Stage RFP Process:**

- a. In addition to the requirements set forth under Section 63G-6a-710 of the Act, a multiple stage request for proposals solicitation shall include:
- i. A description of the stages and the criteria and scoring that will be used to evaluate proposals at each stage; and
 - ii. The methodology used to determine which proposals shall be disqualified from additional stages.

3. **Exceptions to Terms and Conditions Published in the RFP:**

- a. Offerors requesting exceptions and/or additions to the standard terms and conditions published in the RFP must include the exceptions and/or additions with the proposal response.
- b. Exceptions and/or additions submitted after the date and time for receipt of proposals will not be considered unless there is only one offeror that responds to the RFP, the exceptions and/or additions have been approved by the District’s legal counsel, and it is determined by the Procurement Officer that it is not beneficial to the District to republish the solicitation.
- c. Offerors may not submit requests for exceptions and/or additions by reference to a vendor’s website or URL.

- d. The District may refuse to negotiate exceptions and/or additions:
 - i. That are determined to be excessive;
 - ii. That are inconsistent with similar contracts of the District;
 - iii. To warranties, insurance or indemnification provisions that are deemed, after consultation with the District's attorney, to be necessary to protect the District;
 - iv. Where the solicitation specifically prohibits exceptions and/or additions; or
 - v. That are not in the best interest of the District.
- e. If negotiations are permitted, the District may negotiate exceptions and/or additions with offerors, beginning in order with the offeror submitting the fewest exceptions and/or additions to the offeror submitting the greatest number of exceptions and/or additions. Contracts may become effective as negotiations are completed.
- f. If, in the negotiation of exceptions and/or additions with a particular offeror, an agreement is not reached, after a reasonable amount of time, as determined by the Procurement Officer, the negotiations may be terminated, a contract will not be awarded to that offeror, and the District may move to the next eligible offeror.

4. Protected Records:

- a. The following are protected records, and may be redacted in accordance with the Governmental Records Access and Management Act (GRAMA) Title 63G, Chapter 2 of the Utah Code.
 - i. Trade Secrets, as defined in Section 13-24-2 of the Utah Code.
 - ii. Commercial information or non-individual financial information subject to the provisions of Section 63G-2-305(2) of the Utah Code.
 - iii. Other Protected Records under GRAMA.
- b. Any person requesting that a record be protected shall include with the proposal or submitted document:
 - i. A written indication of which provisions of the proposal or submitted document are claimed to be considered for business confidentiality or to be protected (including trade secrets or other reasons for non-disclosure under GRAMA); and
 - ii. A concise statement of the reasons supporting each claimed provision of business confidentiality or other basis for protection. (63G-2-309)

5. Notification:

- a. A person who complies with Subsection 4 immediately above will be notified by the District prior to the public release of any information for which a claim of confidentiality has been asserted.
- b. Except as provided by court order, the District may not be compelled to disclose a record claimed to be protected under Subsection 4 immediately above but which the District or State Records Committee determines should be disclosed until the period in which to bring an appeal expires or the end of the appeal process,

including judicial appeal, is reached. This Subsection 5 does not apply where the claimant, after notice, has waived the claim by not appealing or intervening before the State Records Committee. To the extent allowed by law, the parties to a dispute regarding the release of a record may agree in writing to an alternative dispute resolution process.

- c. Any allowed disclosure of public records submitted in the request for proposals process will be made only after the selection of the successful offeror(s) has been made public in compliance with Section 63G-6a-709.5 of the Act.

6. Process for Submitting Proposals with Protected Business Confidential Information:

- a. If an offeror submits a proposal that contains information claimed to be business confidential or protected information, the offeror must submit two separate proposals:
 - i. One redacted version for public release, with all protected business confidential information either blacked-out or removed, clearly marked as "Redacted Version"; and
 - ii. One non-redacted version for evaluation purposes clearly marked as "Protected Business Confidential".
- b. Pricing may not be classified as business confidential and will be considered to be public information.
- c. An entire proposal may not be designated as "PROTECTED", "CONFIDENTIAL" or "PROPRIETARY" and shall be considered to be non-responsive unless the offeror removes the designation.

7. Pre-proposal Conferences/Site Visits:

- a. Pre-proposal conferences/site visits may be conducted to explain the procurement requirements. If there is to be a pre-proposal conference or site visit, the time and place of the pre-proposal conference/site visit shall be stated in the RFP.
- b. Pre-proposal conference/site visits may be mandatory, but only if the RFP states that the pre-proposal conference/site visit is mandatory and provides the location, date and time of the site visit and also states that failure to attend a mandatory pre-proposal conference/site visit shall result in the disqualification of any offeror that does not attend.
- c. Attendance at a pre-proposal conference may be conducted via any of the following as determined by the Procurement Officer:
 - i. Attendance in person;
 - ii. Teleconference participation;
 - iii. Webinar participation; or
 - iv. Other approved electronic media
- d. A site visit may generally only be attended in person provided, however, at the discretion of the Procurement Officer, an audio or video recording of a site visit may be used.
- e. Attendance and participation at all pre-proposal conferences and site visits must be by an authorized representative of the vendor submitting a proposal and as may be further specified in the RFP.

- f. The District will maintain an attendance log including the name of each attendee, the firm the attendee is representing, the attendee's contact information, and any documents distributed to the attendees; and the District may maintain minutes of the pre-proposal conference/site visit.
- g. The District may, as appropriate, publish as an addendum to the solicitation:
 - i. The attendance log;
 - ii. Minutes of the pre-proposal conference and any documents distributed to the attendees at the pre-proposal conference or site visit; or
 - iii. Any oral modification made to any of the solicitation documents, which shall be reduced to writing.

8. Addenda to Request for Proposals:

- a. Addenda to a Request for Proposals may be made for the purpose of making changes to:
 - i. The scope of work;
 - ii. The schedule;
 - iii. The qualification requirements;
 - iv. The criteria;
 - v. The weighting; or
 - vi. Other requirements of the RFP.
- b. Addenda shall be published within a reasonable time prior to the deadline that proposals are due, to allow prospective offerors to consider the addenda in preparing proposals. Publication at least 5 calendar days prior to the deadline that proposals are due shall be deemed a reasonable time. Minor addenda and urgent circumstances may justify a shorter period of time.
- c. After the due date and time for submitting a response to a request for proposals, at the discretion of the Procurement Officer, addenda to the request for proposals may be limited to offerors that have submitted proposals, provided the addenda does not make a substantial change to the RFP that, in the opinion of the Procurement Officer, likely would have impacted the number of offerors responding to the original publication of the RFP.

9. Modification or Withdrawal of Proposal Prior to Deadline: A proposal may be modified or withdrawn prior to the established due date and time for responding.

10. Proposals and Modifications, Delivery and Time Requirements: To the extent that an error on the part of the District or an employee of the District results in a proposal or modification to a proposal not being received by the established due date and time, the proposal or modification to a proposal shall be accepted as being on time. Otherwise, the following shall apply:

- a. Proposals and modifications to a proposal submitted electronically or by physical delivery, after the established due date and time, will not be accepted for any reason.
- b. When submitting a proposal or modification to a proposal electronically, offerors must allow sufficient time to complete the online forms and upload documents. The solicitation will end at the closing time posted in the electronic system. If an

offeror is in the process of uploading a proposal when the closing time arrives, the proposal or modification to a proposal will not be accepted.

- c. When submitting a proposal or modification to a proposal by physical delivery (U.S. mail, courier service, hand-delivery, or other physical means) offerors are solely responsible for meeting the deadline. Delays caused by a delivery service or other physical means will not be considered as an acceptable reason for a proposal or modification to a proposal being late.
 - i. All proposals or modifications to proposals received by physical delivery will be date and time stamped by the District.

11. Proposal Correction; Withdrawal or Clarification

- a. The Procurement Officer may authorize in writing the correction or withdrawal of an unintentionally erroneous proposal up to five (5) business days of receipt of the bid, but no later than one (1) business day after the submission deadline. A decision to permit the correction or withdrawal of a proposal must be in writing and signed by the Procurement Officer.
- b. The Procurement Officer may allow a vendor to correct an immaterial error in a responsive solicitation response. The Procurement Officer may not allow a vendor to (i) correct a deficiency, inaccuracy or mistake in a responsive solicitation response that is not a immaterial error, (ii) correct an incomplete submission of documents that the solicitation required to be submitted with the solicitation response, (iii) correct a failure to submit a timely solicitation response, substitute or alter a required form or other document specified in the solicitation, (iv) remedy a cause for a vendor being considered to be not responsible or a solicitation response not responsive, or (v) correct a defect or inadequacy resulting in a determination that a vendor's solicitation response does not meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds established in the solicitation. Notwithstanding anything to the contrary, after the deadline for submitting a cost proposal and before a contract is awarded, a vendor may not change the total amount of a cost proposal. This does not apply to a change in the contract price during contract administration.
- c. The Procurement Officer may make a written request to a vendor to clarify information contained in a responsive solicitation response. A vendor's response may only explain, illustrate, or interpret the contents of the vendor's original solicitation response and may not be used to (i) address criteria or specifications not contained in the vendor's original solicitation response, (ii) correct a deficiency, inaccuracy, or mistake in a solicitation response that is not an immaterial error, (iii) correct an incomplete submission of documents that the solicitation required to be submitted with the solicitation response, (iv) correct a failure to submit a timely solicitation response, to substitute or alter a required form or other document specified in the solicitation, to remedy a cause for a vendor being considered to be not responsible or a solicitation response not responsive, or (v) correct a defect or inadequacy resulting in a determination that a vendor does not meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds established in the solicitation.

12. Evaluation of Proposals:

- a. The evaluation of proposals shall be conducted in accordance with Part 7 of the Procurement Code.
- b. An evaluation committee may ask questions of offerors to clarify proposals. A record of questions and answers shall be maintained in the file.
- c. The Procurement Officer may authorize an evaluation committee to receive assistance from an expert or consultant who is not a member of the evaluation committee and does not participate in the evaluation scoring in order to better understand a technical issue involved in the procurement.
- d. The evaluation of cost in an RFP shall be assigned to an individual who is not a member of the evaluation committee and shall calculate scores for cost based on the entire term of the contract, excluding renewal periods.
 - i. Unless an exception is authorized in writing by the Procurement Officer, cost should not be artificially divided or evaluated on any other basis than the entire term of the contract, excluding renewal periods.
 - ii. Whenever practicable, the evaluation of cost should include maintenance and service agreements, system upgrades, apparatuses, and other components associated with the procurement item.

13. Correction or Withdrawal of Proposal:

- a. In the event an offeror submits a proposal that on its face appears to be impractical, unrealistic or otherwise in error, the Procurement Officer may contact the offeror to either confirm the proposal, permit a correction of the proposal, or permit the withdrawal of the proposal, in accordance with Section 63G-6a-706 of the Act.
- b. Offerors may not correct errors, deficiencies, or incomplete responses in a proposal that has been determined to be not responsible or not responsive, or that does not meet the mandatory minimum requirements stated in the request for proposals in accordance with Section 63G-6a-704 of the Act.

14. Interviews and Presentations:

- a. The evaluation committee may enter into discussions or conduct interviews with, or attend presentations by the offerors for the purpose of clarifying information contained in proposals. In a discussion, interview or presentation, an offeror may not explain, illustrate, or interpret the contents of the offeror's original proposal, and may not (i) address criteria or specifications not contained in the offeror's original proposal, (ii) correct a deficiency, inaccuracy, or mistake in a proposal that is not an immaterial error, (iii) correct an incomplete submission of documents that the solicitation required to be submitted with the proposal, (iv) correct a failure to submit a timely proposal, (v) substitute or alter a required form or other document specified in the solicitation, (vi) remedy a cause for an offeror being considered to be not responsible or a proposal not responsive, or (vii) correct a defect or inadequacy resulting in a determination that an offeror does not meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds established in the solicitation.

- b. Offerors invited to interviews or presentations shall be limited to those offerors meeting minimum requirements specified in the RFP.
 - c. Representations made by the offeror during interviews or presentations shall become an addendum to the offeror's proposal and shall be documented. Representations must be consistent with the offeror's original proposal and may only be used for purposes of clarifying or filling in gaps in the offeror's proposal.
 - d. The Procurement Officer shall establish a date and time for the interviews or presentations and shall notify eligible offerors of the procedures. Interviews and presentations will be at the offeror's expense.
15. **Best and Final Offers:** Best and final offers (BAFO) shall be requested in accordance with Section 63G-6a-707.5 of the Act and this Policy.
- a. The BAFO process is an optional step in the evaluation phase of the request for proposals process in which offerors are requested or given an opportunity to modify their proposals. At any time during the evaluation process, the evaluation committee, with the approval of the Procurement Officer, may request best and final offers from responsible offerors who have submitted responsive proposals that meet the minimum qualifications, evaluation criteria, or applicable score thresholds identified in the Request for Proposals, if any one of the following applies:
 - i. No single proposal addresses all the specifications stated in the Request for Proposals.
 - ii. All or a significant number of the proposals are ambiguous on a material point and the evaluation committee requires further clarification in order to conduct a fair evaluation of proposals.
 - iii. The evaluation committee needs additional information from all offerors to complete the evaluation of proposals.
 - iv. The differences between proposals in one or more material aspects are too slight to allow the evaluation committee to distinguish between proposals.
 - v. All cost proposals are too high or over budget.
 - vi. Another reason exists supporting a request for best and final offers.
 - b. Proposal modifications submitted in response to a request for best and final offers may only address the specific issues and/or sections of the RFP described in the request for best and final offers.
 - i. An offeror may not use the best and final offers process to correct a material error or other deficiencies in the offeror's proposal not called for in the request for best and final offers issued by the District.
 - c. When a request for best and final offers is issued to reduce cost proposals, offerors shall submit itemized cost proposals which clearly indicate the tasks or scope reductions that can be implemented to bring costs within the available budget.

- i. The cost information of one offeror may not be disclosed to a competing offeror during the best and final offers process and such cost information shall not be shared with other offerors until after the contract has been awarded.
 - ii. The District shall ensure that auction tactics are not used in the discussion process, including discussing and comparing the costs and features of other proposals.
- d. The best and final offers process may only be conducted during the evaluation phase of the RFP process and may not be conducted as part of the contract negotiation process.
- e. The District may not use the best and final offers process to allow offerors a second opportunity to propose on the entire RFP.
- f. If a proposal modification is made orally during the interview or presentation process, the modification must be confirmed in writing.
- g. A request for best and final offers shall:
 - i. Comply with all public notice requirements provided in Section 63G-6a-406 of the Act;
 - ii. Include a deadline for submission that allows offerors a reasonable opportunity to prepare and submit their responses; and
 - iii. Indicate how proposal modifications in response to a request for best and final offers will be evaluated.
- h. If an offeror does not submit a best and final offer, its immediate previous proposal will be considered as its best and final offer.
- i. Unsolicited best and final offers will not be accepted.

16. Cost-benefit Analysis Exception: CM/GC:

- a. A cost-benefit analysis is not required if the contract is awarded based solely on the qualifications of the construction manager/general contractor and the management fee described in Section 63G-6a-708(6)(a) of the Act, provided:
 - i. A competitive process is maintained by the issuance of a request for proposals that requires the offeror to provide, at a minimum:
 - (1) A management plan;
 - (2) References;
 - (3) Statements of qualifications; and
 - (4) A management fee which contains only the following:
 - (i) Preconstruction phase services;
 - (ii) Monthly supervision fees for the construction phase; and
 - (iii) Overhead and profit for the construction phase.

- b. A cost-benefit analysis conducted under Section 63G-6a-708 of the Act shall be based on the entire term of the contract, excluding any renewal periods, and may take life-cycle costs into consideration.
- c. The evaluation committee may, as described in the solicitation, weight and score the management fee as a fixed rate or a fixed percentage of the estimated contract value. (63G-6a-707(6))
- d. The awarded contract must be in the best interest of the District.

17. Only One Proposal Received:

- a. If only one proposal is received in response to a request for proposals, the evaluation committee may conduct a review to determine if:
 - i. The proposal meets the minimum requirements;
 - ii. Pricing and terms are reasonable; and
 - iii. The proposal is in the best interest of the District.
- b. If the evaluation committee determines that the proposal meets the minimum requirements, pricing and terms are reasonable, and the proposal is in the best interest of the District, the District may make an award.
- c. If an award is not made, the District may either cancel the procurement or resolicit for the purpose of obtaining additional proposals.

18. Evaluation Committee Procedures for Scoring Criteria Other Than Cost:

- a. In order to prevent the evaluation committee from analyzing proposals that cannot be considered for award, either the evaluation committee, or the Procurement Officer prior to distributing copies of proposals to the evaluation committee, may conduct an initial review of any applicable pass/fail minimum requirements set forth in the RFP to determine whether the proposals are responsive and responsible or are in violation of the Procurement Code or this Policy. The evaluation committee should not evaluate proposals deemed non-responsive or non-responsible or that have been disqualified for a violation of the Procurement Code or this Policy. Examples of pass/fail minimum requirements include:
 - i. Timeliness of receipt of the proposal;
 - ii. Qualification;
 - iii. Certification;
 - iv. Licensing;
 - v. Experience;
 - vi. Compliance with state or federal regulation;
 - vii. Services provided;
 - viii. Product availability;
 - ix. Equipment; and
 - x. Other pass/fail minimum requirements set forth in the RFP.
- b. The evaluation and scoring of proposals in the RFP process shall be conducted in accordance with the following procedures:
 - i. Prior to the scoring of proposals, the Procurement Officer will meet with the evaluation committee and any staff members who will have access to the proposals to:

- (1) Discuss the evaluation and scoring process to ensure that each committee member has a clear understanding of the scoring process and how points will be assigned;
 - (2) Discuss requirements regarding conflicts of interest, the appearance of impropriety, and the importance of confidentiality;
 - (3) Discuss the scoring sheet and evaluation criteria set forth in the RFP; and
 - (4) Provide a copy of relevant portions of this Policy to the evaluation committee and any staff members who will have access to the proposals.
 - ii. Once the proposals have been received and it is clear which offerors will be involved in the RFP process, each member of the evaluation committee may be asked to sign a written statement certifying that he/she does not have a conflict of interest, as set forth in Section 63G-6a-707(3)(b) of the Act and in this Policy.
- c. Unless an exception is authorized by the Procurement Officer, in order to avoid cost influencing the evaluation committee's scoring of non-price criteria, in accordance with Section 63G-6a-707(5) of the Act, costs may not be revealed to the evaluation committee until after the committee has finalized its scoring on all other technical non-price criteria stated in the RFP.
- d. After receipt of proposals, each committee member shall independently read and score each proposal based on the technical non-price criteria set forth in the RFP to assess the completeness, quality, and desirability of each proposal.
 - i. Proposals must be evaluated solely on the criteria stated in the RFP.
 - (1) Past performance ratings and references may be considered if listed as evaluation criteria in the RFP.
 - (2) Personal opinions based on prior experience with a procurement item or the offeror are not to be considered in scoring proposals, except as provided in the RFP.
 - (3) Personal favoritism for a vendor or bias against a vendor cannot be considered in scoring proposals, but a committee member may properly have a bias based upon the review of a proposal in comparison to the criteria stated in the RFP.
 - ii. Evaluators are encouraged to request technical support from the Procurement Officer when conducting their independent assessments and scoring.
 - iii. After the proposals have been evaluated and scored by the individual committee members, the entire committee shall meet to discuss the proposals; if applicable, to conduct interviews; to

resolve any factual disagreements; and to arrive at the final scoring. All committee members must be present in person or by electronic means to take any official action.

- (1) If a committee member does not attend an evaluation committee meeting (including electronic attendance), the member may be removed from the evaluation committee and the remainder of the committee may take official action, provided there are at least three evaluation committee members remaining.
- iv. If there are mandatory minimum requirements, those offerors not meeting the requirements will be eliminated from further consideration.
 - v. During committee discussions, each member may change his/her initial scoring. If additional information or clarification is needed from an offeror, the committee may, with approval by the Procurement Officer, request information or clarification from an offeror. Such request will only be approved if it can be done in a manner that is fair to all offerors.
 - vi. At any time during the evaluation process, the evaluation committee may, with the approval of the Procurement Officer, request best and final offers from responsible and responsive offerors and evaluate those offers in accordance with Section 63G-6a-707.5 of the Act and applicable portions of this Policy.
 - vii. Each evaluation committee member shall turn in a completed scoring sheet, signed and dated by the evaluation committee member.
- e. The evaluation committee may tally the final scores for criteria other than cost to arrive at a consensus score by either of the following methods:
 - i. Total of all of the points given by individual committee members; or
 - ii. An average of the individual scores.
- f. The evaluation committee shall submit its final recommended scores for all criteria other than cost to the Procurement Officer.
- g. The District shall follow the procedures set forth in Section 63G-6a-707(5) of the Act pertaining to the following:
 - i. Reviewing the evaluation committee's final recommended scores for each proposal for all criteria other than cost;
 - ii. Scoring cost based on the applicable scoring formula; and
 - iii. Calculating the total combined score for each responsive and responsible proposal.
- h. The evaluation committee and/or the Procurement Officer shall prepare the cost justification statement and any applicable cost-benefit analysis in accordance with Section 63G-6a-708 of the Act.
- i. The District may replace any member on the evaluation committee or reconstitute the committee in any way the District deems appropriate to cure an impropriety.

If the impropriety cannot be cured by replacing a committee member, then a new evaluation committee may be appointed or the procurement may be cancelled.

- j. Nothing in this Policy shall preclude the Procurement Officer from serving on an evaluation committee.

19. Criteria for Scoring Criteria Other Than Cost:

- a. Scoring of evaluation criteria other than cost, for proposals apparently meeting the mandatory minimum requirements stated in an RFP, shall be based on a one through five point scoring system.
- b. Points shall be awarded to each applicable evaluation category as set forth in the RFP which may include:
 - i. Technical specifications;
 - ii. Qualifications and experience;
 - iii. Programming;
 - iv. Design;
 - v. Time, manner, or schedule of delivery;
 - vi. Quality or suitability for a particular purpose;
 - vii. Financial solvency;
 - viii. Management and methodological plan; and
 - ix. Other requirements specified in the RFP.
- c. Scoring Methodology:
 - i. Five points (Excellent): The proposal addresses and exceeds all of the requirements described in the RFP.
 - ii. Four points (Very Good): The proposal addresses all of the requirements described in the RFP and, in some respects, exceeds them.
 - iii. Three points (Good): The proposal addresses all of the requirements described in the RFP in a satisfactory manner.
 - iv. Two points (Fair): The proposal addresses the requirements described in the RFP in an unsatisfactory manner.
 - v. One point (Poor): The proposal fails to address the requirements described in the RFP or addresses the requirements inaccurately or poorly.

20. Minimum Score Thresholds: The District may establish minimum score thresholds for any RFP procurement to advance proposals from one stage in the RFP process to the next, including contract award.

- a. If minimum score thresholds are established for a procurement, the RFP must clearly describe the minimum score threshold that proposals must achieve in order to advance to the next stage in the RFP process or to be awarded a contract.
- b. Minimum score thresholds may be based on:
 - i. Minimum scores for each evaluation category;
 - ii. The total of each minimum score in each evaluation category based on total points available; or
 - iii. A combination of (i) and (ii).
- c. Minimum score thresholds may not be based on:

- i. A natural break in scores that was not defined and set forth in the RFP; or
- ii. A predetermined number of offerors.

21. Evaluation Committee Members Required to Exercise Independent Judgment:

- a. Evaluation committee members are expected to exercise independent judgment in a manner that is not dependent on anyone else's opinion or desires. As such, committee members must not allow their scoring to inappropriately be influenced by another person's wishes that additional or fewer points be awarded to a particular offeror.
- b. Evaluators may seek to increase their knowledge before scoring by asking questions and seeking appropriate information from the Procurement Officer. Otherwise, evaluators should not discuss proposals or the scoring of proposals with other persons who are not on the evaluation committee.
- c. The exercise of independent judgment applies not only to possible inappropriate influences from outside the evaluation committee, but also to inappropriate influences from within the committee. It is acceptable for there to be discussion and debate within the committee regarding how well a proposal meets the evaluation criteria. However, open discussion and debate may not be allowed to lead to coercion or intimidation on the part of one committee member in an attempt to influence the scoring of another committee member.
 - i. Evaluators may not act on their own or in concert with another evaluation committee member to inappropriately steer an award to a favored vendor or to disfavor a particular vendor.
- d. Evaluators are required to report to the Procurement Officer any attempt by another committee member to improperly influence the scoring to favor or disfavor a particular offeror.
- e. If an evaluator feels that his/her independence has been compromised, that person must recuse himself/herself from the evaluation process.

22. Professional Services other than Architecture, Engineering and Surveying:

- a. A contract with a consultant providing professional or technical services, such as accounting and legal services, may be awarded using the RFP procedure or as a small purchase under Section V of this Policy.
- b. Subject to Section IV.A. of this Policy, contracts with consultants providing professional or technical services, such as accounting and legal services, may be extended from year-to-year in the discretion of the Board.

23. Publicizing Awards:

- a. In addition to the requirements of Section 63G-6a-709.5 of the Act, the following shall be disclosed after receipt of a GRAMA request and payment of any lawfully enacted and applicable fees:
 - i. The contract(s) entered into as a result of the selection and the successful proposal(s), except for those portions that are to be non-disclosed under Subsection E.4 above;

- ii. The unsuccessful proposals, except for those portions that are not to be disclosed;
- iii. The rankings of the proposals;
- iv. The names of the members of any evaluation committee (reviewing authority);
- v. The final total or average scores used by the evaluation committee to make the selection (in no event will the names of the individual scorers be associated with their individual scores or rankings); and
- vi. The written justification statement supporting the selection, except for those portions that are not to be disclosed.

b. The following may impair the District's procurement proceedings or give an unfair advantage to a person proposing to enter into a contract or agreement with the District, and may not be disclosed by the District to the public, including under a GRAMA request:

- i. The names of individual scorers/evaluators in relation to their individual scores or rankings;
- ii. Any individual scorer's/evaluator's notes, drafts, or working documents;
- iii. Non-public financial statements; and
- iv. Past performance and reference information, which is not provided by the offeror and which is obtained as a result of the efforts of the District. To the extent such past performance or reference information is included in the written justification statement; it is subject to public disclosure.

24. **Timing of Rejection:** As provided in Section 63G-6a-704(3) of the Act, the District may, at any time during the RFP process, reject a proposal based on a determination that the submitter of the proposal is not responsible or the proposal is not responsive. As such, the evaluation committee may make a determination that a proposal is nonresponsive or not responsible at any time even if the proposal initially passed the pass/fail review mentioned in Section VIII.E.18.a.

F. **Annual Renewals of Purchase Contracts:** Unless the District has an approved contract with a longer term than one year or it is desirable to extend or continue purchases from the same source as allowed under Subsection X.A.1., A.2. or A.3., the purchase of supplies, materials and equipment on a monthly or other recurring basis is to be the subject of an annual bid, proposal or competitive quotation procedure, as determined to be appropriate by the Procurement Officer.

G. **Conformity to Solicitation Requirements:**

1. **Rejection:**

- a. Any bid or offer that fails to conform to the essential requirements of the solicitation shall be rejected.
- b. Any bid or offer that does not conform to the applicable specifications shall be rejected unless the solicitation authorized the submission of alternate bids or offers and the procurement item(s) offered as alternates meet the requirements specified in the solicitation.
- c. Any bid or offer that fails to conform to the delivery schedule or permissible alternates stated in the solicitation shall be rejected.

2. **Conditions or Exceptions:** A bid or offer shall be rejected when the bidder or offeror imposes conditions or takes exceptions that would modify requirements or terms and conditions of the solicitation or limit the bidder or offeror's liability to the District, since to allow the bidder or offeror to impose such conditions or take exceptions would be prejudicial to other bidders or offerors. For example, bids or offers shall be rejected in which the bidder or offeror:
 - a. For commodities, protects against future changes in conditions, such as increased costs, if total possible costs to the District cannot be determined;
 - b. Fails to state a price and indicates that price will be the price in effect at time of delivery or states a price but qualifies it as being subject to the price in effect at the time of delivery;
 - c. When not authorized by the solicitation, conditions or qualifies a bid by stipulating that it is to be considered only if, before the date of award, the bidder or offeror receives (or does not receive) an award under a separate solicitation; or
 - d. Limits any right of the District under any contract clause.
3. **Deletion:** A bidder or offeror may be requested to delete objectionable conditions from a bid or offer, provided doing so is not prejudicial to other bidders or offerors, or the conditions do not go to the substance, as distinguished from the form, of the bid or proposal. A condition goes to the substance of a bid or offer where it affects price, quantity, quality, or delivery of the offered procurement item(s).

H. **Unreasonable or Unbalanced Pricing:**

1. **Rejection:**

- a. Any bid or offer may be rejected if the Procurement Officer determines in writing that it is unreasonable as to price. Unreasonableness of price includes not only the total price of the bid or offer, but also the prices for individual line items.
- b. Any bid or offer may be rejected if the prices for any line item or subline item are materially unbalanced. Unbalanced pricing may increase performance risk and could result in payment of unreasonably high prices. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more line items is significantly overstated or understated as indicated by the application of cost or price analysis techniques. The greatest risks associated with unbalanced pricing occur when:
 - i. Startup work, mobilization, procurement item sample production or testing are separate line items;
 - ii. Base quantities and optional quantities are separate line items; or
 - iii. The evaluated price is the aggregate of estimated quantities to be ordered under separate line items of an indefinite-delivery contract.
- c. All bids or offers with separately priced line items or subline items may be analyzed to determine if the prices are unbalanced. If cost or price analysis techniques indicate that an offer is unbalanced, the District shall:

- i. Consider the risks to the District associated with the unbalanced pricing in determining the competitive range and in making the source selection decision; and
 - ii. Consider whether award of the contract will result in paying unreasonably high prices for contract performance.
- d. A bid or offer may be rejected if the Procurement Officer determines that the lack of balance poses an unacceptable risk to the District.

I. Rejection for Nonresponsibility or Nonresponsiveness:

- 1. **Nonresponsible Bidder or Offeror:** Subject to Section 63G-6a-903 of the Act, the Procurement Officer shall reject a bid or offer from a bidder or offeror that is determined to be nonresponsible. A responsible bidder or offeror is defined in Section 63G-6a-103(42) of the Act. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility of that bidder or offeror. If a bid is rejected due to nonresponsibility, such shall be documented in writing by the Procurement Officer.
- 2. **Nonresponsive Offer:** In accordance with Section 63G-6a-604(3) of the Act, the Procurement Officer may not accept a bid or proposal that is not responsive. Responsiveness is defined in Section 63G-6a-103(43) of the Act.
- 3. **Bid Security Failure:** When bid security is required and a bidder fails to furnish the security in accordance with the requirements of the invitation for bids, the bid shall be rejected. (UCA §63G-6a-1102)
- 4. **Documentation:** The originals of all rejected bids, offers, or other submissions, and all written findings with respect to such rejections, shall be made part of the procurement file and be available for public inspection.

J. Rejection for Suspension/Debarment:

Bids, offers, or other submissions received from any vendor that is suspended, debarred, or otherwise ineligible as of the due date for receipt of bids, proposals, or other submissions shall be rejected.

IX. CANCELLATION, REJECTION AND DEBARMENT

A. General Provisions:

- 1. **Cancellation:** An Invitation for Bids, a Request for Proposals, or other solicitation may be canceled prior to the deadline for receipt of bids, proposals, or other submissions, when it is in the best interest of the District as determined by the Procurement Officer. In the event a solicitation is cancelled, the written justification for cancellation shall be made part of the procurement file and shall be available for public inspection and the District shall:
 - a. Re-solicit new bids or proposals using the same or revised specifications; or
 - b. Withdraw the requisition for the procurement item(s).
- 2. **Rejection of Bids and Proposals:** The Procurement Officer may reject a bid or proposal for:
 - a. A violation of the Utah Procurement Code or this policy by the offeror;

- b. A violation of a requirement of the Invitation for Bids or Request for Proposals by the offeror;
 - c. Unlawful or unethical conduct by the offeror;
 - d. A change in the offeror's circumstance that, had the change been known at the time the proposal was submitted, would have caused the proposal to not have the highest score;
 - e. A failure by the offeror to sign a contract within ninety (90) calendar days after the contract award;
 - f. The offeror not being responsible; or
 - g. The bid or proposal not being responsive or not meeting the mandatory minimum requirements, evaluation criteria, or applicable score thresholds stated in the solicitation.
3. **Documentation:** The reason(s) for cancellation or rejection shall be in the form of a written finding, which is made part of the contract file and is available for public inspection. In all cases, a copy of the written finding shall be provided to the offeror whose bid or proposal was rejected.

B. Re-solicitation:

1. **No Response:** In the event there is no response to an initial solicitation, the Procurement Officer may:
- a. Contact the known supplier community to determine why there were no responses to the solicitation;
 - b. Research the potential vendor community; and,
 - c. Based upon the information obtained under (a) and (b), modify the solicitation documents.
2. **Inadequate Supplemental Response:** If the District has modified the solicitation documents and, after the re-issuance of a solicitation, there is still no competition or there is insufficient competition, the Procurement Officer may:
- a. Further modify the procurement documents; or,
 - b. Cancel the requisition for the procurement item(s).

C. Cancellation Before Award. When it is determined before award but after opening that the specifications, scope of work or other requirements contained in the solicitation documents were not met by any bidder or offeror, the solicitation shall be cancelled.

1. **Determination:** Solicitations may be cancelled before award but after opening all bids or offers when the Procurement Officer determines in writing that:
- a. Inadequate or ambiguous specifications were cited in the solicitation;
 - b. The specifications in the solicitation have been or must be revised;

- c. The procurement item(s) being solicited are no longer required;
 - d. The solicitation did not provide for consideration of all factors of cost to the District, such as cost of transportation, warranties, service, and maintenance;
 - e. Bids or offers received indicate that the needs of the District might be satisfied by a less expensive procurement item differing from that in the solicitation;
 - f. Except as provided in Section 63G-6a-607 of the Act, all otherwise acceptable bids or offers received are at unreasonable prices, or only one bid or offer is received and the Procurement Officer cannot determine the reasonableness of the bid price or cost proposal;
 - g. The responses to the solicitation were not independently arrived at in open competition, were collusive, or were submitted in bad faith; or
 - h. No responsive bid or offer has been received from a responsible bidder or offeror;
- D. **Alternative to Cancellation.** In the event administrative difficulties are encountered, before award but after the deadline for submissions, that may delay the award beyond the bidders' or offerors' acceptance periods, the bidders or offerors should be requested, before the expiration of their bids or offers, to extend in writing the acceptance period (with the consent of sureties, if any) in order to avoid the need for cancellation.
- E. **Continuation of Need.** If the solicitation has been cancelled for the reasons specified in Subsection C.1. f., g or h above, the Procurement Officer has made the determination required under Subsection C., and the District has an existing contract, the District may permit an extension of the existing contract under Section 63G-6a-802.7 of the Act.

X. EXCEPTIONS – PROCUREMENT WITHOUT COMPETITION

- A. **Contracts Awarded Without Competition:** The Procurement Officer or the Board, through appropriate action, may determine that a specific contract for a supply, service or construction item should be awarded without receipt or review of competitive bids or proposals if one of the circumstances stated in 1 through 5 below exists. In the event that a contract is awarded without competition for one of these reasons, a written determination of both the reason for purchasing or contracting without competition as well as the basis for the selection of the particular contractor and/or supplier will be recorded. With these written determinations, a record containing the contractor's or supplier's name, the amount and type of the contract, the total dollar value of the procurement item including, when applicable, the actual or estimated full life-cycle cost of maintenance and of the service agreement, the duration of the proposed sole source contract, documentation that there is no other competing source for the procurement item (unless the procurement is under 1.b or c below), a description of the procurement item, and any other information desired by the Procurement Officer will be maintained in the contract file.

1. **Sole Source:**

- a. Sole source procurements shall be conducted in accordance with requirements set forth in Section 63G-6a-802 of the Procurement Code. A sole source procurement may be conducted if:
 - i. There is only one source for the procurement item;
 - ii. The transitional costs are a significant consideration in selecting a procurement item and the results of a cost-benefit analysis

- demonstrate that transitional costs are unreasonable or cost-prohibitive, and that the award of a contract without engaging in a standard procurement process is in the best interest of the District;
 - iii. The award of a contract is under circumstances that make awarding the contract through a standard procurement process impractical and not in the best interest of the District; or
 - iv. The procurement item is needed for trial use or testing pursuant to Section 63G-6a-802.3 of the Act to determine whether the procurement item will benefit the District.
 - b. Sole source procurements over **\$50,000** shall be published, and less costly sole source procurements may be published, in accordance with Section 63G-6a-406 of the Act.
 - c. A person may contest a sole source procurement prior to the closing of the public notice period set forth in Section 63G-6a-406 of the Act by submitting the following information in writing to the Procurement Officer:
 - i. The name of the contesting person;
 - ii. The contesting person's address of record and email address of record, and
 - iii. A detailed explanation of the challenge, including documentation showing that there are other competing sources for the procurement item.
 - d. Upon receipt of information contesting a sole source procurement, the Procurement Officer shall conduct an investigation to determine the validity of the challenge and make a written determination either supporting or denying the challenge.

2. Sole Source: Temporary Extension of an Existing Contract:

- a. The Procurement Officer may justify in writing the extension an existing contract for a reasonable period of time not to exceed 120 days without engaging in a standard procurement process, if any of the following applies:
 - i. An extension is necessary to avoid a lapse in critical governmental services or to mitigate a circumstance that is likely to have a negative impact on public health, safety, welfare or property, and the District (a) is engaged in a standard procurement process for a procurement item that is the subject of the contract being extended, and (b) the standard procurement process is delayed due to an unintentional error.
 - ii. A change in an industry standard requires one or more significant changes to specifications for the procurement item.
 - iii. The extension is necessary:
 - (1) To prevent the loss of federal funds;
 - (2) To mitigate the effects of a delay of a state or federal appropriation;
 - (3) To enable the District to continue to receive a procurement item during a delay in the

implementation of a contract award pursuant to a procurement that has already been conducted; or

- (4) To enable the District to continue to receive a procurement item during a period of time during which negotiations with a vendor under a new contract for the procurement item are being conducted.

- iv. An extension is necessary for the period of a protest, appeal, or court action, if the protest, appeal or court action is the reason for delaying the award of a new contract.
- v. An extension is necessary and the County Attorney determines in writing that the contract extension does not violate state or federal antitrust laws and is consistent with the purpose of ensuring the fair and equitable treatment of all persons who deal with the procurement system.

- 3. **No Response to Bid Invitation:** When the District does not receive a response to its announcement, request or invitation to bid.

- 4. **Cooperative Contract:** When the District makes purchases pursuant to a cooperative procurement in accordance with Section 63G-6a-2105 of the Act. Furthermore, nothing contained in this Policy shall prohibit or limit the ability of the District to contract with any other public agency for the exchange of supplies, material, services or equipment, which exchange shall be by the mutual agreement of the respective public agencies (63G-6a-2103).

- 5. **Emergency Procurement:** Emergency procurements shall be conducted as provided below and in accordance with the requirements set forth in Section 63G-6a-803 of the Act.

- a. An emergency procurement may only be used if the procurement is necessary to:
 - i. Avoid a lapse in a critical government service;
 - ii. Mitigate a circumstance that is likely to have a negative impact on public health, safety, welfare or property; or
 - iii. Protect the legal interests of the District.
- b. Emergency procurements are limited to those procurement items necessary to mitigate the emergency.
- c. While a standard procurement process is not required under an emergency procurement, when practicable, the Procurement Officer may seek to obtain as much competition as possible through use of phone quotes, internet quotes, limited invitations to bid, or other selection methods while avoiding harm, or risk of harm, to the public health, safety, welfare, property, or impairment of the ability of the District to function or perform required services.
- d. The Procurement Officer shall be notified of the emergency condition prior to the acquisition of any material or supplies, goods, wares or merchandise as provided above. In the event an emergency which requires immediate action should arise after business hours, on a weekend or holiday and/or when it is otherwise not possible or convenient to notify the Procurement Officer, emergency purchases may be made by the department in charge without so notifying the Procurement Officer, but such purchases shall be reported to the Procurement Officer on the

first working day after the occurrence. Where circumstances permit, the Procurement Officer may propose lists of approved vendors for emergency purchases.

- e. A written determination by the Procurement Officer documenting the basis for the emergency and the selection of the procurement item shall be kept in the contract file. The required documentation may be prepared after the emergency condition has been alleviated.

XI. PROCUREMENT OF CONSTRUCTION

- A. **State Law:** District construction projects are governed by Section 63G-6a-1302 of the Act and by this Part XI.
 1. **Alternative Approach:** To the extent allowed by law, and notwithstanding anything to the contrary in this Policy, the District may procure construction pursuant to the requirements of Title 11, Chapter 39 of the Utah Code, in which event the “bid limit” calculated as provided in Utah Code § 11-39-101(1) shall replace all construction cost estimate and/or bid requirements based upon cost provisions of this Policy, including small purchase provisions under Part V, in which event otherwise applicable requirements of this Policy shall be superseded and replaced by the provisions of Title 11, Chapter 39.
- B. **Construction Cost Estimate:** The District Director or Procurement Officer shall cause plans and specifications for construction projects, including the estimated cost of the improvement, to be prepared by the District’s engineer (in house or consulting) or other qualified person. The cost estimate shall be submitted to the Board either when the bid is submitted for formal approval or before the District undertakes the project using its own work crew or an invitation to bid or to submit proposals is issued, or the Board will be provided an explanation of why plans and specifications and/or a cost estimate cannot be provided, as may be the case if a design-build contract is under consideration. If the estimated cost of the improvement is **\$25,000** or less, the District may make the improvement using an independent contractor as provided in Subsection V.C.4.
- C. **Extra Work and Change Orders:** The District Director or Procurement Officer is authorized to approve extra work or change orders in an amount not to exceed 10% of the contract when justified by contract specifications and deemed to be in the best interest of the District. At the conclusion of the contract, a final written report will be presented to the Board.
 1. **Certification - Increases in Contract Amount:** Any change order which increases the contract amount shall be subject to prior written certification that the change order is within the determined project or contract budget. The certification may be made by the District’s Treasurer or other official responsible for monitoring and reporting upon the status of the costs of the total project or contract budget.
 2. **Availability of Funds or Adjustment in Scope of Work:** If the certification discloses a resulting increase in the total project or contract budget, the District Director or Procurement Officer shall not execute or make the change order unless sufficient funds are available or the scope of the project or contract is adjusted to permit the degree of completion feasible within the total project or contract budget as it existed prior to the change order under consideration. However, with respect to the validity, as to the contractor, of any executed change order upon which the contractor has reasonably relied, it shall be presumed that there has been compliance with the provisions of this Part XI. (63G-6a-1207)
- D. **Modification of Specifications:** The District Director or Procurement Officer shall have authority to waive or modify the District’s construction specifications upon a determination that such waiver

or modification does not significantly jeopardize the interests of the District and is reasonable and appropriate under the facts and circumstances presented. Such waivers and modifications may be based upon either requests from developers and other interested persons or District staff recommendations.

1. **Permanent Modifications:** Whenever the deletion or modification of the District's construction specifications is intended to be permanent and to apply to all or a significant number of future construction contracts to be performed within the boundaries of the District, the District Director or Procurement Officer shall so notify the Board within a reasonable time.
2. **Appeal to the Board:** At the District Director's or Procurement Officer's discretion, specific requested waivers or modifications of the District's construction specifications may be presented to the Board for final resolution and any contractor or other interested party may appeal the District Director's or Procurement Officer's decision regarding the modification of construction specifications to the Board.
3. **Status of Decision Prior to Board Action:** Until the District Director's or Procurement Officer's decision regarding a waiver or modification of the District's construction specifications has been modified or reversed by the Board, it shall be the decision and position of the District.

E. **Construction Contract Management:** The method of construction contracting management utilized for any given project shall be determined by the District Director or the Procurement Officer in consultation with the District's engineer, if there is one. Any lawful method of construction contracting management that is determined to be feasible may be utilized.

1. **Recommendations of Engineer:** In determining which method of construction contracting management is to be used for a particular project, the recommendations of the District's engineer, if there is one, are to be given great weight. The method selected will be the method deemed to be most advantageous to the interests of the District.
2. **Factors to Be Considered:** It is intended that the District Director or Procurement Officer have sufficient flexibility in formulating the construction contract management method for a particular project to fulfill the needs of the District. Before selecting a construction contracting management method, the District Director or Procurement Officer, in consultation with the District's engineer (if there is one), shall carefully consider the following factors: (a) when the project improvements must be ready for use; (b) the type of project; (c) the extent to which the requirements of the District, and the ways in which they are to be met, are known; (d) the location of the project; (e) the size, scope, complexity, and economics of the project; (f) the amount and source of funding and any resulting constraints or limitations necessitated by the funding source; (g) the availability, qualification and experience of District personnel to be assigned to the project and the amount of time the District personnel can devote to the project; (h) the availability, qualifications, and experience of outside consultants and contractors (including construction managers/general contractors) to complete the project under the various methods being considered; (i) the results achieved on similar projects in the past and the methods used; and (j) the comparative advantages and disadvantages of the construction contracting methods and how they might be adapted or combined to fulfill the needs of the District. The factors to be considered in achieving the purposes set forth herein are not to be construed as an exclusive list. (63G-6a-1302)
 - a. The following descriptions are provided for the more common construction contracting management methods which may be used by the District. The methods described are not mutually exclusive, and may be combined on a project. These descriptions are not intended to be fixed in respect to all construction

projects. These descriptions may be adapted to fit the circumstances of any given project. (63G-6a-1205)

- i. Single Prime (General) Contractor. The single prime contractor method is typified by one business, acting as a general contractor, contracting with the District to timely complete an entire construction project in accordance with drawings and specifications provided by the District. Generally, the drawings and specifications are prepared by an architectural or engineering firm under contract with the District. Further, while the general contractor may take responsibility for successful completion of the project, much of the work may be performed by specialty contractors with which the prime contractor has entered into subcontracts.
 - ii. Multiple Prime Contractors. Under the multiple prime contractor method, the District will contract directly with a number of general contractors or specialty contractors to complete portions of the project in accordance with the District's drawings and specifications. The District may have primary responsibility for the successful completion of the entire project, or the contracts may provide that one or more of the multiple prime contractors has this responsibility.
 - iii. Design-Build. In a design-build project, an entity, often a team of a general contractor and a designer, contract directly with the District to meet the District's requirements as described in a set of performance specifications and/or a program. Design responsibility and construction responsibility both rest with the design-build contractor. This method can include instances where the design-build contractor supplies the site as part of the package.
 - iv. Construction Manager Not at Risk. A construction manager is a person or firm experienced in construction who has the ability to evaluate and to implement drawings and specifications as they affect time, cost, and quality of construction and the ability to coordinate the construction of the project, including the administration of change orders as well as other responsibilities as described in the contract.
 - v. Construction Manager/General Contractor (Construction Manager at Risk). The District may contract with the construction manager early in a project to assist in the development of a cost effective design. In a Construction Manager/General Contractor (CM/GC) method, the CM/GC becomes the general contractor and is at risk for all of the responsibilities of a general contractor for the project, including meeting the specifications, complying with applicable laws, rules and regulations, completing the project on time and not exceeding a specified maximum price.
3. **Written Statement:** In making a decision concerning the method of construction contracting management to utilize for any given project, the District Director or Procurement Officer is to execute and include in the contract file a written statement setting forth the facts which led to the selection of a particular method of construction contracting management for that project.
4. **Design Build Contracts:** The District may procure architect-engineer services and construction using a single contract with the design-build provider.

- a. The District will consult a professional engineer or a licensed architect with design-build experience as provided in Utah Code § 11-39-107(2)(c).
5. **Construction Manager/General Contractor (CM/GC):** The District may enter into a contract for the management of a construction project which allows the contractor to subcontract for additional labor and materials that were not included in the contractor's cost proposal submitted at the time of the procurement of the construction manager/general contractor's services. The term "construction manager/general contractor" shall not refer to a contractor whose only subcontract work not included in the original cost proposal is subcontracted portions of approved change orders. Should the District utilize the CM/GM method of construction contract management, the construction manager/general contractor will be selected using a "standard procurement process" as defined in Section 63G-6a-103 of the Act, or an exception allowed under Part 8 of the Procurement Code may be utilized. When entering into any subcontract that was not specifically included in the CM/GC's cost proposal submitted to the District, the CM/GC shall procure that subcontractor by using a standard procurement process or an exception to the requirement to use a standard procurement process in the same manner as if the subcontract work was being procured by the District. (63G-6a-1302)
- a. As used herein, "management fee" includes only the following fees of the CM/GC:
 - i. Preconstruction phase services;
 - ii. Monthly supervision fees for the construction phase; and
 - iii. Overhead and profit for the construction phase.
 - b. When selecting a CM/GC for a construction project, the evaluation committee:
 - i. May score a CM/GC based upon criteria contained in the solicitation, including qualifications, performance ratings, references, management plan, certifications, and other project specific criteria described in the solicitation;
 - ii. May, as described in the solicitation, weight and score the management fee as a fixed rate or as a fixed percentage of the estimated contract value;
 - iii. May, at any time after the opening of the responses to the request for proposals, have access to, and consider, the management fees proposed by the offerors; and
 - iv. Except as provided in Section 63G-6a-707 of the Act, may not know or have access to any other information relating to the cost of construction submitted by the offerors, until after the evaluation committee submits its final recommended scores on all other criteria.
- F. **Contract Clauses:** Section 63G-6a-1202 of the Procurement Code encourages the District "to establish standard contract clauses to assist the [District] and to help contractors and potential contractors to understand applicable requirements." To that end, clauses providing for adjustments in prices and time of performance and covering the following subjects will generally be included in construction contracts: (a) the unilateral right of the District to order in writing changes in the work within the scope of the contract and changes in the time of performance of the contract that do not alter the scope of the contract work; (b) variations occurring between estimated quantities of work in a contract and actual quantities; (c) suspension of work ordered by the District; and (d) site

conditions differing from those indicated in the construction contract, or ordinarily encountered, except that differing site conditions clauses need not be included in a construction contract when the contract is negotiated, when the contractor provides the site or design, or when the parties have otherwise agreed with respect to the risk of differing site conditions.

1. **Prohibited Contract Terms:**

- a. The District may not require that any contractor, subcontractor or material supplier engaged in the construction, maintenance, repair or improvement of public works pay its employees a predetermined amount of wages or wage rate or provide any particular type, amount or rate of employee benefits; provided, however, that any applicable federal or state minimum wage or benefit law may be enforced.
- b. No contract shall contain any provision or requirement which is prohibited by applicable law or public policy, including Section 63G-6a-1203 of the Act, which prohibits any contract provision that would require a design professional to indemnify anyone from liability claims arising out of the design professional's services, "unless the liability claim arises from the design professional's negligent act, wrongful act, error or omission, or other liability imposed by law" or the person being indemnified is under the design professional's "direct or indirect control or responsibility".
- c. A provision in a construction contract requiring a dispute arising under the contract to be resolved in a forum outside of the state of Utah is void and unenforceable as against public policy as provided in Utah Code § 13-8-3.
- d. Should any prohibited provision or requirement be stated in any contract to which the District is a party, to the extent allowed by law, the contract shall be read and enforced as though the offending provision were not contained therein.

2. **Remedy Clauses:** Construction contracts may include clauses providing for appropriate remedies and covering the following subjects, among others: (a) liquidated damages; (b) specified excuses for delay or nonperformance; (c) termination of the contract for default; and (d) termination of the contract in whole or in part for the convenience of the District.

G. **State Construction Registry:**

- 1. **Notice of Commencement:** No later than 15 days after commencement of physical construction work at the project site, the District or its contractor shall file a notice of commencement with the State Construction Registry established by the Division of Occupational and Professional Licensing as required by Utah Code § 38-1b-201.
- 2. **Notice of Intent to Complete:** The District or the District's contractor shall file a notice of intent to obtain final completion with the State Construction Registry in accordance with Utah Code § 38-1a-506 if:
 - a. Completion of performance time under the original contract is greater than 120 days;
 - b. The total original construction contract price exceeds **\$500,000**; and
 - c. A payment bond is not obtained in accordance with Utah Code § 14-2-1.

3. **Notice of Completion:** Upon final completion of a construction project (regardless of whether a notice of intent to obtain final completion has been filed), a notice of completion may be filed with the State Construction Registry, including the name, address, telephone number, and e-mail address of the person filing the notice of completion; the name of the County in which the project property is located; information identifying the District's construction project; the date on which final completion occurred, and the method used to determine final completion; all as allowed by Utah Code § 38-1a-507.

H. Retainage: Retention proceeds withheld and retained from any payment due under the terms of a construction contract may not exceed 5% of the payment, and total retention proceeds withheld may not exceed 5% of the total construction price, as provided in Utah Code § 13-8-5. Furthermore, all retention proceeds shall be placed in an interest bearing account and be accounted for separately from other amounts paid under the contract. Interest accrued on the account shall be for the benefit of the contractor and all subcontractors of every tier and will be paid after the construction project is complete and has been accepted by the District, unless the District assumes partial occupancy of the project prior to completion, in which event proportionate accrued interest will be released within 45 days after partial occupancy.

1. **Withholding Based on Breach:** Based upon a breach of the construction contract documents, the District may withhold payment, for as long as reasonably necessary, an amount which is necessary to cure the breach or default or, if the project, or portion of a project as applicable, has substantially been completed, the District may retain until final completion up to twice the fair market value of any work that has not been completed. (13-8-5(8))

XII. INSPECTIONS

A. Justification: Circumstances under which the District may perform inspections include inspections of the contractor's manufacturing/production facility or place of business, or any location where the work is performed, to determine: whether the definition of "responsible", as defined in Section 63G-6a-103 of the Act and in the solicitation documents, has been met or is capable of being met; and if the contract is being performed in accordance with its terms.

B. Access to Contractor's Manufacturing/Production Facilities: The District may enter a contractor's or subcontractor's manufacturing/production facility or place of business to: (a) inspect procurement items for acceptance by the District pursuant to the terms of a contract; (b) audit cost or pricing data or audit the books and records of any contractor or subcontractor; and (c) investigate in connection with an action to debar or suspend a vendor from consideration for award of a contract.

C. Inspection of Supplies and Services:

1. **Contract to Control:** Contracts may provide that the District may inspect procurement items at the contractor's or subcontractor's facility and perform tests to determine whether any procurement item conforms to solicitation and contract requirements.

D. Conduct of Inspections: Inspections or tests shall be performed so as not to unduly delay the work of the contractor or subcontractor. No inspector may change any provision of the specifications or the contract without written authorization by the Procurement Officer. The presence or absence of an inspector or an inspection shall not relieve the contractor or subcontractor from any requirement of the contract. When an inspection is made, the contractor or subcontractor will be expected to provide, without charge, all reasonable facilities and assistance for the safety and convenience of the person performing the inspection or testing.

XIII. PRICE AND COST

- A. **Price Adjustments:** A contract may allow price adjustments, but cost or pricing data shall be required in support of a proposal leading to the adjustment of any contract pricing. All accounting for contracts and contract price adjustments, including allowable incurred costs, shall be conducted in accordance with generally accepted accounting principles for government.

1. **Exceptions:** Cost or pricing data exceptions:

- a. Cost or pricing data need not be submitted when the terms of the contract state established market indices, or catalog prices or other benchmarks are used as the basis for contract price adjustments, or when prices are set by law or rule;
- b. If a contractor submits a price adjustment that is higher than established market indices, catalog prices or other benchmarks established in the contract, the Procurement Officer may request additional cost or pricing data; or
- c. The Procurement Officer may waive the requirement for cost or pricing data, provided a written determination is made supporting the reasons for the waiver. A copy of the determination shall be kept in the contract file.

2. **Computation:** Adjustments in price pursuant to clauses promulgated under Subsection XI.F. shall be computed in one or more of the following ways: (a) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable; (b) by unit prices specified in the contract or subsequently agreed upon; (c) by the costs attributable to the events or situations under the clauses with adjustment of profit or fee, all as specified in the contract or as subsequently agreed upon; (d) in any other manner as the contracting parties may mutually agree; or (e) in the absence of agreement by the parties, by a unilateral determination by the District of the costs attributable to the events or situations under the clauses with adjustment of profit or fee, all as computed by the District in accordance with applicable provisions of Part XI, which are issued as allowed by Utah Code § 63G-6a-1206, and subject to other applicable provisions of the Act.

3. **Defective Costs or Pricing Data:** If defective cost or pricing data was used to adjust a contract price, the vendor and the District may enter into discussions to negotiate a settlement. If a settlement cannot be negotiated, either party may seek relief through the courts.

4. **Price Analysis:**

- a. Price analysis may be used to determine if a price is reasonable and competitive, such as when:
 - i. There are a limited number of bidders or offerors;
 - ii. Awarding a sole source contract; or
 - iii. Identifying price outliers in bids and offers.
- b. Price analysis involves a comparison of prices for the same or similar procurement items, including quality, warranties, service agreements, delivery, contractual provisions, terms and conditions, etc.
- c. Examples of a price analysis include:
 - i. Prices submitted by other prospective bidders or offerors;

- ii. Price quotations;
 - iii. Previous contract prices;
 - iv. Comparisons to the existing contracts of other public entities; and,
 - v. Prices published in catalogs or price lists.
- 5. **Cost Analysis:** Cost analysis includes the verification of cost data. Cost analysis may be used to evaluate:
 - a. Specific elements of costs;
 - b. Total cost of ownership and life-cycle cost;
 - c. Supplemental cost schedules;
 - d. Market basket cost of similar items;
 - e. The necessity for certain costs;
 - f. The reasonableness of allowances for contingencies;
 - g. The basis used for allocation of indirect costs; and,
 - h. The reasonableness of the total cost or price.
- 6. **Auditing of Books of Contractor or Subcontractor:**
 - a. The Procurement Officer may audit the books and records of a contractor or subcontractor.
 - b. An audit is limited to the books and records that relate to the applicable contract or subcontract and may occur only at a reasonable time and place.
 - c. A contractor shall maintain all books and records relating to a contract for six years after the day on which the contractor receives the final payment under the contract, or until all audits initiated under this policy within the six-year period have been completed, whichever is later.
 - d. A subcontractor shall maintain all books and records relating to the subcontract for six years after the day on which the subcontractor receives the final payment under the subcontract, or until all audits initiated under this policy within the six-year period have been completed, whichever is later.
- 7. **Retention of Books and Records:** Contractors shall maintain all records related to the contract for at least three years after the final payment, unless a longer period is required by law. (63G-6a-1206.3)
- 8. **Applicable Credits:** Applicable credits are receipts or price reductions which offset or reduce expenditures allocable to contracts as direct or indirect costs. Examples include purchase discounts, rebates, allowance, recoveries or indemnification for losses, sale of scrap and surplus equipment and materials, adjustments for overpayments or erroneous charges, and income from employee recreational or incidental services and food sales.
- 9. **Use of Federal Cost Principles:**

- a. In dealing with contractors operating according to federal cost principles, the Procurement Officer may use federal cost principles, including the determination of allowable, allocable, and reasonable costs, as guidance.
 - b. In contracts not awarded under a program which is funded by federal assistance funds, the Procurement Officer may explicitly incorporate federal cost principles into a solicitation, and thus into any contract awarded pursuant to that solicitation. The Procurement Officer and the contractor, by mutual agreement, may incorporate federal cost principles into a contract during negotiation or after award.
 - c. In contracts awarded under a program which is financed in whole or in part by federal assistance funds, all requirements set forth in the assistance document, including specified federal cost principles, must be satisfied. To the extent that the cost principles specified in the grant document conflict with the cost principles issued pursuant to Section 63G-6a-1206 of the Act, the cost principles specified in the grant shall control.
10. **Authority to Deviate from Cost Principles:** Before the District may deviate from the cost principles set forth in this Policy, a written determination must be made by the Procurement Officer specifying the reasons for the deviation. The written determination shall be made part of the contract file.

XIV. MULTIPLE AWARD CONTRACTS – INDEFINITE QUANTITY CONTRACTS

As authorized under Section 63G-6a-1204.5 of the Act, the District may enter into multiple award contracts.

- A. **Multiple Award:** A multiple award contract is a procurement process where two or more bidders or offerors are awarded a contract under a single solicitation. Purchases are made through an order placed with one of the contractors pursuant to the procedures established in the solicitation and the contract. Contractors receiving a contract award are not guaranteed that procurement items will be purchased from their contracts.
- 1. **Use:** A multiple award contract may be awarded under a single solicitation to two or more bidders or offerors when similar procurement items are needed or desired for adequate delivery, service, availability, or product compatibility.
 - 2. **Solicitation:** In addition to the requirements set forth in Sections 63G-6a-603 and 63G-6a-703 of the Act, when it is anticipated that a procurement will result in multiple contract awards, the solicitation shall include a statement that indicates that contracts may be awarded to more than one bidder or offeror;
 - 3. **Invitation for Bids:** Multiple award contracts in an invitation for bids shall be issued in accordance with Part 6 of the Act to the lowest responsive and responsible bidders meeting the objective criteria described in the invitation for bids and may be awarded to satisfy delivery, service, availability or product compatibility needs of the District using the following methods:
 - a. Lowest bid for all solicited procurement items provided:
 - i. The solicitation indicates that multiple contracts will be awarded to the lowest bidders for all procurement items being solicited as determined by a break in prices specifically stated in the solicitation, such as any

price within a specific percentage of the lowest responsive and responsible bid price, or other methodology described in the solicitation ;

- b. Lowest bid by Category provided:
 - i. The solicitation indicates that contracts will be awarded based on the lowest bid in a category; and
 - ii. Only one bidder may be awarded a contract per category if so specified in the solicitation;
- c. Lowest bid by line item provided:
 - i. The solicitation indicates that contracts will be awarded based on the lowest bid per line item; and
 - ii. Only one bidder may be awarded a contract per line item if so specified in the solicitation;
- d. Any combination of (a), (b) and/or (c) above, or
- e. Any other methodology described in the solicitation.
- f. All responsive and responsible bidders may be awarded a contract, provided the contracts specifically direct that orders must be placed first with the low bidder unless the lowest cost bidder cannot provide the needed procurement item, then with the second lowest bidder unless the second lowest cost bidder cannot provide the needed procurement item, then with the third lowest bidder unless the third lowest cost bidder cannot provide the needed procurement item, and so on in order from the lowest cost responsive and responsible bidder to the highest cost responsive and responsible bidder until the order is filled or the list of responsive and responsible bidders has been exhausted.

4. **Request for Proposals:** The award of multiple contracts in a request for proposals shall be made in accordance with Part 7 of the Act and may be awarded based on criteria set forth in the solicitation and in accordance with point thresholds and other methodology set forth in the RFP describing how multiple award contracts will be awarded with enough specificity to avoid the appearance of favoritism affecting the decision of whether to award multiple contracts and who should receive a multiple award contract.

5. **Multiple Award Contracts for Unidentified Procurement Items:**

- a. An unidentified procurement item is defined as a procurement item that, at the time the solicitation is issued:
 - i. Has not been specifically identified but will be identified at some time in the future, such as an approved vendor list or approved consultant list.
 - ii. Does not have a clearly defined project or procurement specific scope of work; and
 - iii. Does not have a clearly defined project or procurement specific budget.
- b. Unidentified procurement items may be procured under approved vendor list thresholds established by the Board.
- c. An RFP or other solicitation issued for a multiple award contract for unidentified procurement items must specify the methodology that will be used to determine

which vendor under the multiple award contract will be selected to receive an order.

- i. The methodology must include a procedure to document that the District is obtaining best value, including an analysis of cost and other evaluation criteria outlined in the solicitation.
- ii. The methodology must also ensure the fair and equitable treatment of each multiple award contract vendor, including using methods to select a vendor such as:
 - (1) Using a rotation system, organized alphabetically, numerically, or randomly;
 - (2) Assigning a potential contractor to a specified geographical area;
 - (3) Classifying each potential contractor based on the potential contractor's field or area of expertise; or
 - (4) Obtaining quotes or bids from two or more contractors.

6. Ordering From Multiple Award Contracts:

- a. When buying procurement items under a multiple award contract that was awarded through an invitation for bids, the District shall obtain a minimum of two quotes for the procurement item(s) being purchased and place the order with the contractor with the lowest quoted price.
 - i. The requirement to obtain two or more quotes is waived when there is only one bidder award for the particular procurement item or geographical area.
 - ii. The order need not be placed with the lowest cost contract bidder if that bidder cannot provide the needed procurement item, in which event the order may be placed with the second lowest cost bidder unless the second lowest cost bidder cannot provide the needed procurement item, and so on, in order, until a contract bidder is selected or the list of contract bidders is exhausted.
 - iii. If the methodology described in the solicitation is based on criteria other than the lowest quoted price, the designated methodology shall control.
- b. When buying a procurement item under a multiple award contract that was awarded through an RFP, the District may place orders based on the District's determination as to which contractor or procurement item best meets the needs of the District. Contracts awarded through the RFP process are awarded based on the best value to the District, taking into consideration price and the other specific non-price criteria set forth in the RFP. Consequently, all contractors and procurement items under contract issued through an RFP have been determined to provide best value to the District.
- c. A multiple award contract may not be used to steer purchases to a favored contractor or use any other means or methods that do not result in fair consideration being given to all contractors that have been awarded a contract under a multiple award.

7. Primary and Secondary Contracts:

- a. Designations of multiple award contracts as primary and secondary may be made if a statement to that effect is contained in the solicitation documents.

- b. When the Procurement Officer or designee determines that the need for a procurement item will exceed the capacity of any single primary contractor, secondary contracts may be awarded to additional contractors.
 - c. Purchases under primary and secondary contracts will be made, initially from the primary contractor offering the lowest contract price until the primary contractor's capacity has been reached or the items are not available from the primary contractor, then from secondary contractors in progressive order from lowest price or best availability to the next lowest price or best availability, and so on.
 - 8. **Intent to Use:** If a multiple award is anticipated prior to issuing a solicitation, the method of award shall be stated in the solicitation.
- B. **Contracts and Change Orders-Contract Types:** The District may use contract types to the extent authorized under Section 63G-6a-1205 of the Act.
- C. **Prepayments:** Prepayments are subject to the restrictions contained in Section 63G-6a-1208 of the Act.
- D. **Leases of Personal Property:**
 - 1. **Requirements:** Leases of personal property are subject to the following:
 - a. A lease (including a lease with a purchase option) may be entered into provided that the District complies with Section 63G-6a-1209 of the Act and:
 - i. The lease is in the best interest of the District;
 - ii. All conditions for renewal and cost are set forth in the lease;
 - iii. The lease is awarded through a standard procurement process, or an exception to the standard procurement process described in Part 8 of the Act; and
 - iv. The lease is not used to avoid a competitive procurement.
 - 2. **Completion Requirement:** Lease contracts will be conducted with as much competition as practicable under the circumstances.
- E. **Modification of Contract Terms:** Contract clauses may be as set forth in standard documents approved from time to time by the Board maintained at the office of the District. However, the District Director, the Procurement Officer or the Board may modify the clauses for inclusion in any particular contract. Any variation may be supported by a written determination that describes the circumstances justifying the variation, and notice of any material variation may be included in the invitation for bids or requests for proposals.

XV. PROCUREMENT OF ARCHITECT, ENGINEERING AND SURVEYING SERVICES

- A. **Hiring a Professional Architect, Engineer or Surveyor:** Other than small purchases governed by Section V.B., the District shall procure design professional services by publicly announcing all requirements for those services through a Request for Statement of Qualifications ("RSQ") and negotiate a contract for said services on the basis of demonstrated competence and qualification for the type of services required, which at a minimum shall include: (a) the qualifications, experience and background of each firm (or individual if the professional is not part of a firm) submitting a proposal; (b) the management plan, including specific individual(s) assigned or to be assigned to

the project and the time commitments of each to the project; (c) the approach to the project that each firm (or individual) will take, (d) the performance ratings earned by the firm or references for similar work, (e) any quality assurance or quality control plan, (f) the quality of the firm's past work product, (g) the time, manner of delivery, and schedule of delivery of the firm's services, (h) the firm's financial solvency, and (i) any other project specific criteria that the Procurement Officer establishes.. The District may engage the services of a professional architect, engineer or surveyor based on the above criteria rather than based solely on the lowest cost so long as the Procurement Officer determines that the cost is fair and reasonable. A RSQ shall not include a request for a price or cost component for the services. Subject to the above, the provisions of Utah Code §63G-6a-1501 - 1506 apply to the procurement of services within the scope of the practice of architecture as defined in UCA §58-3a-102 or professional engineering as defined in UCA §58-22-102.

1. **Architect-Engineer Evaluation Committee:** The Procurement Officer shall appoint members of the Architect-Engineer Evaluation Committee. The evaluation committee must consist of at least three members who are qualified under Sections 63G-6a-1503(3)(b) and 63G-6a-410 of the Act.

2. **Request for Statements of Qualifications:**

- a. The District will issue a public notice for a request for statements of qualifications to be used in ranking architects or engineers.
- b. A request for statement of qualifications will state:
 - i. That the District is conducting the procurement to acquire the procurement item;
 - ii. Information on how to contact the District;
 - iii. Information on how to obtain a copy of the procurement documents;
 - iv. The type of procurement item to which the request for statements of qualifications relates;
 - v. The scope of the work to be performed;
 - vi. The instructions and the deadline for providing information in response to the request for statements of qualifications; and
 - vii. Criteria to be used to evaluate statements of qualifications including:
 - (1) Basic information about the person or firm;
 - (2) Experience and work history;
 - (3) Management and staff;
 - (4) Qualifications;
 - (5) Licenses and certifications;
 - (6) Applicable performance ratings;
 - (7) Financial statements;
 - (8) Quality assurance or quality control plan;
 - (9) Quality of past work product;
 - (10) Time, manner of delivery, and schedule of delivery of the professional services; and
 - (11) Other pertinent information.
- c. Key personnel identified in a statement of qualifications may not be changed without the advance written approval of the Procurement Officer.
- d. Architects and engineers shall not include cost information in a response to a request for statements of qualifications.

3. **Evaluation of Statements of Qualifications:** The evaluation committee shall evaluate statements of qualifications in accordance with Sections 63G-6a-1503.5 and 63G-6a-410 of the Act to rank (score) architects or engineers.
 4. **Negotiation and Award of Contract:** The Procurement Officer or designee shall negotiate a contract with the most qualified firm for the required services at compensation determined to be fair and reasonable.
 5. **Failure to Negotiate Contract With the Highest Ranked Firm:**
 - a. If fair and reasonable compensation, contract requirements, and contract documents cannot be agreed upon with the highest ranked firm, the Procurement Officer shall advise the firm in writing of the termination of negotiations.
 - b. Upon failure to negotiate a contract with the highest ranked firm, the Procurement Officer shall proceed in accordance with Sections 63G-6a-1505 and 63-6a-410 of the Procurement Code.
 6. **Notice of Award:**
 - a. The District may award a contract to the highest ranked firm with which the fee negotiation was successful.
 - b. Notice of the award shall be made available to the public.
- B. **Contract Extensions:** Subject to Section IV.A. of this Policy, contracts with consultants providing engineering and architectural services may be extended from year-to-year at the discretion of the Board.

XVI. BONDS

Performance and other bonds in such amounts as shall be reasonably necessary to protect the interests of the District may be required. The nature, form and amount of such bonds are to be described in the notice inviting bids or in the request for competitive sealed proposals, regardless of the procurement type (construction, equipment, etc.).

- A. **Bid Security Requirements:**
1. **Construction:** Invitations for Bids and Requests for Proposals for construction contracts require the submission of a bid bond in an amount equal to at least 5% of the bid, at the time the bid is submitted.
 2. **Other Procurements:** Invitations for Bids and Requests for Proposals for other procurements may require the submission of a bid security, including specifications for the form and type of bid security, when the Procurement Officer determines it to be in the best interest of the District.
 3. **Acceptable Bid Security Not Furnished:** If a bid security is required and acceptable bid security is not furnished, the bid shall be rejected as nonresponsive, unless the failure to comply is determined by the Procurement Officer to be nonsubstantial. Failure to submit an acceptable bid security may be deemed nonsubstantial if:
 - a. The bid security is submitted on a form other than the required bid bond form and the bid security meets all other requirements of this Policy and the contractor

provides acceptable bid security by the close of business of the next succeeding business day after being notified of the defective bid security;

- b. Only one bid is received, and there is not sufficient time to re-solicit;
- c. The amount of the bid security submitted, though less than the amount required by the Invitation for Bids or RFP, is equal to or greater than the difference in the price stated in the next higher acceptable bid; or
- d. The bid security becomes inadequate as a result of the correction of a mistake in the bid or bid modification which is allowed by this Policy, if the bidder increases the amount of the guarantee to required limits within 2 business days after the bid opening.

- 4. **Forfeiture:** If the successful bidder fails or refuses to enter into the contract or furnish the additional bonds required as provided above, the bidder's bid security may be forfeited.

B. Performance Bonds for Construction Contracts: A performance bond is required for all construction contracts in the amount of 100% of the contract price. The performance bond shall be delivered by the contractor to the District within fourteen days of the contractor receiving notice of the award of the construction contract. If a contractor fails to deliver the required performance bond, the contractor's bid/offer shall be rejected, its bid security may be enforced, and award of the contract may be made to the next lowest responsive and responsible bidder or the next highest ranked offeror.

C. Surety or Performance Bonds for Non-construction Procurement Items:

- 1. **Permissive:** A surety or performance bond may be required on any non-construction contract as the Procurement Officer deems necessary to guarantee the satisfactory completion of a contract, provided the Invitation for Bids or Request for Proposals contains a statement that a surety or performance bond is required in an amount:

- a. Equal to the amount of the bid or offer;
- b. Equal to the project budget or estimated project cost, if the budget or estimated project cost is published in the solicitation documents;
- c. Equal to the previous contract cost, if the previous contract cost is published in the solicitation documents; or
- d. The Invitation for Bids or Request for Proposals contains a statement that a surety or performance bond, in an amount less than the amount determined under (a), is required; and the Invitation for Bids or Request for Proposals contains a detailed description of the work to be performed or item(s) to be provided for which the surety or performance bond is required.

- 2. **Limitation:** Surety or Performance Bonds should not be used to unreasonably eliminate competition or be of such unreasonable value as to eliminate competition.

D. Payment Bonds: A payment bond is required for all construction contracts in the amount of 100% of the contract price. If a contractor fails to timely deliver the required payment bond, the contractor's bid or offer shall be rejected, its bid security may be enforced, and award of the contract shall be made to the next lowest responsive and responsible bidder or the next highest ranked offeror.

- 1. **Failure to Obtain:** If the District fails to obtain a payment bond for a construction project, there may be liability to anyone furnishing labor or supplying materials for the construction project as provided in Title 14, Chapter 1 of the Utah Code.

- E. **Waiver:** The Procurement Officer may waive any bonding requirement if it is determined in writing by the Procurement Officer that:
- a. Bonds cannot reasonably be obtained for the work;
 - b. The cost of the bond exceeds the risk to the District; or
 - c. Bonds are not necessary to protect the interests of the District.

XVII. PROHIBITED ACTS/ETHICS

- A. **Supremacy of Law:** Nothing contained in this Policy shall be construed to authorize conduct that would constitute a crime under any applicable law or ordinance. The requirements of this Policy shall apply *in addition* to other legal requirements including, but not limited to, Utah Code §§ 67-16-1 *et. seq.* (the Utah Public Officers and Employees Ethics Act which, among other things, prohibits the improper disclosure or use of private, controlled or protected information) and applicable sections of Chapter 8 of Title 76 of the Utah Code (dealing with offenses against the administration of government such as bribery). It is the general policy of the District that employees and members of the Board not receive compensation for assisting any person or entity in a transaction involving the District. For any departure from that general policy to be countenanced, the employee or Board Member must sign and file the sworn, written statement required by Utah Code § 67-16-6.
- B. **Conflict of Interest:** No member of the Board or employee of the District may have a direct or indirect interest in any contract entered into by the District unless such interest is disclosed to the Board before the contract is approved. A Board member or employee will be presumed to have an indirect interest in any contract in which a relative of the Board member or employee, as “relative” is defined in Utah Code §52-3-1(1)(d) (a father, mother, husband, wife, son, daughter, sister, brother, uncle, aunt, nephew, niece, first cousin, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law), holds a direct interest in the contract. Any Board member who is interested in a proposed contract with the District shall disclose that interest to the other Board members, shall not participate in any Board discussion of the contract, and shall abstain from voting on the contract. An interested Board member may, however, be counted toward the required quorum for any Board meeting attended by the interested Board member. Any employee who has an interest in a proposed contract with the District shall so notify the District Director and the Board in writing. Such employee may not participate in any evaluation of the proposed contract or of any competing bids or proposals. Before the Board may approve any contract in which a Board member or employee has a known interest, the Board must make a finding to the effect that the proposed contract is in the best interest of the District and is significantly better than any available alternative. A violation of the requirements of this Subsection, including the required advance notification of any conflict of interest, may subject the violator to discipline, including dismissal or termination. Approval of a contract in which a relative of a District Board member or employee holds a direct interest shall not be invalid, and the Board member or employee shall not be subject to sanctions, if the Board member or employee was not aware of the interest of the relative prior to the approval of the contract. The burden shall be on the Board member or employee to establish this lack of knowledge, should an issue be raised concerning the contract in which the relative holds a direct interest.
- C. **Nepotism Prohibited:** Nothing contained in this Policy shall be construed to authorize a violation of Utah Code § 52-3-1, which generally prohibits the employment of relatives.
- D. **Improper Influence:** No employee or official of the District shall use his/her position with the District to pressure, coerce, or otherwise improperly induce any vendor or other person to provide a special benefit to the employee or official that would not generally be available to others. By way

of illustration, no employee or Board member may threaten or imply that a vendor's failure to provide a favorable price or other concession on a personal purchase will or may jeopardize the vendor's relationship with the District.

- E. **Collusion:** Any agreement or collusion among vendors or prospective vendors in restraint of competition and/or fairness shall render the bids/proposals of each such vendor void, if detected before the contract is awarded, or constitute grounds for the District to void any contract to a participant in the collusion if finally determined after the contract has been awarded, and may also result in the debarment of participating potential vendors.
- F. **Sales Taxes:** As a governmental entity, the District is not required to pay a sales tax on certain of its purchases. No employee or official shall use the District's immunity from sales tax collection to avoid the payment of sales tax on personal purchases, except as otherwise provided in Subsection H.1 below.
- G. **Gifts and Gratuities:** No employee or official shall accept any gift or gratuity from any vendor who deals, or desires to deal, with the District that would violate any provision of state law, criminal or otherwise. This restriction is not intended to prohibit small promotional gifts, such as calendars, pens, candy, note pads, etc., of a relatively nominal value that are commonly utilized for public relations or advertising purposes and which do not otherwise violate state law under Utah Code § 67-16-5. Similarly, this restriction is not intended to prohibit business lunches and dinners *provided* they are in harmony with the District's rules and regulations and do not violate applicable state law.
- H. **Personal Purchases:** No District employee or official shall purchase goods or services for personal use and ownership using the District's name, any District account, or District funds without prior approval by the Board. The District shall be reimbursed, either directly or through payroll withholding, for the costs of all such goods and services that are purchased for individual use and ownership by a District employee or Board member.
 - 1. **No Personal Use or Ownership-Exceptions:** Notwithstanding the foregoing prohibition, with the approval of the District Director, goods and services may be purchased in the name of the District, through a District account, and/or utilizing District funds, even though those goods and services will become the personal property of employees or officials of the District, *provided* that any such good or service is to be utilized by the employee or official in performing his or her duties for the District. For example, a monetary allowance may be provided by the district for work boots for members of a District work crew.
 - 2. **Personal Purchases-Validity:** Nothing contained in this Policy shall prohibit or prevent either employees or officials from purchasing from vendors who also provide goods or services to the District *provided* that such private purchases are clearly denoted as such and are made in the name of the employee or official. Furthermore, nothing contained in this Policy shall prohibit employees or officials from receiving discount or membership cards from District vendors *provided* that such cards and memberships are in the name of the individual employee or official, all purchases are billed to and paid for directly by the employee or official, and such cards and memberships are made available to members of the public as a whole, or to a subgroup of the public, and are not based upon the employee's or official's position with the District.
- I. **Favored Vendor:** District employees and officers are prohibited from taking any act, or refusal or failure to act, with the intention of creating a favored vendor situation (as defined in Part II of this Policy). Any violation of this restriction shall subject the employee to discipline up to and including termination.
- J. **Procurement Professional:** Should any employee of the District be classified as a "Procurement Professional" as defined in Section 63G-6a-2402 of the Act, the Procurement Professional shall be governed by Part 24 of the Procurement Code, in addition to other applicable laws. [It is anticipated

that very few local districts or special service districts will retain a Procurement Professional who effectively is dedicated to procurement activities, in which event this Subsection will not apply.]

1. **Socialization With Vendors and Contractors:** A Procurement Professional shall not:
 - a. Participate in social activities with vendors or contractors that may interfere with the proper performance of the Procurement Professional's duties;
 - b. Participate in social activities with vendors or contractors that may lead to unreasonably frequent disqualification of the Procurement Professional from the procurement process; or
 - c. Participate in social activities with vendors or contractors that would appear to a reasonable person to undermine the Procurement Professional's independence, integrity, or impartiality.
2. **Duty to Notify Supervisor:** If a Procurement Professional participates in a prohibited social activity, or has a close personal relationship with a vendor or contractor, the Procurement Professional shall promptly notify the appropriate supervisor and the supervisor shall take appropriate action, which may include removal of the Procurement Professional from the affected procurement or contract administration process.
3. **Duty to Report Unlawful Conduct:** A Procurement Professional with actual knowledge that a person has engaged in unlawful conduct shall report the person's unlawful conduct to the State Auditor or the County Attorney.

XVII. CONTROVERSIES AND PROTESTS

A. Procurement Code Provisions:

1. **Part 16:** Controversies and protests shall be conducted in accordance with the requirements set forth in Sections 63G-6a-1601 through -1604 of the Act. This Policy provides additional requirements and procedures, and will be used in conjunction with the Procurement Code. Unless otherwise designated by the Board, the Procurement Officer shall be the "Protest Officer".
2. **Part 19:** Part 19 of the Procurement Code, Sections 63G-6a-1901 through -1911 of the Act, contain provisions regarding:
 - a. Limitations on challenges of:
 - i. A procurement;
 - ii. A procurement process;
 - iii. The award of a contract relating to a procurement;
 - iv. A debarment; or
 - v. A suspension; and
 - b. The effect of a timely protest or appeal;
 - c. The costs to or against a protester;
 - d. The effect of prior determinations by employees, agents, or other persons appointed by the District;

- e. The effect of a violation found after award of a contract;
 - f. The effect of a violation found prior to the award of a contract;
 - g. Interest rates; and
 - h. A listing of determinations that are final and conclusive unless they are arbitrary and capricious or clearly erroneous.
- B. General:** Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Protest Officer.
- 1. **Deadline.** A protest with respect to the invitation for bids or a request for proposals is to be submitted in writing prior to the opening of bids or the closing date for proposals, unless the aggrieved person did not know and should not have known of the facts giving rise to the protest prior to the bid opening or the closing date for proposals. In any event, the protest shall be submitted in writing within 7 days after the aggrieved person knows or should have known of the facts giving rise thereto. Anyone failing to file a protest within the time prescribed may not:
 - a. Protest to the Protest Officer a solicitation or award of a contract; or
 - b. File an action or appeal challenging a solicitation or award of a contract before an appeals panel, a court, or any other forum. (63G-6a-1602(3))
 - 2. **Protest Document.** A person filing a protest shall include in the filing document:
 - a. The person's mailing address and e-mail address of record; and
 - b. A concise statement of the facts and evidence leading the protestor to claim that protestor has been aggrieved in connection with a procurement and providing the grounds for the protestor's protest and supporting the protestor's claim of standing. (63G-6a-1602(2))
 - c. A protest may not be considered unless it contains facts and evidence that, if true, would establish :
 - i. a violation of this policy or other applicable law or rule,
 - ii. the District's failure to follow a provision of a solicitation,
 - iii. an error made by an evaluation committee or the District,
 - iv. a bias exercised by an evaluation committee or an individual committee member, excluding a bias that is a preference arising during the evaluation process because of how well a solicitation response meets criteria in the solicitation,
 - v. a failure to correctly apply or calculate a scoring criteria, or
 - vi. that specifications in a solicitation are unduly restrictive or unduly anticompetitive.
 - d. A protest may not be based on the rejection of a solicitation response due to a protestor's failure to attend or participate in a mandatory conference, meeting or site visit held before the deadline for submitting a solicitation response or a vague or unsubstantiated allegation.
 - e. A protest may not include a request for:

- i. an explanation of the rationale or scoring of evaluation committee members,
 - ii. the disclosure of a protected record or protected information in addition to the information provided under the disclosure provisions of the Procurement Code, or
 - iii. other information, documents or explanations not explicitly provided for herein.
3. **Resolution/Correction of Errors:** The Protest Officer or designee shall have the authority to settle and resolve a protest. Furthermore, if at any time during the protest process it is discovered that a procurement is out of compliance with any part of the Procurement Code or this Policy, including errors or discrepancies, the Protest Officer may take administrative action to correct or amend the procurement to bring it into compliance, correct errors or discrepancies, or cancel the procurement.
- C. **Verification of Legal Authority:** A person filing a protest in a representative capacity may be asked to verify that the person has legal authority to file the protest on behalf of the public or private corporation, governmental entity, sole proprietorship, partnership, or unincorporated association.
- D. **Intervention in a Protest:** After a timely protest is filed in accordance with the Utah Procurement Code, the Protest Officer shall notify awardees of the subject procurement, and may notify others, of the protest.
 1. **Period of Time to File:** A motion to intervene must be filed with the Protest Officer no later than ten days from the date such notice is sent by the Protest Officer. Only those motions to intervene made within the time prescribed in this Policy will be considered timely. The District and the intended beneficiaries of the procurement (the intended awardee of the procurement) are automatically considered to be parties of record and need not file a motion to intervene.
 2. **Contents of a Motion to Intervene:** A copy of any motion to intervene will be mailed or e-mailed to the party protesting the procurement.
 - a. Any motion to intervene must state, to the extent known, the position taken by the intervenor and the basis in fact and law for that position. A motion to intervene must also state the intervenor's interest in sufficient factual detail to demonstrate that:
 - i. The intervenor has a right to participate which is expressly conferred by statute or by applicable rule, order, or other action; and
 - ii. The intervenor has or represents an interest which may be directly affected by the outcome of the proceeding, including an interest as a consumer; customer; competitor; security holder of a party; or the person's participation is in the public interest.
 3. **Granting of Status:** If no written objection to a timely motion to intervene is filed with the Protest Officer within seven calendar days after the motion to intervene is received by the protesting person, the intervenor becomes a party at the end of this seven day period. If an objection is timely filed, the intervenor becomes a party only when the motion is expressly granted by the Protest Officer based on a determination that a basis for intervention exists as stated in this Policy.
 4. **Late Motion:** If a Motion to Intervene is not timely filed, the Motion shall be denied by the Protest Officer.

- E. **Delay in Award of Contract:** In the event of a timely protest under Subsection B. above, the District will not proceed further with the solicitation or with the award of the contract until all administrative and judicial remedies have been exhausted or until the District Director, after consultation with the District's attorney, makes a written determination that the award of the contract without delay is in the best interests of the District. (63G-6a-1903(2))
- F. **Proceedings to Debar/Suspend Potential Contractors:**
1. **Debarment:** After at least ten (10) days' prior notice to the person/entity involved and a reasonable opportunity for that person/entity to be heard, the District Director, after consulting with the District's attorney and holding a hearing in accordance with UCA §63G-6a-904(1)(c), shall have authority to debar a person/entity for cause from consideration of award of a contract for a period not exceeding three years for any of the causes set forth in UCA §63G-6a-904(3).
 2. **Suspension:** After at least ten (10) days' prior notice to the person/entity involved and a reasonable opportunity for that person/entity to be heard, the District Director, after consultation with the District's attorney and holding a hearing in accordance with UCA §63G-6a-904(1)(c), shall have authority to suspend a person/entity from consideration for the award of a contract if there is probable cause to believe that the person/entity has engaged in any activity which might lead to debarment. The suspension shall not be for a period exceeding three months unless an indictment has been issued for an offense which would be a cause for debarment as set forth in Utah Code § 63G-6a-904(3), in which event the suspension shall, at the request of the District's attorney, remain in effect until after the trial of the suspended person.
- G. **Resolution of Controversies:** The Procurement Officer is authorized to settle and resolve a controversy which arises between the District and a contractor under or by virtue of a contract. This includes, without limitation, controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.
- H. **Written Decision:** The Procurement Officer shall promptly issue a written decision regarding any protest, debarment or suspension or contract controversy if it is not settled by mutual agreement. The decision shall state the reasons for the action taken and inform the protestor, contractor, or prospective contractor of the right to administrative or judicial review as provided in Utah Code, Title 63G, Chapter 6a, Parts 17, 18 and 19.

I. Timing and Finality of Decision:

1. **Adverse Decision Presumed After 30 Days:** As provided in Section 63G-6a-1603(9) of the Act, if a final written decision regarding a protest is not issued within 30 calendar days after the day on which a written request for a final decision is filed with the Protest Officer, or within such longer period as may be agreed upon by the parties, the protestor, prospective vendor, or vendor may proceed as if an adverse decision had been received.
2. **Finality:** Except as otherwise specifically provided in this Policy, a decision of the Procurement Officer shall be effective until stayed or reversed on appeal.
3. **Written Decision:** Once available, a copy of the decision shall be immediately mailed or otherwise furnished to the protestor, prospective contractor, or contractor and any parties that have been allowed to intervene in the proceeding. The decision shall be final and conclusive unless the protestor, prospective contractor, or contractor (a “vendor”) timely files an appeal to an appeals panel established by the Procurement Policy Board in accordance with Sections 63G-6a-1701 to -1706 of the Act within the applicable 7 day statute of limitations period specified in Section 63G-6a-1702 of the Act.

J. Violation of Law: If, before an award of a contract, it is finally determined administratively or upon administrative or judicial review that a solicitation or proposed award of a contract is in violation of law, the solicitation or proposed award shall be canceled or revised to comply with applicable law, unless different relief is mandated. (63G-6a-1909)

K. Options After Adverse Determination: If, after an award of a contract, it is finally determined administratively or upon administrative or judicial review that a solicitation or award of a contract is in violation of law, provided that the recipient of the award has not acted fraudulently or in bad faith, unless different relief is ordered: (a) the contract may be ratified and affirmed by the District if it is determined by the Board that doing so is in the best interest of the District; or (b) the contract may be terminated and the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract prior to termination, plus a reasonable profit. (63G-6a-1907(1)(a))

L. Fraudulent Conduct by Contractor: If, after an award of a contract, it is determined administratively or upon administrative or judicial review that a solicitation or award of a contract is in violation of law and if the recipient of the award has acted fraudulently or in bad faith, unless different relief is ordered: (a) the contract will be declared null and void; or (b) the contract may be ratified and affirmed if such action is in the best interest of the District, as determined by the Board, without prejudice to the District's rights to any appropriate damages. (63G-6a-1907(1)(b))

M. Limitation on Consequential Damages: Under no circumstances is a person entitled to consequential damages in relation to a solicitation or award of a contract under this Policy, including consequential damages for lost profits, loss of business opportunities, or damage to reputation. (63G-6a-1907(2))

N. Appeal to the Board: Nothing provided in this Policy shall limit the ability and authority of the Board to provide for a two-step appeal process at the District level provided that the entire proceeding is completed within the time limits stated in this Policy and in Title 63G, Chapter 6a, Part 16 of the Utah Code. Furthermore, the Board may designate itself as the Protest Officer at any time in the Board's sole discretion.