NORDIC VALLEY SEWER IMPROVEMENT DISTRICT
AGENDA -- BOARD OF TRUSTEES MEETING
FRIDAY, OCTOBER 4, 2024

THE INITIAL MEETING OF THE NORDIC VALLEY SEWER IMPROVEMENT DISTRICT BOARD OF TRUSTEES TO BE HELD ON OCTOBER 4, 2024, AT 11:00 A.M. THE LOCATION OF THE MEETING WILL BE IN THE DISTRICT OFFICE, EDEN PROFESSIONAL CENTER, 2580 NORTH HIGHWAY 162, SUITE D, EDEN UTAH, 84310.

1. Oath of Office for Board Members: Robert Behunin; Laurant Jouffray; John Lewis

2. Election of Board Officers: Chair; Vice Chair; Director

3. Appointment of District Officers: Clerk (CFO); Treasurer; Public Records Officer

4. Public Comments: Brief items not listed on agenda; time limit of three (3) minutes. If more time is needed, please contact board chair to be added to a future agenda.

5. Description of District: Creation by Weber County; Recent Appointment of Trustees; Boundaries; General Discussion

6. Purposes of District: discussion and motion; purposes to include both sanitary sewer service and culinary water service

7. Relationship with PIDs: "Will-serve" Notification: discussion; decision; adoption of resolution (?)

8. Budget Matters: discussion/decision; 2024 -- remainder of year; 2025 -- calendar year budget

9. Public Hearing: District Name Change to "Nordic Valley Improvement District"

10. Action Item: Discussion of Name Change; Adoption of Name Change Resolution

11. Action Item(s): Discussion; Approval of Policies; Adoption of Resolution(s)
    a. Bylaws (UASD Template)
    b. Board Meetings (UASD Template)
    c. Conflicts of Interest (UASD Template)
    d. Critical Infrastructure Records (UASD Template)
    e. Government Records Access and Management Act (UASD Template)
    f. Purchasing Policies (UASD Template)
    g. Public Comments Policy

12. Action Item: Preliminary Funding Agreement with Nordic Valley Ventures; Discussion/Decision

13. Action Item: District to Hold Elections Under the Rules for a "Basic Special District" Utah Code Annotated §§ 17B-1-1402 & 17B-1-306. Base Elections on: Acreage, Assessed Value or Water. Discussion/Decision.

14. Action Item: Schedule of Regular Meetings for Remainder of 2024; Calendar Year 2025

15. Professional Service Matters: Disclosure of Nordic Valley Ventures' Consultants Providing Professional Services related to District; Discussion/Decision

14. Information/Training: Information: Board Member Training at the UASD Annual Conference November 6, 7, 8. Specific training for new boards on November 6. Location: Davis Conference Center, 1651 North 700 West, Layton, Utah.

15. Closed Session (if needed): Discussion of "Closed Meeting" Topics, Utah Code Annotated § 52-4-205[1]

16. Trustees: Information provided re: current, past or future business of District

17. Adjournment

Policy Statement: The District does not discriminate on the basis of race, color, national origin, gender, religion, age or disability in employment or the provision of services.

Disabilities: In compliance with the Americans with Disabilities Act, any individual needing accommodations or services during this meeting should contact Robert Behunin at least 24 hours prior to the meeting. Mr. Behunin may be reached by email at rob.behunin@gmail.com or by telephone at (801) 400-3649.

Certificate of Posting: On or before 11:00 a.m. on Thursday, October 3, 2024, a copy of this Agenda was posted on the Utah Public Notice Website under Utah Code §63F-1-701. Certified by Robert Behunin, Member, Board of Trustees

[1] See, e.g., https://le.utah.gov/xcode/title52/chapter4/C52-4_1800010118000101.pdf

APPROVED MINUTES
OF THE NORDIC VALLEY SEWER IMPROVEMENT DISTRICT
AGENDA -- BOARD OF TRUSTEES MEETING
FRIDAY, OCTOBER 4, 2024

THE INITIAL MEETING OF THE NORDIC VALLEY SEWER IMPROVEMENT DISTRICT BOARD OF TRUSTEES WAS HELD ON OCTOBER 4, 2024, AT 11:00 A.M. THE LOCATION OF THE MEETING WAS IN THE DISTRICT OFFICE, EDEN PROFESSIONAL CENTER, 2580 NORTH HIGHWAY 162, SUITE D, EDEN UTAH, 84310.

MEETING STARTED: 11:12 am, Friday October 4th
ATTENDING: Rob Behunin, Trustee; Laurent Jouffray, Trustee; John Lewis, Trustee; Mark Bell, Legal Counsel.
MEMBERS OF THE PUBLIC: Brook Cole

1. Oath of Office for Board Members: Robert Behunin; Laurant Jouffray; John Lewis
   a. Legal cousel, Mark Bell, a notary public, administered the oath of office to the trustees. The Oath of Offices was signed by each trustee and notorized by Mr. Bell.

2. Election of Board Officers: Chair; Vice Chair; Director
   a. Mr. Bell explained the statutory offices needed in the district and the roles and responsibilities.
   b. Mr. Jouffray nominated and motioned Mr. Behunin as Chair. Mr. Lewis second. Vote was unanimous.
   c. Mr. Behunin nominated and motioned Laurent Jouffray as Vice-Chair and Mr. Lewis as Director; second by Mr. Jouffray. Vote was unanimous in the affirmative.

3. Appointment of District Officers: Clerk (CFO); Treasurer; Public Records Officer
   a. Mr. Behunin nominated and motioned Laurent as Clerk and John Lewis as Treasurer. Mr. Lewis seconded. Vote was unanimous in the affirmative.

4. Public Comments: Brief items not listed on agenda; time limit of three (3) minutes. If more time is needed, please contact board chair to be added to a future agenda.
   a. Noted that the meeting was posted on the Utah Public Website and that no members of the public contacted the district via email or phone for information or special accomodations.
   b. Member of the public present was Brook Cole of Nordic Village Ventures who offered no comments.

5. <u>Description of District</u>: Creation by Weber County; Recent Appointment of Trustees; Boundaries; General Discussion
   a. General discussion was held on the boundaries of the district. It was noted that the ski resort is not currently in the district service area, but will need to be annexed in at a later date.

6. <u>Purposes of District</u>: discussion and motion; purposes to include both sanitary sewer service and culinary water service
   a. A request from the property owner came to the district to include water as well as sewer. Discussion was held.
   b. Mr. Joffray motioned to include among the services of the district culinary water and public sewer. Discussion held on secondary water. Mr. Lewis second. Vote was unanimous in the affirmative.
   c. Mr. Lewis raised the question about potential public concern over a new district being formed and that they (the public) will be pulled into it. Mr. Lewis suggested that the district put out some sort of announcement or press release describing the district, its purpose, its boundaries and authorities.

7. <u>Relationship with PIDs</u>: "Will-serve" Notification: discussion; decision; adoption of resolution.
   a. The district has received a request from the property owner, Nordic Village Venture and the associated PID, to provide a "Will-Serve" notification of water and sewer services.
   b. The Chair invited public comment from Brook Cole who noted that the PID is being formed through Weber County and that the county and the PID requires the public infrastructure that is created be turned over to the district upon completion.
   c. Mr. Bell noted that this is merely an intent for the district to own, operate, and maintain certain public infrastructure if it meets the requirments of the district. Brook Cole also noted that the PID is under no obligation to transfer the infrasture to the district. The two groups, the district and the PID, are expressing the willingness to work together on future water and sewer infrastructure and may enter into a contractual arrangement at a future date.
   d. It was noted that this is, in fact, not technically a "Will-Serve" notice but rather a Notice of Preliminary Intent from the district to the PID.
   e. Mr. Lewis wanted to ask some questions offline, and Mr. Bell cautioned that any questions pertaining to the business of the district should be conducted openly and that if Mr. Lewis had questions of business nature or private interests that might impact the district his questions could be addressed offline but without a quorum present.
   f. Mr. Jouffray moved to authorize and issue the Notice of Preliminary Intent to Own, Operate and Maintain Improvements for for Nordic Village PID No 1-3, and to authorize the Chair to sign the notice. Mr. Lewis seconded. Vote was unanimous in the affirmative.

8. Budget Matters: discussion/decision; 2024 -- remainder of year; 2025 -- calendar year budget.
   a. Discussion held on the budget that was prepared by a consultant to the district, Brad Rasmussen. The district is very basic in its operation at this point. There are some costs to the district: rent and utilities, UASD Dues, Legal and Engineering fees, Directors and Officers insurance, Accounting services fees.
   b. It was noted that the distrct is fee based at this time and not receiving tax funding.
   c. Chair recognized Brook Cole. Brook noted that GWC Capital has helped get the districted started by funding legal fees and engineerg fees. He also noted that GWC Capital is the manager of Nordic Village Ventures and all start-up costs have come from Nordic Village Ventures.
   d. Mr. Bell noted the district should consider a reimbursement agreement from the district to Nordic Village Ventures.
   e. Discussion was held concerning Nordic Village Ventures would receive a reservation fee for a specified period of time, and the mechanism of how those fees would be assessed.
   f. Board authorized Mr. Bell to work with Nordic Village Ventures on a reservation agreement.

9. Public Hearing: District Name Change to "Nordic Valley Improvement District"
   a. Opened Public Hearing on Name Change.
   b. No comment from the public.
   c. Public Hearing Closed.

10. Action Item: Discussion of Name Change; Adoption of Name Change Resolution
   a. Mr. Bell explained the details of how the name change would proceed.
   b. Mr. Behunin asked Mr. Bell to clarify that the district is a special district as opposed to a special service district. Mr. Behunin noted that we need to make the change from a “special service district” with the Lt.Governor’s Office to a “special district.” The Public Records Office also listed the district as a “special district.” That needs to be changed as well.
   c. Laurent motioned to approve Resolution No 2024-10-04 A Changing the Name of the District to Nordic Valley Improvement District. John seconded. Roll call vote was unanimous in the affirmative.

11. Action Item(s): Discussion; Approval of Policies; Adoption of Resolution(s)
   a. Bylaws (UASD Template)
   b. Board Meetings (UASD Template)
   c. Conflicts of Interest (UASD Template)
   d. Critical Infrastructure Records (UASD Template)

e. Government Records Access and Management Act (UASD Template)
f. Purchasing Policies (UASD Template)
g. Public Comments Policy

Mr. Bell explained that the policies proposed for adoption are templates provided by the Utah Association of Special Districts. As templates, these will need to be adjusted to make them more closely aligned with the district, but they are sufficient at this time to get the district started.

Mr. Bell also noted that the board does not have to approve these today and that they can take the time to review further.

Mr. Behunin noted that the board members had received all of those in advance and had the opportunity to review except for the GRAMA and the Public Comments Policy.

Mr.Jouffray asked a question about the name change on the document.

Mr. Bell noted a typo in the document on page three. The signature line has Midvalley Sewer and should be Nordic Valley Sewer Improvement. The change was made by handwriting in the correct name.

Mr. Lewis motioned to approve Resolution 2024-10-4-B Adopting Bylaws, Policies and Procedures Governing the Operation, Management and Activities of the Nordic Valley Sewer Improvement District. Mr. Jouffray seconded. Roll call vote was unanimous in the affirmative.

12. Action Item: Preliminary Funding Agreement with Nordic Valley Ventures; Discussion/Decision
    a. Motion to table Item 12 by Mr. Lewis. Seconded by Mr. Jouffray. Vote was unanimous in the affirmative.

13. Action Item: District to Hold Elections Under the Rules for a "Basic Special District" Utah Code Annotated §§ 17B-1-1402 & 17B-1-306. Base Elections on: Acreage, Assessed Value or Water. Discussion/Decision.
    a. Mr. Bell explained how the voting for board positions would be handled in the future. They are typically based on acerage, assessed value or water rights.
    b. The board can set the way in which elections handled.
    c. Brook Cole asked how voting rights were allocated. Mr. Bell gave an example of how voting rights are allocated. If the development is divided into 1 acre lots and a person owns half an acre, that person gets .5 (one half) of a vote.
    d. Mr. Bell indicated that the district does not have to vote on this issue today and that the district has two years to make a decision.

e. More discussion was regarding acreage versus assessed value and included how condiminiums might be handled.
f. Mr. Lewis moved to table Item 13. Mr. Jouffray seconded. Vote was unanimous in the affirmative.

14. Action Item: Schedule of Regular Meetings for Remainder of 2024; Calendar Year 2025
   a. Discussion was held about the next two meeting for calendar year 2024, and that the district needed to hold a public hearing for a tentative budget for 2025.
   b. November 19, 2024 for the next meeting and public hearing for the tentative 2025 budget at 11am.
   c. December 19, 2024, for the public hearing to approve the 2025 budget at 11am.
   d. The district will attempt to have the reservation agreement done for the November meeting.
   e. Discuss was held about another property owner who is not in the district and who may seek annexation and services from the district.
   f. Laruent Jouffray moved to approve the 2024 meeting schedule. John Lewis seconded. Vote was unanimous in the affirmative.

15. Professional Service Matters: Disclosure of Nordic Valley Ventures' Consultants Providing Professional Services related to District; Discussion/Decision
   a. Mark Bell disclosed that he has been providing legal services to GWC Capital. He will prepare the appropriate documentation to make sure the engagement agreements were in place to manage any conflicts of interest.

16. Information/Training: Information: Board Member Training at the UASD Annual Conference November 6, 7, 8. Specific training for new boards on November 6. Location: Davis Conference Center, 1651 North 700 West, Layton, Utah.
   a. Mark Bell will be providing the clerk training.
   b. Rob Behunin registered and paid for the board to attend.

17. Closed Session (if needed): Discussion of "Closed Meeting" Topics, Utah Code Annotated § 52-4-205[1]
   a. No closed session needed.

18. Trustees: Information provided re: current, past or future business of District
   a. No business.

19. Adjournment
   a. Motion to adjourn by Mr. Jouffary. Mr. Lewis seconded. Meeting adjourned.

____

[1] See, e.g., https://le.utah.gov/xcode/title52/chapter4/C52-4_1800010118000101.pdf

Policy Statement: The District does not discriminate on the basis of race, color, national origin, gender, religion, age or disability in employment or the provision of services.

Disabilities: In compliance with the Americans with Disabilities Act, any individual needing accommodations or services during this meeting should contact Robert Behunin at least 24 hours prior to the meeting. Mr. Behunin may be reached by email at rob.behunin@gmail.com or by telephone at (801) 400-3649.

Certificate of Posting: On or before 11:00 a.m. on Thursday, October 3, 2024, a copy of this Agenda was posted on the Utah Public Notice Website under Utah Code §63F-1-701. Certified by Robert Behunin, Member, Board of Trustees

Approved on November 19, 2024.

RESOLUTION NO. 29-2024

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF WEBER COUNTY APPOINTING MEMBERS TO THE NORDIC VALLEY SEWER IMPROVEMENT DISTRICT BOARD OF TRUSTEES

WHEREAS, the Nordic Valley Sewer Improvement District was created by resolution in 1980 but has been inactive for several years; and

WHEREAS, the Board of Trustees ("Board") for the district has ceased to function, and the terms of all the Board members have expired; and

WHEREAS, Utah Code Ann. § 17B-2a-404(3)(a)(ii) provides that vacancies on the Board may be filled by appointment by the Commission; and the Commission has taken appropriate action to fill this vacancy pursuant to the requirements of Utah Code Ann. § 17B-1-304 by publication and posting notice of the vacancy; and

WHEREAS, the Commission has received three applications for the vacancies on the Board and has determined that all applicants are qualified to fill the positions;

NOW THEREFORE, the Commission herby appoints Laurent P. Jouffray, Robert T. Behunin, and Lloyd Lewis as board trustees with term expirations as noted below.

Board Member		Term Expiration
1.	Laurent P. Jouffray	12/31/2026
2.	Robert T. Behunin	12/31/2028
3.	John Lloyd Lewis	12/31/2028

These appointments are effective immediately upon adoption of this Resolution and the appointees taking the oath of office.

RESOLVED this 28th day of May, 2024.

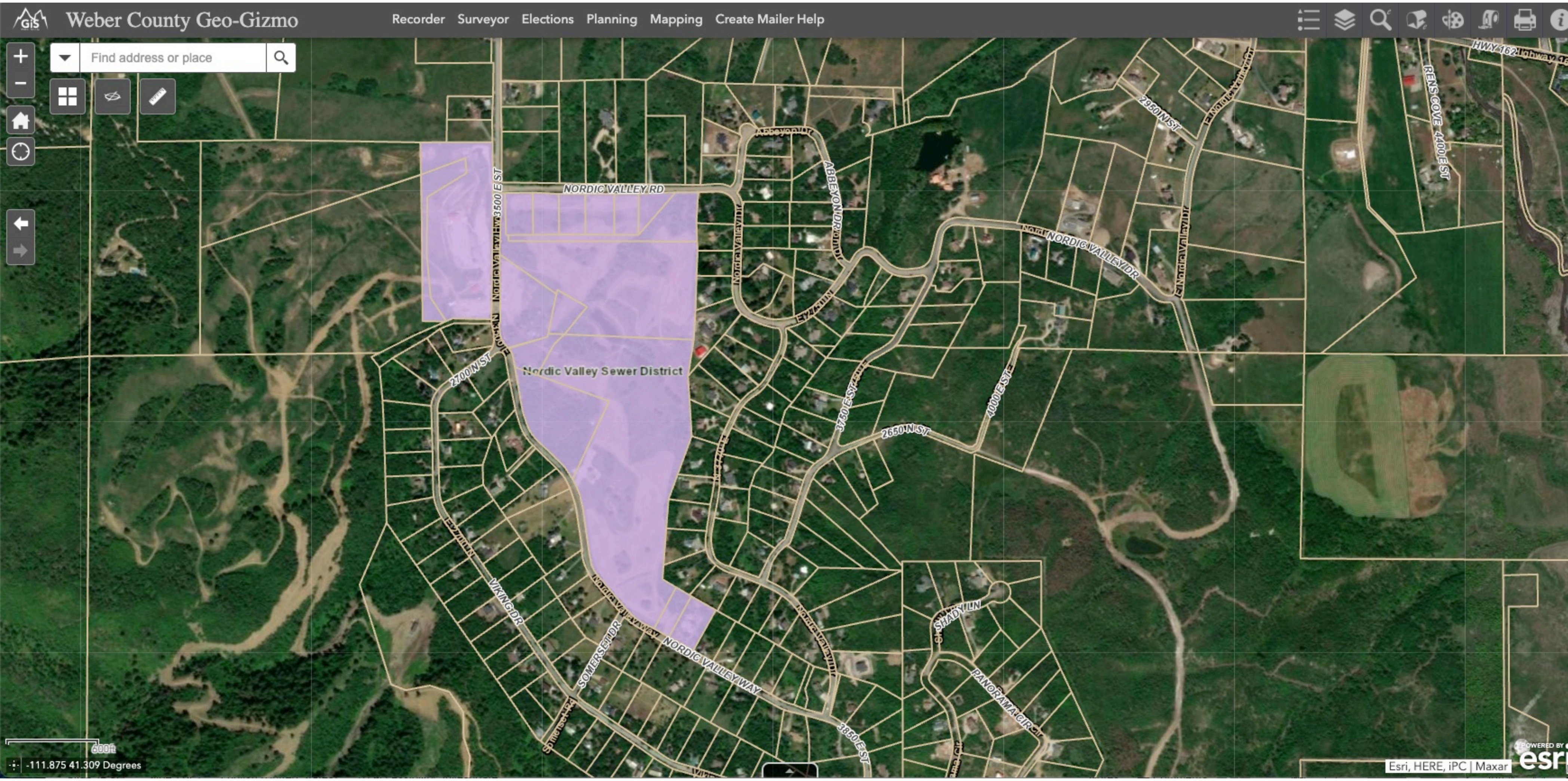
BOARD OF COUNTY COMMISSIONERS
OF WEBER COUNTY

By [signature]
James "Jim" Harvey, Chair

Commissioner Bolos voted Aye
Commissioner Harvey voted Aye
Commissioner Froerer voted Aye

ATTEST:

[signature]
Ricky Hatch, CPA
Weber County Clerk/Auditor


Weber County Geo-Gizmo
Recorder
Surveyor
Elections
Planning
Mapping
Create Mailer Help
Find address or place
Nordic Valley Sewer District
NORDIC VALLEY RD
3500 E ST
2700 N ST
ABBEYON DR
3750 E ST
2650 N ST
4000 E ST
NORDIC VALLEY DR
2950 N ST
RENS COVE
4400 E ST
HWY 162
VIKING DR
SOMERSET DR
NORDIC VALLEY WAY
3850 E ST
SHADY LN
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OATH OF OFFICE

STATE OF UTAH

I, Robert Behunin, having been appointed to the office of trustee of the Nordic Valley Sewer Improvement District do solemnly swear (or affirm) that I will support, obey and defend the Constitution of the United States and the Constitution of the State of Utah, and that I will discharge the duties of my office with fidelity.

____

Signature

State of Utah)
: ss
County of Weber)

Subscribed and sworn to before me this ____ day of October 2024.

____

Notary Public

Seal:

*Utah Code § 78B-1-142: "Every court, every judge, clerk and deputy clerk of any court, every justice, every notary public, and every officer or person authorized to take testimony in any action or proceeding, or to decide upon evidence, has the power to administer oaths or affirmations."

File oath by sending to: Oath of Office, Utah State Archives, 346 Rio Grande, Salt Lake City, UT, 84101

OATH OF OFFICE

STATE OF UTAH

I, Laurant Jouffray, having been appointed to the office of trustee of the Nordic Valley Sewer Improvement District do solemnly swear (or affirm) that I will support, obey and defend the Constitution of the United States and the Constitution of the State of Utah, and that I will discharge the duties of my office with fidelity.

____

Signature

State of Utah)
: ss
County of Weber)

Subscribed and sworn to before me this ____ day of October 2024.

____

Notary Public

Seal:

*Utah Code § 78B-1-142: "Every court, every judge, clerk and deputy clerk of any court, every justice, every notary public, and every officer or person authorized to take testimony in any action or proceeding, or to decide upon evidence, has the power to administer oaths or affirmations."

File oath by sending to: Oath of Office, Utah State Archives, 346 Rio Grande, Salt Lake City, UT, 84101

OATH OF OFFICE

STATE OF UTAH

I, John Lewis, having been appointed to the office of trustee of the Nordic Valley Sewer Improvement District do solemnly swear (or affirm) that I will support, obey and defend the Constitution of the United States and the Constitution of the State of Utah, and that I will discharge the duties of my office with fidelity.

____

Signature

State of Utah)
: ss
County of Weber)

Subscribed and sworn to before me this ____ day of October 2024.

____

Notary Public

Seal:

*Utah Code § 78B-1-142: "Every court, every judge, clerk and deputy clerk of any court, every justice, every notary public, and every officer or person authorized to take testimony in any action or proceeding, or to decide upon evidence, has the power to administer oaths or affirmations."

File oath by sending to: Oath of Office, Utah State Archives, 346 Rio Grande, Salt Lake City, UT, 84101

NORDIC VALLEY SEWER IMPROVEMENT DISTRICT
2580 North Highway 162, Suite d
Eden, UT 84310

NOTICE OF PRELIMINARY INTENT TO OWN, OPERATE, AND MAINTAIN IMPROVEMENTS FINANCED BY NORDIC VILLAGE PID NOS 1-3

DATE: October 4, 2024

TO WHOM IT MAY CONCERN:

Please be advised that the Nordic Village Public Infrastructure District Nos. 1-3 (the "PIDs") have submitted a request to Nordic Valley Sewer Improvement District ("NVSID"), requesting that NVSID own, operate, and maintain improvements and facilities relating to culinary water and sewer service, including water treatment and distribution improvements and facilities and sewer collection and treatment improvements and facilities (collectively, the "Improvements") relating to the existing and future development to occur at and around the base of the Nordic Valley Ski Resort, located at approximately 3567 Nordic Valley Way, Eden, UT 84310 (the "Resort"). The improvements intended to be dedicated to the District include:

- sanitary sewer collection lines, treatment facilities, water storage facilities and related land or easements for these facilities in the proposed sizes and quantities as depicted in the Preliminary Engineering Report prepared by Aqua Engineering; and
- potable water wells, transmission lines, storage tank, distribution lines and related land or easements for these facilities in the proposed sizes and quantities as depicted in the Nordic Village Water Master Plan prepared by Horrocks Engineering.

NVSID agrees to own, operate, and maintain the Improvements, subject to the PIDs and/or the Resort's completion of the Improvements in compliance with NVSID's permitting requirements and construction in accordance with the standards and specifications of NVSID and payment of any applicable fees relating to the Improvements. NVSID acknowledges and confirms that nothing in this communication shall obligate the PIDs or the Resort to construct any Improvements for dedication to NVSID unless required by separate agreement with NVSID.

Sincerely,

____

Robert Behunin
Chair, Board of Trustees
telephone: (801) 400-3649

RESOLUTION NO. 2024-10-04-___

A RESOLUTION CHANGING THE NAME OF NORDIC VALLEY SEWER IMPROVEMENT DISTRICT TO “NORDIC VALLEY IMPROVEMENT DISTRICT," SETTING AN EFFECTIVE DATE FOR THE CHANGE, AND AUTHORIZING AND DIRECTING THE CHAIR OF THE BOARD OF TRUSTEES TO IMPLEMENT THE NAME CHANGE

RECITALS

A. The Nordic Valley Sewer Improvement District ("District") was created by Weber County, Utah in 1980.

B. A purpose of the creation of the District was to provide sanitary sewer services within the geographical boundaries of the District;

C. Until 2024, the District never conducted any formal operations; in May 2024, Weber County appointed a three (3) member board of trustees to operate and conduct the business of the District;

D. The District's service area encompasses a portion of Weber County commonly known as “Nordic Valley;”

E. The Board of Trustees (the "Board") finds that the current name of the District is not adequately descriptive of the services it will provide; the reason for this finding is that the District will provide both sanitary sewer and culinary water services, and may in the future provide other services allowed by law;

F. The Board finds it reasonable and appropriate to adopt a new name for the District, to more clearly reflect the “improvement” services to be provided;

G. Utah Code Annotated Section 17B-1-105 authorizes the District to change its name upon satisfying specific criteria, conditions, and requirements.

H. The District has given notice and held a public hearing regarding the proposed name change, and has otherwise complied with all lawful requirements to effect a change in the District's name.

RESOLUTION

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees of the Nordic Valley Sewer Improvement District as follows:

Section 1. Name Change. The name of the District shall be changed to "Nordic Valley Improvement District." Any reference to Nordic Valley "Sewer Improvement" District after the date hereof shall mean and refer to the "Nordic Valley Improvement District."

Section 2. Effective Date. The name change contemplated by this Resolution shall become effective upon the satisfaction of all requirements set forth in Utah Code Annotated §17B-1-105, including specifically the requirements of 17B-1-105(5).

Section 3. Authority of the Chair to Send Notice and Meet Legal Requirements. The Chair of the Board is hereby authorized and directed to sign and send all notices, to execute all instruments, and to take any other actions required to effectuate the name change contemplated by this Resolution. The Chair may delegate these responsibilities to other members of the Board or to staff as deemed appropriate.

Section 4. Severability. The provisions of this Resolution are severable. If any portion of this Resolution is held invalid or unenforceable, the remaining provisions shall remain in full force and effect.

PASSED AND ADOPTED BY THE BOARD OF TRUSTEES OF THE NORDIC VALLEY SEWER IMPROVEMENT DISTRICT ON THIS 4TH DAY OF OCTOBER 2024.

NORDIC VALLEY SEWER IMPROVEMENT DISTRICT

ATTEST:

______________________________ By:______________________________
Clerk Chair, Board of Trustees

Roll Call Vote	**Aye**	**Nay**
Trustee Behunin	____	______
Trustee Jouffray	____	______
Trustee Lewis	____	______

October __, 2024

Lieutenant Governor Deidre Henderson
Office of the Lieutenant Governor
Utah State Capitol Complex
350 N State Street, Suite 220
Salt Lake City, UT 84114

RE: Notice of Impending Name Change of Nordic Valley Sewer Improvement District

Dear Lieutenant Governor Deidre Henderson,

Pursuant to Utah Code Annotated § 67-1a-6.7 and § 17B-1-105 this notice serves to inform the Office of the Lieutenant Governor of the impending name change of "Nordic Valley Sewer Improvement District" to "Nordic Valley Improvement District."

1. Current Name of the District:

- **Name:** Nordic Valley Sewer Improvement District
- **Address:** Eden Professional Center, 2580 North Highway 162, Suite D, Eden, Utah 84310
- **Service Area:** A portion of Weber County, Utah commonly known as "Nordic Valley"

2. New Name of the District:

- **New Name:** Nordic Valley Improvement District

3. Resolution Information:

- **Resolution Number:** 2024-10-04 ___
- **Date of Adoption:** October 4, 2024
- **Board of Trustees:** Robert Behunin; Laurent Jouffray and John Lewis

4. Public Hearing Details:

- **Date of Public Hearing:** October 4, 2024 at 11:00 a.m.
- **Notice of Public Hearing:** Utah Public Notice Website

5. Effective Date of Name Change:

- The name change is scheduled to take effect on October 4, 2024, or thereafter upon the issuance of a Certificate of Name Change by the office of the Lieutenant Governor and the recording of the required documents with the Weber County Recorder's Office.

6. Contact Information:

For further information or to submit any required documentation, please contact:

- **Name:** Robert Behunin
- **Title:** Chair, Board of Trustees

- **Phone:** 801-400-3649
- **Email:** rob.behunin@gmail.com

We kindly request that the Certificate of Name Change be issued at your earliest convenience. Upon receipt of the certificate, we will ensure that all necessary recordings are completed in compliance with the law.

Thank you for your help and attention to this matter.

____

Robert Behunin
Chair, Board of Trustees
Nordic Valley Sewer Improvement

BYLAWS

Nordic Valley Improvement District

INDEX

Nordic Valley Improvement District

BYLAWS

A. GENERAL.

In the event of a conflict between these Bylaws and any policy, procedure, rule or regulation of the District or any motion approved by the Board of Trustees of the District (the "Board") as reflected in official Board meeting minutes, these Bylaws shall control.

B. PRINCIPAL OFFICE.

The District's office and principal place of business shall be located at Eden Professional Center, 2580 North Highway 162, Suite D, Eden, Utah, 84310, until changed pursuant to Board action.

C. NAME/ORGANIZATION.

1. Name. The name of this special district is Nordic Valley Improvement District, herein the "District".

2. Organization. The District was organized pursuant to applicable provisions of the Utah Code.

3. Nature of District. The District is a political subdivision of the State of Utah and a body corporate with all of the powers granted or necessarily implied by state law.

4. Public Purpose. The purpose of the District is to provide the services and exercise the powers stated in the creation documents of the District; and to exercise all powers conferred upon such districts by law. *See* Title 17B Chapter 1 of the Utah Code and appropriate provisions in Title 17B Chapter 2a of the Utah Code.

D. TRUSTEES.

1. Authority. The District is governed by a Board of Trustees, the members of which are appointed and/or elected as provided by law (the "Board") as authorized by Utah Code Title 17B, Chapter 1, Part 3.

2. Oath of Office. Prior to assuming official duties, each Trustee is to take and subscribe, before an officer authorized to administer oaths, to an oath as required by Utah Code Ann. § 17B-1-303(3). However, the failure of a Trustee to take the required oath shall not invalidate any official act of that Trustee.

3. Fidelity Bond/Insurance. A corporate surety bond or theft or crime insurance, as allowed by law, for the faithful performance of the Trustee's duties is required for each Trustee as provided in Utah Code Ann. § 17B-1-303(7) at the expense of the District, in the amount and with the surety, sureties, insurance company or insurance companies prescribed by the Board.

4. Term of Office. The term of each member of the Board of Trustees is four (4) years and until the Trustee's successor is elected or appointed, as appropriate, and has qualified, all as provided in Utah Code Title 17B, Chapter 1, Part 3 and any applicable provision in Title 17B, Chapter 2a of the Utah Code. A Trustee appointed to fill a vacancy will serve the unexpired portion of the term of the Trustee being replaced. The term of a person elected or appointed to serve on the Board, subject to the above and except as may otherwise be provided by law, commences at noon on the January 1 following the Trustee's election or appointment.

5. Trustee Vacancies. To the extent allowed by law, a vacancy in a Trustee's term of office shall be deemed to exist in the case of death, resignation, disqualification of the Trustee (as, for example, when a Trustee ceases to be a registered voter who resides within the boundaries of the District or the Trustee ceases to reside within the boundaries of the District or a particular Division or area within the District), if a Trustee has been declared of unsound mind by order of a court, or if a Trustee has been convicted of or pled guilty or "no contest" to a felony. Except as otherwise provided in Utah Code Ann. § 17B-1-303(6), all vacancies which may occur on the Board will be filled in accordance with the requirements of Utah Code Ann. § 20A-1-512, as it may be amended from time to time.

6. Powers and Duties. The Board of Trustees has all powers necessary for the administration of the affairs and operation of the properties of the District and may do all such acts as are not by law, or these Bylaws, forbidden. The duties and powers of the Board are generally set forth in Utah Code Ann. §§ 17B-1-301 and the specific Part of Title 17B, Chapter 2a of the Utah Code that applies to the District. The primary function of the Board is to establish policies and make decisions as guidelines for administrative action. The Board may employ or retain the services of a General Manager/CEO/Director (hereafter the "General Manager") and other employees and may retain the services of consultants to perform specified duties and activities under the direction of the General Manager and, ultimately, of the Board.

7. Meetings. Regular, special and emergency meetings of the Board of Trustees may be held as provided in any Board Meeting Policies and Procedures adopted by the Board (the "Board Meeting Policy") and in the Utah Open and Public Meetings Act (Utah Code Ann., §§ 52-4-101, *et seq*. the "Act"). At all meetings of the Board, a majority of the Trustees, or a majority of the voting power of the Trustees, as applicable, shall constitute

a quorum for the transaction of business. *See* Utah Code Ann. § 17B-1-310. Meetings of the Board may take place through telephonic and other electronic means as may be provided in the Act and in the Board Meeting Policy.

E. OFFICERS.

1. Principal Officers. The principal officers of the District shall consist of a Board Chair, a Board Vice Chair, a General Manager (or Director), a Clerk of the District, a Treasurer, a Records Officer and such other officers as the Board may from time to time establish.

2. Qualifications; Election and Term of Office. The Chair and the Vice Chair shall be selected from the Trustees by majority vote of the Trustees annually or biennially at the discretion of the Board. Any vacancy in the position of Chair or Vice Chair caused by the expiration of the term of the incumbent as a member of the Board or by the death, resignation or removal of the incumbent shall likewise be filled by a majority vote of the Trustees and the Trustee selected to fill the position shall do so for the remaining unexpired term. The Board shall also appoint a General Manager (or Director), a Clerk, a Treasurer, a Records Officer and other officers and assistant officers as desired by the Board. The Chair may not serve either as Treasurer or Clerk and the Clerk may not also serve as Treasurer. Subject to those limitations, and except as otherwise provided by law, one person may hold more than one office. Notwithstanding the foregoing, the officers shall serve until their replacements are elected or appointed provided, however, that an officer who is also a full-time employee of the District will not continue to serve in office after the officer ceases to be an employee of the District unless there is a written agreement between the District and the officer that provides otherwise.

3. Duties of Officers.

    a. Chair. The Chair shall, when present, preside at all meetings of the Board and do and perform all duties incident to that position as are customarily done or performed by a special district board chair. Unless the Board action approving any contract or other document specifies otherwise, either the Chair or the General Manager (or Director), or both, shall be authorized and empowered to execute and implement any and all properly approved documents for and on behalf of the District.

    b. Vice Chair. The Vice Chair shall chair meetings of the Board and otherwise act in the place of the Chair when the Chair is absent.

    c. General Manager. The General Manager (or Director) shall be the Chief Operating Officer of the District and shall be responsible for the day-to-day business and affairs of the District, subject to oversight by the Board. The General Manager shall, among other duties, supervise purchasing for the District, supervise the preparation and negotiation of contracts, make necessary contacts on behalf of the District with responsible officials and representatives of federal, state, county and local units of government, verify all payrolls, claims and expenditures for submission to the Board, assist in preparing the annual budget, supervise all employees of the District and be responsible for and exercise supervision and control over the District's property, facilities and operations. Respecting purchases made for or on behalf of the District, the General Manager, or a designee of the General Manager under the General Manager's supervision, is the Board's designee to act as the District's Procurement Official, as provided in the Utah Procurement Code found in Title 63G, Chapter 6a of the Utah Code. The General Manager will perform all other duties, assignments and functions required by the Board to the end that the District may be operated in an efficient, economical and satisfactory manner and effectively serve the public. The General Manager shall serve at the pleasure of the Board. Unless the Board action approving a contract or other document specifies otherwise, either the General Manager or the Chair, or both, shall be authorized and empowered to execute and implement any and all properly approved contracts and other documents for and on behalf of the District.

d. Clerk. The Clerk shall be the custodian of the District's financial records and of the seal of the District and shall perform such other duties as may be required by law, particularly those duties specified in Title 17B, Chapter 1, Part 6 of the Utah Code, or as may be directed by the Board or the General Manager (or Director), with such assistance as may be appropriate. In particular, the Clerk shall give such notices of meetings and other matters pertaining to the District as are required by law, these Bylaws, or any other enactment of the Board. Among other duties, the Clerk shall provide notice of Trustee elections (if one or more Trustees is/are elected) and certify candidate names to the County Clerk as provided in Utah Code Ann. § 17B-1-306, certify the resolution setting the levy to the County Auditor as provided in Utah Code Ann. § 17B-1-628, and certify any unpaid and delinquent qualifying charges to the County Treasurer as directed by the Board so those charges may become a lien on the delinquent premises as provided in Utah Code Ann. § 17B-1-902. The Clerk or other appointed person shall attend District Board meetings and keep a record of the proceedings as provided in Utah Code Ann. § 17B-1-631 and prepare and present to the Board detailed quarterly financial reports as provided in Utah Code Ann. § 17B-1-638. The Clerk or other appointed person not performing Treasurer duties shall maintain the financial records for each fund of the District and all related subsidiary records (including a list of all outstanding bonds, their purpose, amount, terms, date and place payable) as provided in Utah Code Ann. § 17B-1-632, and shall prepare necessary checks after having made the determinations required by Utah Code Ann. § 17B-1-635. The Clerk shall serve at the pleasure of the Board. One or more Assistant Clerks may be appointed to assist the Clerk and to carry out administrative and other functions of the Clerk.

e. Treasurer. The Treasurer shall have charge and custody of, and be responsible for, all funds received and disposed of by the District from any source whatsoever and, in particular, shall be responsible for the lawful investment and safekeeping of District funds by following the procedures and requirements of the State Money Management Act which is found in Title 51, Chapter 7 of the Utah Code and shall perform such other duties as may be required by law, particularly those Treasurer duties specified in Title 17B, Chapter 1, Part 6 of the Utah Code, or as directed by the Board or the General Manager (or Director), with such assistance as may be appropriate. In particular, the Treasurer shall receive all public funds and money payable to the District, shall keep an accurate, detailed account of all monies received and shall be the custodian of all money, bonds and other securities and assets of the District as provided in Utah Code Ann. § 17B-1-633. The Treasurer shall give or cause to be given a receipt or other evidence of payment to persons paying money to the District treasury as provided in Utah Code Ann. § 17B-1-634. The Treasurer is required to promptly deposit all District funds into the appropriate bank accounts of the District as provided in Utah Code Ann. § 17B-1-637. The Treasurer shall see to it that all money received on any special assessment is applied to pay for the improvement for which the assessment was made as provided in Utah Code Ann. § 17B-1-636. The Treasurer and/or any other person(s) appointed by the Board shall sign all checks for the District after determining that sufficient money is on deposit in the appropriate bank account of the District to honor the check, as provided in Utah Code Ann. § 17B-1-635(2). Notwithstanding anything to the contrary in these Bylaws, or in any policy, procedure, rule or regulation of the District, the person maintaining the financial records of the District may not sign any single signature check. The Treasurer shall serve at the pleasure of the Board. One or more Assistant Treasurers may be appointed to assist the Treasurer and to carry out administrative and other functions of the Treasurer provided that no one person may perform both statutory Treasurer duties and statutory Clerk duties.

f. Records Officer. A Records Officer shall be appointed to exercise such rights and perform such duties in the classification, preservation and oversight of District records as provided in Utah Code Ann. §§ 63G-2-101, *et seq*. (the "Government Records Access and Management Act" or "GRAMA") and in any Records Policy established by the Board, provided that such Policy is consistent with GRAMA, and as may be assigned by the General Manager (or Director). The Records Officer shall be the custodian of the records of the District that are not, by law or these Bylaws, under the custody of some other person such as the Clerk or the Treasurer.

g. Other Officers. There shall be such other officers and the officers shall perform such duties as determined by the Board or the General Manager (or Director) in addition to those duties referenced in these Bylaws.

4. Resignation. Any officer may resign at any time by giving verbal or written notice to the Board. Any resignation shall take effect upon receipt of such notice or at any later time specified therein. Unless otherwise specified in the notice, acceptance of the resignation shall not be necessary to make it effective.

5. Removal of Officers. Any officer elected by the Board may be removed and a successor may be elected by a majority vote of the Board whenever, in the Board's judgment, the best interests of the District would be served by such removal provided, however, that the termination of employment with the District of an officer may be subject to the District's Personnel Policies and Procedures.

F. POLICIES AND PROCEDURES.

1. Formal Rules and Regulations. From time to time, the Board may adopt rules and regulations for the governance and operation of the District including, but not limited to, administrative policies and procedures, personnel policies and procedures, procurement policies and procedures and other rules and regulations (collectively "Rules and Regulations" or "Formal Rules and Regulations"). The Rules and Regulations may cover subjects included in these Bylaws and may be more detailed than these Bylaws provided, however, in the event of any conflict between these Bylaws and the Rules and Regulations that cannot otherwise be reconciled, these Bylaws shall control.

2. Informal Rules and Regulations. "Informal", but nonetheless binding, rules and regulations and policies and procedures may be adopted by the Board or approved by the General Manager (or Director) where such authority has been delegated by the Board. The Informal Rules and Regulations shall be in writing in such form as the Board and/or the General Manager, as appropriate, shall desire. In the event of a conflict between the Informal and the Formal Rules and Regulations, the Formal Rules and Regulations shall control unless declared otherwise by the Board.

3. Amendments. The Formal Rules and Regulations and all other rules and regulations and other enactments of the District may be amended by the Board from time-to-time.

G. CHECKING AND INVESTMENT ACCOUNTS AND DISBURSEMENTS.

1. Deposits. All monies, promissory notes, and evidences of debt or investments belonging to the District shall be deposited in financial centers or banks or with the Utah State Treasurer as authorized by the State Money Management Act, Title 51, Chapter 7, of the Utah Code, or other applicable law.

2. Check Procedure. With the exception of minor “petty cash” purchases or the use of an authorized credit or payment card, payments and disbursements by the District shall be made by a check drawn on the District’s account or by an authorized direct deposit or electronic transfer. A check signer machine or computer with appropriate signature plates or equivalent may be utilized to generate checks after it has been determined that the payment has been properly authorized and does not overextend the budget and there are sufficient funds in the bank account to honor the check. Except as otherwise authorized by the Board, the signatures of the General Manager (or Director) and the Clerk will be depicted on any computer/machine generated checks. When a check is manually prepared, the check shall be signed by any two of the following officers of the District: the General Manager, the Clerk, the Treasurer, the Board Chair, the Board Vice Chair or any other officer of the District as authorized by the Board. A person may sign a check no more than once, even if the person holds more than one office. All checks presented for signature are to be accompanied by documentation supporting the expenditure. A check is not to be submitted for signature, either using the check signer machine or computer or manual signatures, and a direct deposit or electronic transfer is not to be made, unless there are available funds to cover the expenditure.

3. Direct Deposits. As noted in subsection 2 immediately above, properly approved payments, including but not limited to payroll, may be made by direct deposit into an authorized financial institution account or by electronic transfer.

4. Approval. Approved disbursements may be shown in the Board meeting minutes and, if so shown, the minutes shall constitute authority for the payment of capital items and other expenditures which require Board approval. Other disbursements may be approved as provided in the District’s Rules and Regulations.

5. Surety Required. All persons with check signing or direct deposit authority and/or with investment and/or financial recordkeeping responsibilities shall be bonded or covered by theft or crime insurance in such sum as may be required by law or prescribed by the State Money

Management Council and with such surety, sureties, insurance company or insurance companies as the Board shall determine, with the costs of each bond or insurance coverage to be paid by the District. If it appears that the Treasurer or any other officer or employee of the District is making a profit out of public money, is comingling District funds with personal funds, or is using District funds for any purpose not authorized by law, the Treasurer, officer or employee shall be suspended from office and/or employment as provided by law and may be subject to criminal prosecution and/or civil suit.

H. SEAL.

The Board of Trustees may have adopted a corporate seal, the imprint of which may, but need not, be embossed hereon. The Clerk shall have custody of the seal, if there is one, and be responsible for its safekeeping and use.

I. EFFECT OF STATE LAW.

1. State Law to Supplement. The District is subject to the requirements of state law as reflected in applicable provisions of Title 17B and other applicable portions of the Utah Code regardless of whether the subject of those provisions is covered by these Bylaws or other enactments of the Board.

2. State Law to Control. In the event of a conflict between these Bylaws or any other enactment of the Board and an applicable provision of the Utah Code, the Code provision shall control, even though the said provision may not have been in effect when these Bylaws or other enactment were adopted or may have been amended after the effective date of these Bylaws. Notwithstanding the foregoing, however, should the applicable state statute provide that it is not to impact action previously taken then, to the extent permissible, these Bylaws or other District enactment shall continue to control.

J. AMENDMENTS TO BYLAWS.

Amendments to these Bylaws may be made, and these Bylaws may be superseded and replaced by new Bylaws, on the affirmative vote of at least 2/3 of the Trustees, or at least 2/3 of the voting power of the entire Board, as applicable, present at a Board meeting, with a quorum being present, at any meeting of the Board, provided that notice of the intent to amend or replace the Bylaws shall have been given to each Trustee in the notice of the meeting at least three (3) days prior to the meeting, unless such notice requirement is waived by the Trustee.

K. SAVINGS CLAUSE

Should any part, subdivision, section, subsection, sentence, clause, phrase or provision of these Bylaws or the application thereof be found to be invalid or in conflict with state or federal law, the conflicting portion of these Bylaws shall not affect the application or force of the balance of the Bylaws.

These Bylaws were adopted by the Board of Trustees on the _____ day of ______________________, 20___.

____

Chair

NORDIC VALLEY IMPROVEMENT DISTRICT
BOARD MEETING POLICY

INDEX

Nordic Valley Improvement District

BOARD MEETING POLICY

A. BACKGROUND

1. Policy: These rules shall be known as the Nordic Valley Improvement District (the "District") Board Meeting Policy (the "Policy").

2. Purpose: The Policy establishes guidelines for meetings of the District legislative body (the "Board"), including how meetings are to be convened, how they are to be conducted, and how minutes are to be prepared and approved.

B. COMPLIANCE WITH STATE LAW

1. Application of the Open and Public Meetings Act: In adopting the Policy, the District recognizes the application of the Open and Public Meetings Act, UTAH CODE ANN. §§ 52-4-101 *et. seq.,* as it may be modified, amended, superseded or replaced from time-to-time (the "Act"). Any inconsistency or conflict between this Policy and applicable provisions of the Act shall be governed by the Act.

2. Definitions: The definitions stated in UTAH CODE ANN. § 52-4-103 are incorporated herein by reference.

C. MEETING NOTICE AND AGENDA

1. Required Annual Notice: The District Board will, either shortly prior to or at the beginning of each calendar year, establish an annual meeting schedule, including the date, time and location of each regular Board meeting through the year, and give public notice of the annual meeting schedule as required by law. Notwithstanding the foregoing, any meeting may be rescheduled at the request or on the affirmative vote of a majority of the Board Members, with notice of the rescheduled meeting to be provided as stated in section C.4 of this Policy.

2. Special and Emergency Meetings: The Board may hold special and emergency meetings, provided that they are properly called and notice of every such meeting is given as provided in section C.4 of this Policy. No emergency meeting of the Board may be held unless an attempt has been made to notify all of the members of the Board and a majority of the Board Members approve holding the meeting. A special meeting of the Board may be called by the Chair and an emergency meeting may be called either by the Chair or by the Chief Administrative Officer of the District (the "Manager"). Any Board Member or the Manager may request that a special meeting of the Board be held, but the approval of the Chair will be required. In the absence of the Chair, the Vice Chair may call or approve either a special meeting or an emergency meeting of the Board. In the absence of the Manager, any person designated by the Manager may call an emergency meeting of the Board. If, due to unforeseen circumstances, it is necessary for the Board to hold an emergency meeting to consider matters of an emergency or urgent nature, and they are unable to meet in person, the Board may meet via electronic communication, in compliance with the electronic meeting policy in section D.8 of this Policy.

3. **<u>Agenda</u>**: An agenda shall be prepared for every meeting of the Board. Each topic to be considered by the Board shall be listed with reasonable specificity as an agenda item. Any Board meeting agenda may include a "public comment," or its functional equivalent, agenda item and, and at the discretion of the Board Member who is chairing the meeting, any topic raised by a member of the public may be discussed, even if it is not listed as an agenda item. Each agenda will include topics as requested by any Board Member or the Manager. Topics may be identified in the agenda using general references. For example, an agenda reference to "Personnel" or "Personnel Matters" will enable the Board to discuss, consider and act upon any personnel matters, decisions or issues that are brought up during the meeting.

4. **<u>Notice</u>**: Not less than 24 hours' advance public notice, including the agenda, date, time and location, will be given as a class A notice under UTAH CODE ANN. § 63-G-30-102(1) for each regular and special meeting of the Board by: (a) publishing the notice on the Utah Public Notice Website created under UTAH CODE ANN. § 63A-16-601; (b) publishing the notice on the District's or the Board's official website, if the District or the Board maintains an official website and has an annual operating budget of $250,000 or more; and (c) posting the public notice in a public location in or near the District that is likely to be seen by residents of the District or, if there are no residents within the District, individuals who pass through or near the District. The requirement that the public notice be posted in a public location within the District may be satisfied by posting the notice in, on, or near the anchor location for the Board meeting or the structure or other area where the meeting will be held. If, due to unforeseen circumstances, it is necessary for the Board to hold an emergency meeting to consider matters of an emergency or urgent nature, the foregoing notice requirements may be disregarded and the best notice practicable may be given. These notice requirements are minimum requirements and are not to be construed as precluding such additional postings and notifications as may be directed by the Board and, in any event, it is recommended that the written notice be posted at the principal office of the District or, if there is no principal office, at the building where the meeting is to be held. If any Board Member will participate in the meeting through electronic means, in addition to the notice requirements stated above, the notice requirements of UTAH CODE ANN. § 52-4-207(3) must be satisfied, including providing notice to all Board Members at least 24 hours before the meeting and including in all meeting notices a description of how the Board Members will be connected to the electronic meeting and posting written notice at the anchor location, which is the physical location from which the electronic meeting originates or the participants are connected, if there is an anchor location.

5. **<u>Amendments to Agenda</u>**: The agenda of a meeting of the Board may be amended to include additional subjects at the request of any Board Member, even though notice of the meeting has already been given as provided in section 4 immediately above, if the amended notice is posted and given in accordance with the requirements of section 4 at least 24 hours before the scheduled time of the meeting.

D. CONDUCT OF MEETINGS

1. 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 members or statutory voting power of the Board is present. A Board Member who is not physically present may nevertheless participate in the meeting through electronic means and be counted toward the required quorum in accordance with UTAH CODE ANN. § 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 physically present, except that the Board Member who chairs the meeting must be present at the anchor location unless there is no anchor location as allowed under UTAH CODE ANN. § 52-4-207(5).

2. Control of the Meeting: Unless the Chair or Vice-Chair, as appropriate, is participating in the meeting via electronic communication or both the Chair and Vice-Chair are absent, each meeting of the Board will be conducted by the Chair, if present, or by the Vice-Chair in the absence of the Chair. If neither the Chair nor the Vice Chair is physically present (but a quorum is present) a Board Member who is physically present at the anchor location will preside over the meeting with the consent of the Board Member(s) who are physically present at that location. The Board Member chairing the meeting may relinquish the chair to the next Board Member in succession, other than a Board Member participating via electronic communication, 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.

3. Public Participation: Time for public comment may, in the discretion of the Chair, be allowed at any meeting of the Board in accordance with the following:

a. Each speaker will be expected to state his or her name and address before directing comments to the Board.

b. The public comment portion of a meeting is not a question and answer session. Rather, it is intended to enable the Board to receive testimony and input from the public. Any member of the public who has questions regarding any aspect of the District's operations is encouraged to contact the Manager or an appropriate staff member outside of the meeting, including staying after the meeting has been adjourned.

c. The Board member chairing the meeting shall have discretion in allotting time to each speaker according to the circumstances including, but not limited to, the number of people desiring to speak and the amount of business to be conducted by the Board.

d. Once a speaker has been informed that his or her allotted time is up, the speaker will be expected to finish the sentence and relinquish the floor. If the speaker wants to say more, the speaker may meet privately with staff and may also continue his or her remarks at the next Board meeting during which public comments are accepted.

e. Speakers are encouraged to avoid repetition and, where a group is present, to designate a spokesperson to speak for the group. In the interest of economy and the orderly conduct of a meeting, the Board Member chairing the meeting may ask any speaker who is merely restating points if he or she has any new information for the Board. If the speaker does not have new information, the speaker may be asked to relinquish the floor to another speaker who has new information.

f. A speaker wishing to address a particular line item on the meeting agenda should designate the agenda item being discussed at the beginning of the remarks. Comments regarding agenda items will take priority over the discussion of non-agenda items. Persons will, at the discretion of the Board Member chairing the meeting, be allowed to discuss any relevant matter during the public comment portion of a Board meeting, even if the matter is not otherwise identified as an agenda item.

g. It is the intent that public comments generally be directed to the Board only during the public comment portion of the agenda, if there is one, or during a public hearing. Nevertheless, the Board Member chairing the meeting may, in his or her discretion, direct questions to experts in attendance and may allow brief public comment during the discussion of a specific agenda item.

h. To encourage public comment on matters before the Board, signed letters and written statements that are short enough to be read aloud in three minutes or less may be read into the record during the public comment portion of a Board meeting provided, however, that the use of offensive, profane or vulgar language or personal attacks that impugn the character or integrity of an individual may not be read into the meeting record.

4. **Expulsion From a Meeting**: The right to attend and observe a public meeting does not include the right to otherwise participate in that meeting unless it is a public hearing. Public participation in District Board meetings is a privilege granted by the Board in the interest of open government, but is not a right. 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 Board Member chairing the meeting, security personnel or law enforcement officials may be called to remove the person.

5. **Closed Meetings**: Except as otherwise provided in this section 5, all meetings of the Board are to be open to the public. 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, provided that a quorum is then present. A meeting may be closed for any of the applicable reasons specified in UTAH CODE ANN. § 52-4-205(1) as follows:

a. A discussion of the character, professional competence, or physical or mental health of an individual.

b. Strategy sessions to discuss collective bargaining.

c. Strategy sessions to discuss pending or reasonably imminent litigation.

d. Strategy sessions to discuss the purchase, exchange, lease or sale of real property (including a water right or water shares) if public discussion of the transaction would disclose the appraisal or estimated value of the subject property or prevent the Board from completing the transaction on the best possible terms provided, however, that before the sale of real property may be discussed during a closed meeting, public notice that the property will be offered for sale must be given, and the terms of the sale must be publicly disclosed before the Board approves the sale.

e. A discussion regarding the deployment of security personnel, devices or systems.

f. Investigative proceedings regarding allegations of criminal misconduct.

g. Deliberations of the Board acting in the capacity of a procurement evaluation committee, the procurement protest officer, or a procurement appeals panel.

h. To consider information designated as a trade secret as necessary to properly conduct a procurement.

i. To discuss information that, at the time, may not be disclosed to the public or a participant in the procurement process and the Board needs to review or discuss the information in order to properly fulfill its role and responsibilities in the procurement process.

j. To consider a loan application, if public discussion of the loan application would disclose non-public personal financial information, a nonpublic trade secret, as defined in UTAH CODE ANN. § 13-24-2, or non-public business financial information, the disclosure of which would reasonably be expected to result in unfair competitive injury to the person submitting the information.

6. **Conduct of a Closed Meeting**: The Board may not approve any ordinance, resolution, rule, regulation, contract or appointment or take any vote during a closed meeting except for a vote on a motion to end the closed portion of the meeting and return to an open meeting. In addition, the Board may not interview an individual who is applying to fill a vacant elected position or discuss filling a midterm Board vacancy or a temporary Board Member absence or discuss the character, professional competence or physical or mental health of an individual under consideration to fill a midterm Board vacancy or temporary absence during a closed meeting. The identity of the specific person whose character, competence or physical or mental health is to be discussed, the identity of the parties to pending or reasonably 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. Only the Board Members, and those individuals designated by the Board, may be present during a closed meeting.

7. **Recording of Meetings**: Unless the District's annual expenditures for all funding, excluding capital expenditures and debt service, are $50,000 or less, the District is required to record all open Board meetings. 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. The District's recording of a meeting is to be maintained for such period of time as specified in the District's approved records retention schedule. If the District has not adopted its own records retention schedule, the records retention schedule established by State Archives for municipalities (or for special or special service districts, should State Archives approve a standard records retention schedule for such districts) shall apply to Board meeting recordings, after which time the recording may be erased or destroyed and any tape or other recording device may be reused. Where written minutes are not prepared, as is allowed for closed meetings, the recording shall be maintained indefinitely. Such recordings are to be maintained in or converted to a format that meets long-term records storage requirements. The recording of a meeting is to be a complete and unedited record from the commencement of the meeting through adjournment of the meeting. Recordings of closed meetings are to be separate from recordings of any open meeting or open portion of the meeting.

8. **Electronic Meetings**: The Board may, from time to time as desired, convene and conduct meetings in which one or more Board Members may attend and participate in the meeting through any electronic means by satisfying the requirements of UTAH CODE ANN. § 52-4-207.

a. Except as otherwise provided by applicable law, one or more "anchor locations" must be established for all electronic meetings. The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected. If there is a physical anchor location, at least one anchor location for an electronic meeting must be in the building where the Board would normally meet if not holding an electronic meeting, unless an emergency situation precludes a meeting from being held at that location.

b. Except as otherwise allowed by applicable law, public notice must be given of each electronic meeting as provided in section C.4 by providing a class A notice as provided in UTAH CODE ANN. § 63G-30-102(1) and, in addition, by posting the written notice at the anchor location, if there is one. In addition, notice must also be given to all Board Members at least 24 hours before the meeting, including a description of how Board Members may electronically connect to the meeting. Space and facilities must be provided at the anchor location(s), and/or via electronic means, so that all interested persons may attend and/or monitor, in person or electronically, the open portions of the meeting. If members of the public will be allowed to monitor or participate in a Board meeting, the meeting notice will include a description of how members of the public may electronically connect to the meeting. In addition, if the meeting is a public hearing, space and facilities must be provided at the anchor location(s) and/or via electronic means so that interested persons and the public may attend, monitor and participate in the hearing. Notwithstanding anything to the contrary in this Policy, the Chair, or the Vice-Chair in the Chair's absence, may determine, based upon budget or logistical considerations, that it is not in the best interest of the District to hold an electronic meeting, in which event the meeting will not be held as an electronic meeting.

c. A quorum of the Board need not be present at a single anchor location for an electronic meeting to be held. As few as one Board Member may be present at the anchor location, if there is a physical anchor location, provided that all other requirements of this Policy and of UTAH CODE ANN. § 52-4-207 are satisfied, for a meeting to be held as an electronic meeting provided that the Board Member who chairs the meeting is physically present at the anchor location, if there is a physical anchor location. The Chair, or the Vice-Chair in the Chair's absence, may also restrict the number of separate electronic connections that are allowed for an electronic meeting based on available equipment capacity.

d. The primary purpose for holding an electronic meeting is to enable members of the Board to participate in the meeting electronically and, provided there is a physical anchor location that is open to the public, arrangements may or may not be made to enable a member of the public to connect to the Board meeting electronically, in the discretion of the District. Notwithstanding anything to the contrary in this Policy, with the exception of a public hearing, the general public and other interested persons may or may not be permitted to speak or present their views electronically at the discretion of the Board Member who chairs the meeting. Members of the public and the news media may attend, monitor and, where appropriate, participate in the public portion of any electronic meeting conducted by the Board at any anchor location, if there is a physical anchor location, and appropriate space and facilities shall be made available at each anchor location, if any, to accommodate the same. Notwithstanding the foregoing, if there is no anchor location that is available to the public, as governed by UTAH CODE ANN § 52-4-207(5), electronic means will be provided for members of the public and the media to monitor open portions of the electronic Board meeting and instructions concerning how to access the electronic Board meeting will be included as part of the meeting notice and agenda.

e. A Board meeting may be held without an anchor location, as provided in UTAH CODE ANN. § 52-4-207(5), based on a determination of the Board Chair that conducting a meeting with an anchor location presents a substantial risk to the health or safety of those present, or who would otherwise be present, at the anchor location, or the location where the Board would normally meet has been ordered closed to the public for health or safety reasons, and the public notice for the meeting includes a statement describing the Chair's determination and a summary of the facts upon which the Chair's determination is based and information describing how a member of the public may attend the meeting remotely via electronic means. The Chair may also close a Board meeting during the course of the meeting based on substantial health or safety concerns as provided in UTAH CODE ANN. § 52-4-207(5)(b). The District may also hold a Board meeting without an anchor location if one or more members of the Board qualify to be on the Board as an owner of land or as an agent or officer of the owner of land, as opposed to being a registered voter who resides within the District, as provided in UTAH CODE ANN. § 52-4-207(5)(c) or (d), provided that the public notice for the electronic meeting includes information concerning how members of the Board and members of the public may attend the meeting remotely by electronic means.

f. Except for a unanimous vote, all votes during an electronic Board meeting shall be taken by roll call.

g. In the event that an applicable state law, rule or regulation conflicts with this section 8, the law, rule or regulation shall control.

E. MINUTES AND RECORDINGS

1. **<u>Open Meetings</u>**: Written minutes and a digital or tape recording shall be kept of all open meetings of the Board. Draft minutes shall be prepared by the person designated by the Board. The written 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; a record of the individual votes taken; the names of each person who is not a member of the Board and, after being recognized by the Chair, provided testimony or comments, and the substance in brief of their testimony or comments (this requirement may be contingent upon the person testifying identifying himself or herself for the record); and any other information that is a record of the proceedings that any Board Member requests be entered in the minutes or recording. The written minutes will record, by individual Board Member, each vote taken during an open Board meeting. If the Board includes elected members, each vote must be recorded in list format by name for all yes votes, no votes, and absent Board Members. The recording is to be a complete and unedited record of the meeting from its commencement through adjournment. Pending Board meeting minutes and the recording of the meeting are public records which will be available for inspection by the public. Pending minutes, which will be marked "draft" or otherwise contain a clear indication that the Board has not yet approved the minutes, will be made available to the public upon request and during normal business hours within a reasonable time after the meeting. Within three business days after the meeting, an audio recording of the meeting will be available to the public for listening. Even though open meetings are to be recorded, the written minutes, once approved by the Board, shall be the official record of action taken during the meeting.

2. **<u>Closed Meetings</u>**: The reason or reasons for holding a closed meeting, the location where the closed meeting will be held, 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 publicly announced and entered in the minutes of the open portion of the meeting.

3. **Sworn Statement**: If the Board closes a meeting exclusively 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 affirming that the sole purpose for closing the meeting was to discuss (a) the character, professional competence or physical or mental health of one or more individuals; or (b) the deployment of security personnel, devices or systems. Notwithstanding anything to the contrary in this Policy, neither a recording nor written minutes are required for a closed meeting that satisfies the requirements of this section 3. A sample Affidavit is attached to this Policy as Attachment "A".

4. **Recording of a Closed Meeting**: If the Board closes a meeting for any purpose other than as specified in section 3 immediately above, the closed portion of the meeting must be recorded and the recording must be safeguarded. The recording of a closed meeting is to be complete and unedited from the commencement of the closed meeting through adjournment of the closed meeting. While a recording of the closed meeting may be required, written minutes of the closed meeting are not mandatory. The recording and any minutes of a closed meeting are to include the date, time and place of the meeting; the names of Board Members present and absent; and the names of all others present except where the disclosure would infringe on the confidentiality necessary to fulfill the original purpose of closing the meeting. Recordings of a closed meeting should be maintained in or converted to a format that meets long-term records storage requirements. Notwithstanding anything to the contrary in this Policy, in the Records (GRAMA) Policy of the District, or in the Government Records Access and Management Act, UTAH CODE ANN. §§ 63G-2-101 *et. seq.* ("GRAMA"), recordings and written minutes of closed meetings are protected records to be disclosed only pursuant to a court order as provided in UTAH CODE ANN. § 52-4-304. Recorded and written minutes (if maintained) of a closed meeting or a closed portion of a meeting shall be maintained separately from any open meeting recording or minutes. Any Board Member who violates the Act regarding the protected status of such recordings or minutes may be subject to criminal penalties.

5. **Approval of Minutes**: Minutes are not "official" until they have formally been approved by the Board. With the exception of minutes that are "protected" as provided in section 4 immediately above, all minutes shall be posted and be available for review and public inspection within three business days after the Board approves the minutes.

6. **Required Posting** An individual who, at an open meeting of the Board, publicly presents or provides electronic information relating to an item on the meeting agenda, will be required to provide, at that time, an electronic or hard copy of the electronic information for inclusion in the public record. Within three business days after the written minutes of an open meeting are approved by the Board, the District will post to the Utah Public Notice Website a copy of the approved minutes and any public materials distributed at the meeting; make the approved minutes and public materials available to the public at the District's primary office; and if the Board provides online minutes, post the approved minutes and any public materials distributed at the Board meeting on the District's website. In the alternative, instead of posting the approved minutes and public materials on the Utah Public Notice Website, the District may post to the Utah Public Website a link to a website on which the approved minutes and any public materials distributed at the meeting are posted.

7. **Site Visits**: Notwithstanding any contrary requirement in this Policy, a recording is not required to be kept of an open meeting that is a site visit or a traveling tour provided that no vote or action is taken by the Board.

F. ANNUAL TRAINING

The Board Chair is responsible, under UTAH CODE ANN. § 52-4-104, to ensure that Board Members are provided annual training on the requirements of the Open and Public Meetings Act. The training may be "in-house" or may be satisfied through attending the annual convention of the Utah Association of Special Districts or other training provided by the Association or by the office of the State Auditor or by the Association and the State Auditor acting jointly, or by attending any other qualifying training approved by the Chair.

G. APPLICATION OF THE POLICY

Neither this Policy nor the Act shall apply to any chance meeting or social meeting of any Board Members provided, however, that such chance meeting or social meeting shall not be used to circumvent this Policy. Similarly, any number of Board Members not constituting a quorum may meet and may discuss District business. Otherwise, this Policy shall apply to all regular, special and emergency meetings of the Board.

Approved by the legislative body of the District on the _______ day of ____________ , 20____.

____
Title: ______________________

ATTACHMENT "A"

CLOSED MEETING AFFIDAVIT

STATE OF UTAH)
:ss.
COUNTY OF ________)

Having first been duly sworn, comes now _________________, who deposes, states and affirms as follows:

1. I am a duly elected or appointed member of the legislative body (the "Board") of the Nordic Valley Improvement District (the "District").

2. A meeting of the District Board was held on _________________, 20___.

3. I presided over the District Board meeting.

4. During the course of the meeting, upon the affirmative vote of at least two-thirds of the Board members in attendance, a quorum being present, the meeting was closed for the sole purpose of discussing: (Please check appropriate box(es) This Affidavit may not be used in place of a recording if any other subject is discussed..)

☐ the character, professional competence, or physical or mental health of one or more individuals; and/or

☐ the deployment of security personnel, devices or systems.

Further Affiant sayeth naught.

____
Signature

SUBSCRIBED AND SWORN to before me this ______ day of _____________, 20___.

____
Notary Public

Nordic Valley Improvement District

CONFLICT OF INTEREST POLICY

I. <u>PURPOSE</u>: The purpose of this Conflict of Interest Policy (the "Policy") is to protect the interests of the Nordic Valley Improvement District (the "District") when the District is contemplating entering into a transaction or arrangement that might benefit the private interests of an officer or employee of the District. The Policy is intended to complement but not replace any state and federal laws governing conflicts of interest that are applicable to special districts and special service districts, including the Utah Public Officers' and Employees' Ethics Act, Utah Code Ann. §§ 67-16-1, *et seq* (the Ethics Act").

II. <u>GOAL</u>: The goal is to set forth standards of conduct for officers and employees of the District in areas where there are actual or potential conflicts of interest between their public duties and private interests.

III. <u>DEFINITIONS</u>:

1. **<u>District</u>:** All references to the "District" are to the entity that is identified above.

2. **<u>Board</u>:** The "Board" is the governing body responsible for the overall operations of the District.

IV. <u>PROHIBITED ACTS</u>:

1. No employee, officer, or Board member shall (1) use his or her District office or employment for private advantage by revealing confidential, controlled, private, or protected information gained through that office or employment, (2) use his or her District position to secure special privileges, or (3) accept other employment that would reasonably be expected to interfere with the ethical performance of his or her public duties.

2. No employee, officer, or Board member shall knowingly receive, accept, take, seek or solicit, directly or indirectly, any gift or loan for himself or herself or for another if: (1) the gift or loan would reasonably tend to influence him or her in the performance of official duties, or (2) the donor has been, is, or may in the near future become involved in any official District business. Exceptions to the prohibition in subparagraph (2) are occasional, non-monetary gifts of a value of not in excess of $50.00; awards publicly presented in recognition of public services; bona fide business loans made in the ordinary course of business; or campaign contributions actually used in a political campaign.

3. No employee, officer, or Board member shall have personal investments in any business entity which will create a substantial conflict between his or her private interests and his or her public duties.

4. Employees may not be involved with any private business which is regulated by the District, may not be involved in any transaction between their private business interests and the District, and may not be involved in any other actual or potential conflict of interest unless the nature and extent of the private business interest(s) are disclosed as explained below.

V. **DISCLOSURE**:

1. Any District officer, employee, or Board member who receives payment for helping a private person or business in a transaction with the District must disclose the payment.

2. Any District officer, employee, or Board member involved in a private business which is subject to District regulation must disclose that involvement. If the regulation is made by an agency or board of which the officer, employee, or Board member is a member, disclosure must be made annually, and again at each meeting in which the officer's or employee's business is discussed. Such oral disclosures shall be made part of the minutes of the meeting.

3. Any District officer, employee, or Board member involved with a private business that does or anticipates doing business with the District must disclose that involvement.

4. Any District officer, employee, or Board member who has a personal or business interest of any kind which raises an actual or potential conflict of interest with District duties must disclose that interest.

5. All such statements are public records, open to public inspection. All disclosures must be made as follows: written disclosure must be made at least annually; orally in any District Board meeting during which a transaction is discussed involving a matter in which the officer, employee, or Board member has an interest; and again in writing when the conflict arises. The general written disclosure must be re-filed every January of each year that the outside interest persists, and must be filed with the officer's, employee's or Board member's immediate supervisor, with the chief executive or administrative officer of the District (the "District Manager"), and with the Board. Written disclosures by a Board member must be filed with the Board Chair (or the Board Vice Chair if the disclosure is filed by the Board Chair) and the District Manager. All disclosures must be considered and approved at least annually by the Board.

VI. **VIOLATIONS**:

A violation of these provisions may subject the officer, employee, or Board member to disciplinary action, in addition to the possibility of criminal prosecution. Any violations will be thoroughly investigated and prosecuted. Please be aware that this document is a shortened and simplified statement of the legal requirements involved in this area. YOUR CONDUCT WILL BE GOVERNED BY THE LAW, NOT ONLY BY THE POLICY. For example, but not by way of limitation, please refer to the Ethics Act, along with Utah Code Ann. §§ 63G-6a-2404 (unlawful procurement conduct) and 76-8-105 (bribery).

Approved by the governing body of the District on the ___ day of __________________, 20____.

____
Title: _________________________

____

Nordic Valley Improvement District

DISCLOSURE OF PRIVATE BUSINESS INTERESTS

(Use one form for each business entity or person involved.)

Under the provisions of the Utah Public Officers' and Employees' Ethics Act, Utah Code §§ 67-16-1 *et seq*., I, the undersigned, under penalties of perjury, make the following statement regarding my private business interests. (*Type or print all information*.)

A. ____

District Employee, Officer, or Board Member

____

Address

B. ____

Outside institution, entity, private business, or person involved

____

Describe

____

Outside institution, entity, private business, or person's address and phone number

C. Describe your position in, investment in, or relationship to the above-named institution, entity, private business, or person. This may include describing the nature of the economic interest or employment you hold in the private business, or the relationship with, or transaction between, the business, institution, person, etc. and ____________________ ______________________________________ (the District). Use more sheets if necessary. (*This disclosure statement will not be accepted as valid unless this section is completed and the statement is properly signed.)*:

____

District Employee, Officer, or Board Member Signature

This statement is a public document. It must be filed, as applicable, with the officer's or employee's immediate supervisor, the Chief Executive or Chief Administrative officer of the District, and the Board. It must be filed when the potential conflict arises and annually if the conflict is ongoing.

Nordic Valley Improvement District

CRITICAL INFRASTRUCTURE RECORDS POLICY[1]

A. Purpose: This Policy shall be known as the Nordic Valley Improvement District ("District") Critical Infrastructure Records Policy or the "Policy", the purpose of which is to protect water and/or wastewater Critical Infrastructure information and records from disclosure and to ensure that any release of said information and records is limited to project-specific data necessitated by a defined development need or governmental purpose.

B. Background:

1. Federal Law: The United States Congress adopted the America's Water Infrastructure Act of 2018 ("AWIA") (Pub. L. No. 115-270), which requires community drinking water systems to conduct a risk and resilience assessment ("RRA") and prepare or revise an emergency response plan ("ERP"). A drinking water system must certify to the U.S. Environmental Protection Agency ("EPA") that the RRA and ERP have been completed every five years. The AWIA protects any information submitted to the EPA from public disclosure (Pub. L. No. 115-270, § 2013(b)). The drinking water system is only required to submit the certification to the EPA, and not the actual RRA and ERP, and thus the public disclosure of the RRA and ERP is subject to state law.

2. State Law: The Government Records Access and Management Act provides that the District's records regarding security measures designed for the protection of persons or property, including building and public works designs relating to ongoing security measures, are not subject to public disclosure (Utah Code Ann. (UCA) § 63G-2-106); protects records if disclosure "would jeopardize the security of governmental property, governmental programs, or governmental recordkeeping systems from damage, theft or other appropriation or use contrary to law or public policy" (UCA § 63G-2-305(12)); and protects the following drinking water and wastewater system records: "(a) an engineering or architectural drawing of the drinking water or wastewater facility; and (b) except as provided in Section 63G-2-106, a record detailing tools or processes the drinking water or wastewater facility uses to secure, or prohibit access to, the records described in Subsection (84)(a)" (UCA § 63G-2-305(84)). In 2022, the Utah Legislature adopted S.B. 254, Government Records Access Revisions, which protects from disclosure certain water and wastewater critical infrastructure records.

3. District Finding: To clarify what District records are protected under GRAMA Section 63G-2-305(12) and (84), the District finds, and for purposes of this Critical Infrastructure Records Policy defines, the following records to be "protected": All engineering and architectural drawings of the District's entire system(s) (including collection, treatment and distribution facilities, as applicable), and all supporting and related documentation such as studies, diagrams, maps, construction renderings, GIS data, work orders, and similar materials, whether in paper, electronic or other format.

[1] This Policy is designed for local districts and special service districts that provide water services, wastewater services, or a combination of water and wastewater services. It is not intended for use by a district that provides neither of those services.

C. Definitions: For purposes of this Critical Infrastructure Records Policy the following words will have the following meanings:

1. "Critical Infrastructure" has the same meaning as in Section 1016(e) of the Patriot Act of 2001 (42 U.S.C. § 5195c(e)): "systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters". Pursuant to Presidential Directive 21, water and wastewater systems are defined as "Critical Infrastructure".

2. "Drinking water facilities" "water facilities" or "wastewater facilities" means the entirety of the District's collection, treatment and distribution system(s), as applicable.

3. "Government Records Access and Management Act" or "GRAMA" means Utah Code Ann. Title 63G, Chapter 2.

4. "Protected" or "Protected Record" has the meaning set forth in Utah Code Ann. § 63G-2-103(22): "a record that is classified [as] protected as provided by Section 63G-2-305."

D. Exempt Records: Pursuant to Section 63G-2-106 of GRAMA, the following records are exempt from and are not subject to the disclosure requirements set forth in GRAMA, and it is the policy of the District that these records shall not be disclosed pursuant to any GRAMA request or other type of records request, except to the extent otherwise required by state or federal law:

1. Security measures and plans, including a plan to prepare for or mitigate terrorist activity, or for emergency and disaster response and recovery. This shall include, but is not limited to, the District's RRA and ERP, as applicable, prepared pursuant to the AWIA. The District's RRA and/or ERP shall include any and all GIS data of the District's Critical Infrastructure systems.

2. Risk Assessment or Security Audit results, or data collected from any risk assessment or security audit performed by the District. This collected data includes any and all GIS data of the District's Critical Infrastructure systems.

3. System and facility data that may disclose points of access to, or vulnerabilities of, the District's collection, treatment and distribution systems, including any and all GIS data, as applicable.

E. Protected Records: Pursuant to Section 63G-2-305(84) of GRAMA, the following records are Protected and are subject to disclosure only to the extent authorized in GRAMA:

1. Records, the disclosure of which would jeopardize the security of governmental property, programs or recordkeeping systems from damage, theft or other appropriation or use contrary to law or public policy. Said records, if not exempt under Subsection D of this Critical Infrastructure Records Policy, include system and facility data that may disclose points of access to, or vulnerabilities of, the District's wastewater collection and treatment and culinary water distribution systems, including GIS data, as applicable.

2. **Engineering or architectural drawings** of the District's drinking water and/or wastewater facilities, as applicable.

3. **Records detailing tools or processes** the District uses to secure, or prohibit access to, the records described in Sections B.2 and D.2 of this Policy, except to the extent those records fall within the categories of records described as exempt from disclosure under Section D of this Policy.

F. Public Records: Pursuant to Section 63G-2-106(3) of GRAMA, any certification that the District has conducted a risk and resilience assessment under 42 U.S.C. Sec. 300i-2 is a public record. However, the resulting RRA or ERP, including any supporting data, drawings, summaries, GIS data or information, and other related material, shall not be considered a public record and shall be exempt from disclosure under GRAMA.

G. Policy of Strict Application: It is the intent of the District that this Critical Infrastructure Records Policy be applied strictly to prohibit disclosure of Critical Infrastructure Records and data to the greatest extent allowed under the law and this Critical Infrastructure Records Policy. Due to the security sensitive nature of the District's Critical Infrastructure, any balancing tests set forth in the law shall be weighed more heavily in favor of privacy protection and non-disclosure rather than disclosure. To the extent that the District's Critical Infrastructure GIS data is included within the District's RRA, ERP or any other risk assessment or security audit described in this Critical Infrastructure Records Policy, the District's intent and policy is to keep dissemination of such GIS and related data as restricted as allowed under the law. In its consideration of records requests for the material described herein as exempt or protected, before releasing any such record the District shall require that a requester demonstrate a project specific or other legally justified need for the record. By way of example, the District will release limited project-specific records and data only to owners or developers of property to be served by District facilities, to Blue Stakes utilities and agencies, or to government agencies that have a lawful need for the requested data.

H. Subsequent Modifications/Higher Law:

1. **Critical Infrastructure Records Policy Not Exhaustive:** The governing body of the District reserves the right to add to, delete from, or change this Critical Infrastructure Records Policy at any time. Each GRAMA request or other request for a record shall be considered on a case-by-case basis, taking into consideration this Critical Infrastructure Records Policy, as well as state and federal laws.

2. **Higher Law to Control:** In the event of any conflict between the Critical Infrastructure Records Policy and any applicable federal or state law, rule, or regulation, the federal or state law, rule, or regulation, including amendments and modifications thereto, shall control to the extent of such inconsistency.

Approved by the governing body of the District on the ___ day of _____________, 20__.

____
Title: ________________________________

Nordic Valley Improvement District
RECORDS ACCESS AND MANAGEMENT

Nordic Valley Improvement District

RECORDS ACCESS AND MANAGEMENT POLICY

I. BACKGROUND

A. **Policy:** This shall be known as the Records Access and Management Policy (the "Policy") of the Nordic Valley Improvement District ("the District"). The Policy is governed by applicable provisions of the Government Records Access and Management Act ("GRAMA" or the "Act") Utah Code Ann. § 63G-2-101, et. seq., and Utah Code Ann. § 63A-12-100.5, et. seq., Division of Archives and Records Service and Management of Government Records, as either may be amended from time to time.

B. **Purpose:** The Policy establishes guidelines for open government information recognizing the need to maintain and preserve accurate records, provide public access to public records and preserve the right of privacy of personal data collected or received by the District. In particular, the purpose of this Policy is to conform to GRAMA 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 implement the general provisions of state law and provide limited modifications to the general provisions of state law, where allowed, to best meet the public needs, operation, management capabilities and resources of the District.

II. COMPLIANCE WITH STATE LAW

A. **Application of GRAMA:** In adopting the Policy, the District recognizes that the following sections of GRAMA apply to the District and adopts by reference these provisions as part of this Policy: Parts 1, 3 and 8 and Sections 63G-2-201 through -206; 63G-2-601 and -602; and 63G-2-701. Utah Code Ann. §§ 63A-12-103, -105, -107 and -110 also apply. Any inconsistency or conflict between this Policy and the above referenced statutory Sections or any other applicable law shall be governed by the statute, to the extent applicable to the District, as amended from time-to-time.

III. DEFINITIONS

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

A. **Act:** As used herein, the terms "Act" and "GRAMA" are interchangeable and shall refer to the Government Records Access and Management Act, §§63G-2-101, et. seq., Utah Code Ann., 1953, as amended.

B. **<u>Board</u>:** The "Board" is the governing legislative body of the District, however designated.

C. **<u>Computer Program</u>:** The phrase "computer program" means a 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, and other source material explaining how to operate the computer program. "Computer program" does not include the original data; analysis, compilation and other manipulated forms of the original data produced using the program; or mathematical or statistical formulas (excluding the underlying mathematical algorithms contained in the program) that would be used if the manipulated forms of the original data were produced manually.

D. **<u>Controlled Records</u>:** "Controlled records" are those defined as controlled under the provisions of the Act (Section 63G-2-304).

E. **<u>Data</u>:** "Data" shall refer to individual entries (for example, birth date, address, etc.) in records.

F. **<u>Dispose</u>:** "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 deletion or erasure of electronically recorded audio, visual, non-written formats, data processing, or other records.

G. **<u>District:</u>** Shall refer to the District or any public or private entity which, pursuant to contract with the District, has agreed to produce and/or maintain District records.

H. **<u>Non-Public Records</u>:** "Non-public records" shall refer to those records defined as private, controlled, or protected under the Act.

I. **<u>Private Records</u>:** "Private records" shall refer to those records classified as private under the provisions of the Act (Sections 63G-2-302 and -303).

J. **<u>Protected Records</u>:** "Protected records" shall refer to those records classified as protected under the provisions of the Act (Section 63G-2-305).

K. **<u>Public Records</u>:** "Public records" shall refer to those records which have not been classified as non-public in accordance with the provisions of the Act and are not exempt from disclosure. *See* Section 63G-2-301 of GRAMA.

L. **<u>Record</u>:** "Record" means all books, letters, documents, papers, maps, plans, photographs, films, cards, tapes, recordings, electronic data or other documentary materials 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 photocopy or other mechanical or electronic means. "Record" does not mean:

1. Temporary drafts or similar materials 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.

2. Materials that are legally owned by an individual in the individual's private capacity.

3. Materials to which access is limited by copyright or patent laws unless the copyright or patent is owned by the District.

4. Proprietary software.

5. Junk mail or commercial publications received by the District or by an officer or employee of the District.

6. A personal note or communication, prepared by any District employee or official in a capacity other than the employee's or official's governmental capacity or that is unrelated to the conduct of the public's business.

7. A daily calendar or other personal note prepared by any District employee or official for that person's personal use or for the personal use of a supervisor or other individual for whom that person is working.

8. Notes or internal memoranda prepared for the use of any District officer or employee acting in a quasi-judicial or deliberative process or pursuant to matters discussed in a meeting properly closed to the public in accordance with the Utah Open and Public Meetings Act, Utah Code Ann. §§ 52-4-204, 52-4-205 and 52-4-206.

9. Computer programs as defined in Section III.C. that are developed or purchased by or for the District for District use.

10. A mobile telephone number used by an employee or officer of the District, provided that the employee or officer has designated at least one business telephone number that is a public record as provided by the Act (GRAMA Section 63G-2-301).

11. Any other record that is exempt from disclosure under the Act or any other applicable law.

M. **Statutory Definitions:** Other words and phrases defined in Section 63G-2-103 of the Act shall have the statutorily defined meaning and, should any definition stated above in this Section III differ from a definition in the Act, the statutory definition shall control.

IV. PUBLIC RIGHT TO RECORDS

A. **Public Access**: Members of the public shall have the right to see, review, examine and 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 provided, however, that disclosure of records to which access is governed or limited pursuant to court rule, a state statute other than the Act, federal statute, or federal regulation, including records to which access is governed or limited as a condition of participating in a state or federal program or receiving state or federal funds, is governed by the specific provisions of that statute, rule or regulation. To the extent not inconsistent therewith, the Act and this Policy are applicable to records that are subject to restrictions by statute, rule or regulation. The District may decline to fulfill a records request if the request unreasonably duplicates prior records requests from that person or organization in accordance with Utah Code Ann. § 63G-2-201(7).

B. **Regularly Maintained Records:** In response to a record request, the District has no obligation to create a record or record series; compile, format, manipulate, package, summarize, or tailor information; or provide a record in a particular format, medium, or program not currently maintained by the District. Upon request, the District may provide a record in a particular format if it is able to do so without unreasonably interfering with its duties and responsibilities and the requesting party agrees to pay to the District all costs, in compliance with state statute, incurred in providing the record in the requested format.

C. **Records in Public Publications:** The District has no obligation to fulfill an individual's record request if the record requested is accessible in the identical physical form and content in a public publication or a product produced by the District, and the District provides the individual with the publication or product and specifies where the record can be found within the publication or product.

D. **Custodial Agency:** When a record is temporarily held by a custodial agency, pursuant to the 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.

E. **Business Confidentiality:** Any person who provides a record to the District that the person believes should be protected as a "trade secret" as defined in UTAH CODE ANN. § 13-24-2(4) or should be protected as "commercial information" or "nonindividual financial information" under UTAH CODE ANN. § 63G-2-305(2) shall provide, along with the record, a written claim of business confidentiality and a concise statement of reasons supporting the claim of business confidentiality. The Records Officer or Manager shall consider the business confidentiality claim and shall notify the claimant whether the record is to be classified as protected or as public or if the District determines that the record should be released after balancing the interests and determining that there is no interest in restricting access to the record or that the interests favoring access outweigh the interests favoring restriction of access. Except as provided by court order, the District is not to disclose records which are the subject of a business confidentiality claim but which the District determines should be classified as public until the period in which to bring an appeal from that determination expires or the end of the appeals process, including judicial appeal, as provided in Section XI. The foregoing sentence does not apply where the claimant, after notice, has waived the claim by not appealing or intervening before the appeals board established by the Board. As provided in Subsection 63G-2-309(1)(c) of the Act, a person who makes a claim of business confidentiality is required to protect, defend, and indemnify the District and all staff members and employees of the District "from and against any claims, liability, or damages resulting from or arising from a denial of access to the record as a protected record based on the claim of business confidentiality."

F. **Employee Personnel Files:** The right to examine and copy documents in an employee's personnel file is subject to access in accordance with the Act.

G. **Disclosure of Electronic Information:** Under some circumstances, as a result of an investigation, subpoena, lawsuit, or the Act, the District may be required to provide electronic or other information. Consequently, anything on the District's computer system, including personal data, may be disclosed to third parties pursuant to the above-mentioned processes and applicable law.

H. **Vexatious Requester:** As provided in subsection 63G-2-201(7)(a)(vi) of the Act, the District is not required to fulfill a records request from a person who has been determined by the State Records Committee, under Section 63G-2-209 of the Act, to be a "vexatious requester" in an order that specifies a period of time during which the District is not required to fulfill a record request for the vexatious requester and that period of time has not expired.

V. CLASSIFICATION OF RECORDS

A. **Public Records:** Public District records shall be as defined or identified in Section 63G-2-201 or Section 63G-2-301 of the Act. Public records shall be made available to any person. All District records are considered public unless they are (1) expressly designated, classified, or defined otherwise by the District in accordance with policies and procedures established by this Policy, (2) are so designated, classified or defined by the Act, or (3) are made non-public by other applicable law or court order.

B. **Private Records:** Private records shall be those District records classified as "private", as defined in Section 63G-2-302 of the Act and as designated, classified, or defined in procedures established pursuant to this Policy. Private records include, but are not limited to, the following: records concerning an individual's eligibility for unemployment insurance benefits, social services, welfare benefits, or the determination of benefit levels; medical records; records concerning current and former employees of the District and applicants for employment that would disclose the individual's home address, home telephone number, social security number, insurance coverage, marital status or payroll deductions; and other records properly classified as private by the District, including records containing data on individuals, the disclosure of which would constitute a "clearly unwarranted invasion of personal privacy".

C. **Controlled Records:** Controlled records shall be those District records classified as "controlled", as defined in Section 63G-2-304 of the Act and as designated, classified, or defined under procedures established in this Policy. A record is "controlled" if it contains medical, psychiatric or psychological data about an individual; the District reasonably believes that releasing the information could be detrimental to the mental health of the subject of the record or to the safety of any individual; or releasing the information would constitute a violation of normal professional practice and medical ethics; and the District has properly classified the record as "controlled".

D. **Protected Records:** Protected records shall be those District records classified as "protected", as defined in Section 63G-2-305 of the Act and as designated, classified or defined in procedures established in this Policy. Provided that they are properly classified by the District, protected records include but are not limited to the following: records that are the subject of a proper written claim of business confidentiality as provided in UTAH CODE ANN. § 63G-2-309; commercial or financial information the disclosure of which could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the District to obtain necessary information in the future if the person submitting the information has a greater interest in prohibiting access than the interest of the public in obtaining access and the person has submitted information to the District as specified in Utah Code Ann. § 63G-2-309; records the disclosure of which would impair District procurement proceedings or give an unfair advantage to any person proposing to enter into a contract with the District (this does not refer to bids submitted to the District which are to be open to the public after the bid opening); records that would identify real property or the appraisal or estimated value of real or personal property under consideration for acquisition by the District unless the public interest in obtaining access to the information outweighs the District's need to acquire the property on the best terms available, the information has already been disclosed to one or more members of the general public, potential sellers of the property have already learned of the District's interest, or the potential sellers have already learned of the District's estimated value of the property or the property under consideration by the District is a single family residence and the District has initiated negotiations to acquire the property as required under Utah Code Ann. § 78B-6-505; records relative to the sale, exchange, lease or rental of real or personal property except where public interest in access outweigh the interest in restricting access or appraisals or value estimates have already been disclosed to persons not employed under a duty of confidentiality to the District; records the disclosure of which would jeopardize the life or safety of an individual; records the disclosure of which would jeopardize the security of District property, programs or record keeping systems; records prepared by or for the District solely in anticipation of litigation that are not available through discovery in the litigation; attorney work product; communications between the District and its legal counsel; drafts of documents, unless otherwise classified as public; records concerning the District's strategy about collective bargaining or pending litigation; records, other than personnel evaluations, that contain a personal recommendation concerning an individual the disclosure of which would constitute a clearly unwarranted invasion of personal privacy where disclosure is not in the public interest; transcripts, minutes or reports of the closed portions of a meeting of the District except as provided in Utah Code Ann. §§ 52-4-204(4) and 52-4-304; records that would reveal settlement negotiations (not including final settlements or empirical data, to the extent they are not otherwise exempt from disclosure); unless classified as public under the Act (Section 63G-2-301) and, except as provided in Utah Code Ann. § 41-1a-116, records that reveal an individual's home address, home telephone number, or personal mobile phone number if the individual is required to provide the information to comply with a governmental law, ordinance, rule or order and the subject of the record has a reasonable expectation that this information will be kept confidential due both to the nature of the law, ordinance, rule or order and to the individual's compliance with the law, ordinance, rule or order.

E. **Timing of Classification:** The Records Officer may classify a particular record, record series, or information within a record at any time, but is not required to classify a particular record, record series or information until access to the record is requested. Furthermore, the Records Officer may redesignate a record series or reclassify a record or record series, or information within a record, at any time. Notifications will be given to the State Archivist respecting the designation or classification of a record or a record series as required by the Act.

VI. ACCESS TO NON-PUBLIC RECORDS

A. **Access to Private Records:** Private records shall be made available to the following persons: the subject of the record; the parent or legal guardian of an unemancipated minor who is the subject of the record; the legal guardian of a legally incapacitated individual who is the subject of the record; any person who has a power of attorney from the subject of the record; any person who has a notarized release from the subject of the record or his legal representative dated no more than ninety (90) days before the request; a health care provider, if the record is a medial record and releasing the record or information in the record is consistent with normal professional practice and medical ethics; or any person to whom the record must be provided pursuant to a legislative subpoena or a court order issued by a court of competent jurisdiction. If there is more than one subject of a private record, the portion of the record pertaining to another subject is to be segregated from the portion that the requester is entitled to inspect. Private records may be disclosed to persons other than those listed above as provided in Section 63G-2-202 of the Act.

B. **Access to Controlled Records:** Controlled records shall be made available to a physician, psychologist, certified social worker, insurance provider or agent, or a government public health agency upon submission of a release from the subject of the record dated no more than ninety (90) days prior to the request and upon a signed acknowledgment from the person not to disclose controlled information to any person, including the subject of the record; or any person to whom the record must be disclosed pursuant to a legislative subpoena or a court order signed by a judge of a court of competent jurisdiction. If there is more than one subject of a controlled record, the portion of the record pertaining to another subject is to be segregated from the portion that the requester is entitled to inspect.

C. **Access to Protected Records:** Protected records shall be made available, upon request, to the person who submitted the information in the record; to a person who has a power of attorney or notarized release (dated not more than ninety (90) days prior to the request) from all persons and governmental entities (or from their legal representatives) whose interests may be protected by the classification of the record; and to any person to whom the record must be provided pursuant to a legislative subpoena or court order signed by a judge of a court of competent jurisdiction. Protected records may be disclosed to persons other than those listed above as allowed under the Act or other applicable law. The District may disclose an individual's home address, home telephone number, or personal mobile phone number even though it is classified as protected if the Records Officer determines that disclosure of the record is beneficial to the subject of the record, the District, and the public; the disclosure serves a public purpose related to public safety or consumer protection; and the person agrees not to use or allow the use of the record for advertising or solicitation.

D. **Access for Research Purposes:** Controlled or private records may be disclosed to a person for research purposes provided the following criteria are satisfied: the research cannot reasonably be accomplished without use of the record; the proposed research is bona fide; the research value outweighs any infringement upon personal privacy; the researcher signs a statement insuring that the records will remain confidential and that all individual identifying information will be removed from the provided record once the research is complete; and that the record will be used for no other purpose than the research approved by the District. The District may require indemnification as a condition of permitting the records to be released for research.

E. **Disclosure to Governmental Entity:** The District may provide a private, controlled, or protected record to another governmental entity, a government-managed corporation, a political subdivision, the federal government, the state of Utah or (only as provided in Section 63G-2-206 of the Act) another state under the following circumstances: the requesting entity serves as a repository or archives for historical preservation; the requesting entity enforces, litigates, or investigates, civil, criminal, or administrative law, and the record is necessary to a proceeding or investigation; the requesting entity is authorized by state statute to conduct an audit and the record is needed for that audit; the requester is the legislature or an agent of the legislature and the requested record is related to the legislature's duties; or the requesting governmental entity provides written assurance: that the record is necessary to the performance of the governmental entity's duties and functions; that the record will be used for a purpose similar to the purpose for which the information in the record or record series was collected or obtained; and that the use of the record produces a public benefit that outweighs the individual privacy right that caused the record to be classified as private, controlled or protected.

F. **Disclosure to Contractor or Private Provider:** The District may provide a private, controlled, or protected record or record series to a contractor or a private provider if: the record or record series produces a public benefit that equals or outweighs the individual's privacy right that caused the record to be classified as private, controlled or protected; the record series requested is necessary for the performance of a contract with a governmental entity; the record will only be used for the performance of the contract with the governmental entity; the record will not be disclosed to any other person; the record will not be used for advertising or solicitation purposes; and the contractor or private provider gives written assurance that it will adhere to the restrictions of this Subsection F.

VII. PRIVACY RIGHTS

A. **Personal Right of Privacy:** The District recognizes and upholds the personal right of privacy retained by persons who may be the subject of governmental records.

B. **Notification:** The District may, as determined appropriate by the Manager, notify the subject of a record that a request for access to the subject's record has been made.

C. **Release:** Access to non-public records is controlled by Section 63G-2-202 of the Act. To the extent allowed by law, the District may require that the requester of a non-public record provide a written release in form reasonably acceptable to the District which is signed by the subject of the requested record and notarized within ninety (90) days before the request, before access to the record is provided.

D. **Identification:** Before receiving a private, controlled or protected record, the requesting party shall be required to provide evidence of identity that is reasonably satisfactory to the District.

VIII. DESIGNATION, CLASSIFICATION AND RETENTION

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 record 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 by or under the supervision of the District Records Officer. The Records Officer may approve and implement procedures consistent with the requirements of this Policy and the Act pursuant to which records will be classified. Until such time as the District has its own approved retention schedule, the most recent approved model retention schedule for municipalities maintained by the State Archivist will serve as the District's retention schedule unless there is a model retention schedule for special districts.

IX. PROCEDURES FOR RECORD REQUEST

A. **<u>Written Form</u>:** The requester shall fill out and present to the District a written request on a form provided or approved by the District or an applicable State rule. 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. Requesters of non-public information shall adequately identify themselves and their status prior to receiving access to non-public records in accordance with this Policy.

B. **<u>District Response</u>:** Upon receiving a request for a record, the District will undertake a "reasonable search" as defined in Section 63G-2-103(24) of the Act (meaning "a search that is: (a) reasonable in scope and intensity; and (b) not unreasonably burdensome for the government entity"). The District may respond to a request for a record by approving the request and providing the record, denying the request, or such other appropriate response as may be determined by the Records Officer.

1. **<u>Lengthy Requests</u>:** If a person requests copies of more than fifty (50) pages of records, and if the records are contained in files that do not also contain records that are exempt from disclosure, the District may:

a. Provide the person with facilities for copying the requested records and require the person to make the copies and collect appropriate copying fees; or

b. Allow the person to provide his/her own copying facilities and personnel to make the copies at the District's office, in which case the fee for copying the records will be waived.

2. **<u>Normal Response Time</u>:** In most circumstances, and excepting those eventualities set out in Subsection B.3 immediately below, the District shall respond to a written request for a public record within ten business days after that request.

3. **<u>Extended Response Time</u>:** Extraordinary circumstances may justify the District's failure to respond to a written request for a public record within ten business days and shall extend the time for response to that amount of time which is reasonably necessary to respond to the request, as determined by the Records Officer or Manager. Extraordinary circumstances shall include but not be limited to the following:

a. Some other governmental entity is currently and actively using the requested record.

b. The record request is for either a voluminous quantity of records or requires the District to review a large number of records or perform extensive research to locate the requested materials.

c. The District is currently processing either a large number of records requests or is subject to extraordinary seasonal work loads in the processing of other work.

d. The request involves an analysis of legal issues to determine the proper response to the request.

e. The request involves extensive editing to separate public data in a record from that which is not public.

f. Providing the requested record requires computer programming or other format manipulation.

4. **Estimated Response Time:** When a record request cannot be responded to within ten business days, the Records Officer or the Chief Administrative Officer of the District (the "Manager") shall give the requester an estimate of the time required to respond to the request.

C. **Appellate Rights:**

1. A written notice of a full or partial denial is to describe the record, or the portions of a record, to which access is being denied, and will include a citation to the provision or provisions of the Act, this Policy, or any other state or federal law, rule or regulation, or court order or decree, that justifies the denial. The notice of denial will also explain the requester's right to appeal the denial to the Manager, the time limits for filing an appeal, and the name and business address of the District.

2. A notice of full or partial denial will be provided to the requester either in person or by sending, by U.S. mail or other reliable means such as e-mail , the notice of denial to the requester's street, e-mail, or other known address.

3. 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 full or partial denial of such a request, shall give the requester the right to appeal as provided in Section XI below.

X. FEES

A. **<u>Policy Regarding Fees</u>:** 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.

B. **<u>Applicable Fees</u>:** The District will charge the following fees for requests relating to GRAMA:

1. Reviewing a record to determine whether it is subject to disclosure .... No Charge

2. Inspection of record by requesting person .... No Charge

3. Copy Fees (standard sizes)..25 cents per page (for District prepared copies), or such other charge as the District may establish from time-to-time by Board resolution or motion

4. Copy Fees (non-standard sizes) ....The greater of 25 cents per page or actual cost (for District prepared copies), or such other charge as the District may establish from time-to-time by Board resolution or motion

5. Computer Disk or other Electronic Media................................. Actual cost (including overhead and time of District staff)

6. Other Forms .... Actual cost (including overhead and time of District staff)

7. Miscellaneous Fees .... Actual cost (including overhead and time of District staff)

C. **<u>Formatting Fee</u>:** If, in response to a record request, the District compiles a record in a form other than that normally maintained by the District, the cost of staff time for search, retrieval and other direct administrative costs incurred in complying with the request may not exceed the salary of the lowest paid employee who, in the discretion of the Records Officer or the Manager, has the necessary skill and training to perform the request provided, however, that no charge may be made for the first quarter hour of staff time involved in search, retrieval and other direct administrative costs incurred in compiling the record in a non-standard form or format.

D. **<u>Fee Waivers</u>:** The District may fulfill a record request without charge when either the Records Officer or the Manager determines that releasing the record primarily benefits the public rather than a person; the individual requesting the record is the subject of the record, is the parent or legal guardian of an unemancipated minor who is the subject of the record, is the legal guardian of a legally incapacitated individual who is the subject of the record, has a power of attorney from the subject of the record, submits a notarized release from the subject of the record or the subject's legal representative dated no more than ninety (90) days before the date the records request is made, is the health care provider if the record is a medical record or is a person to whom the record must be provided pursuant to court order or legislative subpoena; or the requester's legal rights are directly implicated by the information in the record and the requester is impecunious.

1. **Appeal of Denial:** A person who believes there has been an unreasonable denial of a fee waiver or reduction request may appeal the denial under Section XI. of this Policy in the same manner as a person appeals when inspection of a record claimed to be public is denied.

E. **Payment of Past and Future Fees:** The District may require payment of past fees and future estimated fees before processing a records request if fees are expected to exceed $50.00 or if the requester has not paid fees from one or more previous records requests. Any prepaid amount in excess of fees due will be returned to the requester.

XI. APPEAL PROCESS

A. **Appeal to the Manager:** Any person aggrieved by the District's denial, in whole or in part, of a request for a record or any other access determination made by the District under this Policy may appeal the determination to the Manager as the chief administrative officer of the District, even if the appeal involves an action or an inaction by the Manager, by filing a written notice of appeal with the Manager within thirty (30) days after the District's action which is the subject of the appeal, or within thirty (30) days after notification to the requester of a claim of extraordinary circumstances justifying a delay in providing the record if the requester believes that the extraordinary circumstances do not exist or that the time specified is unreasonable. The notice of appeal shall state the petitioner's name, mailing address, daytime telephone number, the relief sought and, if petitioner desires, a short statement of the facts, reasons and legal authority for the appeal.

1. **Notice Regarding Privacy Rights:** If the Manager determines that the appeal involves a record that is subject to business confidentiality or affects the privacy rights of an individual, the Manager will see to it that a notice of the requester's appeal is sent to the affected person. If the appeal involves a business confidentiality claim, notice of the appeal shall be sent to the business confidentiality claimant within three (3) business days after the Manager receives the notice of appeal unless a notice must be given to more than thirty-five (35) persons, in which event the notice shall be sent as soon as reasonably possible. Similarly, the Manager shall send notice of the business confidentiality claim and the schedule for the Manager's determination to the requester within three (3) business days after having received the notice of appeal. Any business confidentiality claimant shall have seven (7) business days after notice has been sent to the claimant to submit further support for the claim of business confidentiality.

2. **Decision by the Manager:** The Manager shall make a determination on the appeal within ten (10) business days after receipt of the notice of appeal or five (5) business days after receipt of the notice of appeal if the requester or interested party demonstrates that an expedited decision benefits the public rather than the requester or interested party or, if a claim of business confidentiality is involved, within twelve (12) business days after a copy of the notice of appeal has been sent to the person(s) who submitted the claim of business confidentiality. Notwithstanding the foregoing, if the appeal is filed by a person who is aggrieved, but is not the requester of the subject record (for example, a person who is aggrieved by the District's classification or designation of a particular record as non public) and the non requester is the only appellant, notwithstanding the foregoing, the determination on the appeal shall be made within thirty (30) days after the Manager receives the notice of appeal. Should a determination not be issued within the applicable time specified above, unless the parties agree in writing to extend the time limitation, the appeal shall be deemed to have been denied and the aggrieved person may appeal to an appeals board established by the District Board of Trustees as provided in Subsection XI.B.

3. **Informal Hearing:** The Manager may schedule an informal hearing or request any additional information deemed necessary to make a determination. At a hearing, if one is allowed, the Manager may allow the parties (including employees and consultants of the District) to testify, present evidence and comment on the issues. The Manager may also allow other interested persons to comment on the issues. In making his/her determination, the Manager shall consider such facts, evidence and arguments as deemed appropriate. Regardless of whether a hearing is held, the Manager is to issue a signed order either granting the petition or upholding the determination of the District, in whole or in part, no later than the time periods specified in Subsection 2 immediately above unless the parties, by written agreement, extend the time. Any failure by the Manager to issue a decision within the stated time frame shall constitute an order of denial, which may be appealed as provided in Subsection XI.B.

4. **Written Notice of the Manager's Decision:** The Manager may, upon considering and weighing the various interests and public policies pertinent to the classification and disclosure or non-disclosure of any record, order the disclosure of information properly classified as private or as protected if the interests favoring access outweigh the interests favoring restriction of access. The District shall send a written notice of the Manager's determination to all participants. If the Manager affirms the denial in whole or in part, the notice shall include a statement that the requester or other aggrieved person has a right to appeal the denial to the appeal panel established by the District Board of Trustees provided that the written notice of further appeal is filed with the Manager within thirty (30) days after issuance of the Manager's written notice of decision or within thirty (30)

days after the Manager is deemed to have denied the appeal as provided in Subsection XI.A.2.

5. **Delegation of Duties:** The Manager may delegate any of the duties of the Manager under this Section XI.A or under Section XI.B.

B. **Appeals Board:** The District Board of Trustees may establish an appeals board in accordance with the requirements of Section 63G-2-701(5) of the Act to decide an appeal of a decision of the Manager. The appeals board shall be comprised of three (3) members, one of whom shall be an employee of the District and two of whom shall be members of the public who are not employed by or officials of a governmental entity, at least one of whom shall have professional experience with requesting or managing records. If the District establishes an appeals board, which may be established either before or after an appeal is filed with the Manager, the appeal of a decision of the Manager shall be to the appeals board. If the District does not establish an appeals board, the Manager's decision may be appealed to the State Records Committee as provided in Section 63G-2-403 of the Act. Any aggrieved person may appeal the denial or other decision of the Manager to the appeals board by filing a written notice of further appeal with the Manager within thirty (30) days after the issuance of the Manager's decision (or failure to issue a timely decision) or within forty-five (45) days after the day on which the request for a record is made if the District claims "extraordinary circumstances" as provided in Subsection IX.B.3, the requester believes the extraordinary circumstances do not exist or that the time specified in unreasonable, and the Manager failed to make a determination under Subsection XI.A.

1. **Notice of Further Appeal:** The notice of appeal to the appeals board must contain the petitioner's name, mailing address, and daytime telephone number; a copy of any denial of the record request; and a statement of the relief sought; and may also contain a statement of facts, reasons and legal authority in support of the appeal.

2. **Notice of Hearing**: Within five (5) business days after receiving a notice of appeal to the appeals board, the District Clerk, Manager or other designated person shall schedule a hearing for the appeals board to discuss the appeal which is at least ten (10) business days but not more than forty-five (45) calendar days after the notice of further appeal is received by the Manager. An expedited hearing may be scheduled upon application of the petitioner and for good cause shown, as determined by the Manager in consultation with the appeals board Chair. Within five (5) business days after receiving a notice of further appeal, a copy of the notice of hearing is to be sent to the petitioner and a copy of the notice of further appeal, a supporting statement, and a notice of hearing is to be sent to each member of the appeals board, be delivered to the Records Officer and the Manager, and be mailed to any person who made a business confidentiality claim for a record which is the subject of the appeal and to all persons who participated in the proceeding before the Manager. A written statement of facts, reasons and legal authorities in support of the Manager's position must be submitted to the

members of the appeals board and mailed to the petitioner by first class mail, postage prepaid, not later than five (5) business days before the hearing. If an expedited hearing is scheduled, the Manager may modify the timing of the delivery of notices and documents accordingly.

3. **Request for Intervention:** No later than ten (10) business days after the notice of further appeal is mailed as set forth above, a person whose legal interests may be substantially affected by the proceeding may file a request for intervention before the appeals board. Any written statement of facts, reasons and legal authority in support of the intervener's position shall be filed with the request for intervention. The person seeking intervention shall provide copies of the statement to all parties to the proceeding.

4. **Hearing:** At the hearing, the appeals board shall allow the parties (including employees and consultants of the District) to testify, present evidence and comment on the issues. The appeals board may also allow other interested persons to comment on the issues. In making its determination, the appeals board shall consider such facts, evidence and arguments as it deems appropriate. The information gathering portion of the appeal will be conducted during an open meeting of the appeals board, but the deliberative phase of the appeal proceeding may be held as a closed meeting of the appeals board. Furthermore, if the appeals board is weighing the various interests and public policies pertinent to the classification and disclosure or nondisclosure of information classified as private, controlled or protected, and the appeals board must review the disputed records, the review shall be in a closed meeting of the appeals board.

5. **Decision of the Appeals Board**: The appeals board shall prepare and issue a written decision outlining the final determination and reasons for the final determination. Unless otherwise precluded by law, the appeals board may, upon considering and weighing the various interests and public policy pertinent to the classification and disclosure or non-disclosure, and in harmony with the requirements of this Policy and GRAMA, order the disclosure of information properly classified as private, controlled or protected if the public interest favoring access outweighs the interest favoring restriction of access. If the appeals board so orders, it may condition or restrict the requester's use and further disclosure of the record to protect privacy and business confidentiality interests. If appeals board fails to issue a decision either granting the petition or upholding the determination of the Manager, in whole or in part, no later than fifty (50) calendar days after the filing of the notice of further appeal, that failure shall be the equivalent of an order denying the appeal. The petitioner shall notify the appeals board in writing if the petitioner considers the appeal to have been denied. The final decision of the appeals board shall be by majority vote of the appeals board, and shall include a brief summary of the available appeal process to the State Records Committee and/or the courts of the state of Utah, state the time limit for filing a court appeal and, if the party is not

represented by legal counsel, include a notice that, in order to protect its rights on appeal, a party may wish to seek advice from an attorney.

C. **Appeal to the State Records Committee or District Court:** The District, the requester and/or any other party to the proceedings as allowed by law, may appeal an appeals board decision as provided in Utah Code Ann. § 63G-2-701(6) of the Act by filing a petition for judicial review with the district court or by filing an appeal with the State Records Committee as provided in Section 63G-2-403 of the Act. The content of a petition for judicial review and the conduct of the proceeding shall be in accordance with Sections 63G-2-402 and 63G-2-404 of the Act. A person may first appeal a decision of the appeals board to the State Records Committee without losing or waiving the right thereafter to seek judicial review of any decision issued by the State Records Committee.

XIII. REASONABLE ACCOMMODATIONS

Reasonable accommodations regarding access to governmental records shall be provided to persons with disabilities in accordance with applicable requirements of the Americans with Disabilities Act (42 USCA §12101, et. seq.) upon request of the applicant.

XIV. RECORD AMENDMENTS

Any government record 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 Records Officer and shall set forth, with specificity, the requested amendment or correction. When an amendment or correction of a government record is made, both the original record and the amended or corrected record shall be retained, unless provided otherwise in the Act or other state or federal law.

XIV. VIOLATIONS/PENALTIES

A. **Knowing Violation:** 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, use or remove records or allow other persons to do so in violation of the provisions of the Act, this Policy or other applicable law or regulation, may be subject to criminal prosecution and disciplinary action, including termination.

B. **Limitation on Damages:** 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, as provided in Section 63G-2-803 of the Act.

XV. RECORDS OFFICER

A. **Appointment and Responsibilities:** There shall be appointed a District Records Officer, who will be trained to work with State Archives in the care, maintenance, scheduling, disposal, classification, designation, access and preservation of records, to oversee and coordinate records access, management and archives activities for the District. The Records Officer, who may but need not be the Manager, will be expected to successfully complete all required training including, but not limited to, annually completing online training and obtaining a certification from State Archives in accordance with Utah Code Ann. § 63A-12-110, as required by Section 63G-2-108 of the Act. The Records Officer shall make annual reports of records services activities to the Board.

B. **Delegation:** Any employee or consultant of the District may assist the Records Officer and/or the Manager_in performing any of their respective duties and responsibilities under this Policy, provided that any such designated person shall do so under the direct supervision of the Records Officer or the Manager, as appropriate.

XVI. RECORDS MAINTENANCE

A. **Procedures:** 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. He/she shall monitor compliance with required standards of quality, permanence, and admissibility pertaining to the creation, use, and maintenance of records.

B. **Ownership of Records:** 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 legally disposable, obsolete District records. This prohibition does not include providing copies of District records otherwise produced for release or distribution under the Policy.

C. **Control of Access:** All requests for records are to be processed by the Records Officer under the direction of the Manager. If a member of the press or media, a governmental official, an attorney or any other third party contacts an employee, official or representative of the District requesting information regarding the District or an incident involving the District about which the employee, official or representative has information, the employee, official or representative is encouraged to refer such requests to the Manager or the Records Officer or a designee of either, who may respond to such requests for information in accordance with the requirements of the Act and the Policy.

D. **Custodian of Records:** 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.

XVII. CONTENT OF CERTAIN REPORTS

A. **<u>Definitions</u>:** For purposes of this Section XVII, the following terms shall have the meanings indicated.

1. **<u>Promotional Literature</u>:** The term "promotional literature" refers to those reports, the primary or secondary purpose of which is to provide non-residents with information about the District.

2. **<u>Report</u>:** The term "report" means each account, statement, record of proceeding, summary of activities and other written or printed document required by statute that is prepared or produced by the District and distributed to the public. The term "report" does not mean written or printed documents the primary purpose of which is to provide biographical information about District officials.

B. **<u>Restriction on Content</u>:**

1. **<u>Statutory Compliance:</u>** In compliance with Utah Code Ann. § 52-8-201, a report may not include a photograph or likeness of any elected official provided, however, that a report that is promotional literature may contain the photograph or likeness of the Manager.

2. **<u>Penalty:</u>** If an elected official's photograph or likeness appears on any report in violation of this Section XVII, and the report was prepared under the authority or at the direction of the elected official, that elected official will be personally liable for the cost of preparing and distributing the report as provided in Utah Code Ann. § 52-8-202.

Approved by the governing body of the District on the ___ day of _________________, 20____.

____
Title: _________________________

Nordic Valley Improvement District
Purchasing Policy

TABLE OF CONTENTS

Nordic Valley Improvement District

PURCHASING POLICY AND PROCEDURES[1]

I.BACKGROUND

A. **<u>Policy</u>:** This shall be known as the Nordic Valley Improvement District (the "District") Purchasing Policy (the "Policy").

B. **<u>Purpose</u>:** The purpose of this Policy is to identify the procedure for approval and payment of all purchases and encumbrances by the District and to ensure 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. **<u>Applicability of the Utah Procurement Code</u>:** The District is subject to the Utah Procurement Code (Utah Code Ann. §§ 63G-6a-101 *et. seq.*), referred to herein as the "Act" or the "Procurement Code" and purchases by the District shall be made in accordance with applicable sections of the Procurement Code, as now constituted or as it may be amended and modified from time to time. For purposes of the application of the Procurement Code and this Policy, the District is a procurement unit with independent procurement authority.

1. <u>Exception - State or Federal Law or Regulations</u>: Notwithstanding the provisions of Subsection C. immediately above, 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. <u>Exception - Federal Funding/Grants</u>: 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.

II.DEFINITIONS

As used in the Policy, the foregoing and the following definitions shall be applicable.

A. **<u>Board</u>:** The legislative body of the District is referred to herein as the "Board". For purposes of the Procurement Code and this Policy, the Board is the Rulemaking Authority for the District.

[1] The Policy is based, in material part, on purchasing rules found in Utah Administrative Code Rule R3 that have been adopted by the Utah State Procurement Policy Board, which would be the rulemaking authority for the District if the District had not adopted its own Purchasing Policy as authorized under Utah Code Ann. § 63G-6a-103 (76)(i).

B. **<u>Statutory Definitions</u>:** The definitions of terms set forth in Utah Code Ann. § 63G-6a-103, 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. **<u>Procurement Official</u>:** The District Clerk shall be designated as the District's "Procurement Official" and other employees of the District may act as Procurement Officials as authorized and delegated by the Board and/or the Procurement Official. References in this Policy to the Procurement Official shall include any "designee" or "delegate" designated by the Procurement Official or the Board.

D. **<u>Additional Definitions</u>:**

1. <u>Bid Bond</u>: 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 will accept the contract as bid or the cash will be forfeited or the surety will pay the specified bond amount to the District.

2. <u>Bid Rigging</u>: 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.

3. <u>Bid Security</u>: 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.

4. <u>Brand Name or Equal Specification</u>: 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. The District will be the final arbiter of whether a vendor's submission is an equivalent product.

5. <u>Brand Name Specification</u>: means a specification identifying one or more products by manufacturer name, product name, unique product identification number, product description, SKU or catalogue number.

6. <u>Collusion</u>: occurs when two or more persons act together to achieve a fraudulent or unlawful act or result. Collusion inhibits free and open competition in violation of law.

7. <u>Cost Analysis</u>: 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.

8. 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.

9. Evaluation Criteria: means the objective or subjective criteria that will be used to evaluate a vendor's response to a solicitation.

10. Manager: as used in this Policy refers to the chief executive officer of the District, whether that person's official title is "General Manager", "Executive Director", or any other title, and includes any designee of the Manager.

11. Mandatory Requirement: means a condition set out in the specifications/statement of work that must be met without exception.

12. 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; 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.

13. Objective Criteria: means the solicitation criteria that will be evaluated and scored based solely on the measurable and verifiable facts, evidence, and documentation provided in each vendor's solicitation response.

14. Participating Addendum: means an agreement issued in conjunction with a Cooperative Contract.

15. Payment Bond: is a bond that guarantees payment for labor and materials expended on the contract.

16. Performance Bond: is a promise to pay the District a certain amount if the contractor fails to meet an obligation, such as fulfilling the terms of a contract.

17. Person: means an individual, an association, an institution, a corporation, a company, a trust, a limited liability company, a partnership, a political subdivision, a government office, department, division, bureau or other body of government, and any other organization or entity.

18. Price Analysis: means the evaluation of price data without analysis of the separate cost components and profit.

19. Price Data: means factual information concerning prices for procurement items.

20. Reasonable Person Standard: means an objective test to determine if a reasonably prudent person who exercises an average degree of care, skill, and judgment would be justified in drawing the same conclusions under the same circumstances or having knowledge of the same facts.

21. Subjective Criteria: means the solicitation criteria that will be evaluated and scored based on the personal judgement, interpretations, and opinions of the evaluators after reviewing and analyzing the information presented in each vendor's solicitation response.

22. Steering a Contract to a Favored Vendor: occurs when a person involved in any phase of the procurement process acts with bias or prejudice in violation of the law to favor one vendor over another vendor in awarding a District contract. It includes collusion or manipulation of the procurement process; accepting any form of illegal gratuity, bribe or kickback; awarding a contract to a vendor without engaging in a standard procurement process without proper justification; bid rigging; using specifications that are overly restrictive, beyond the reasonable needs of the District, or that give an unfair advantage to a particular vendor without proper justification; intentionally dividing a purchase to avoid engaging in a standard competitive procurement process; leaking solicitation or other information to a particular vendor that is prejudicial to other vendors; participation in the procurement process while having a financial conflict of interest; and any other knowing and intentional effort to, without justification, favor or disfavor a vendor.

III.GENERAL PROVISIONS

A. **Procurement Official:** 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 Official 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:** Except as otherwise provided in this Policy or as authorized and delegated by the Board, the Board must approve all expenditures of the District. Notwithstanding the foregoing, however, the Procurement Official, 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 Ann.§§ 17B-1-601 *et. Seq.*, may issue payroll checks and direct deposits 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, nondiscretionary payments required under a contract that has been approved by the Board and for which sufficient funds are included in the current District budget, 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.

C. **<u>Availability of Funds</u>:** No purchase shall be made and no encumbrance shall be incurred unless funds sufficient to cover the purchase or encumbrance are available, sufficient funds for the purchase are included in the current District budget, and the purchase is approved by the appropriate District officials as herein provided.

D. **<u>Delivery of Goods</u>:** 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 Official, except in the case of an emergency purchase as provided in Subsection X.A.5 of this Policy.

E. **<u>Cooperative Purchasing and Purchasing Preferences</u>:**

1. <u>Cooperative Purchasing</u>: Nothing contained in this Policy 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 Section 63G-6a-2105 of the Act.

   b. In accordance with Section 63G-6a-2105, the District may obtain procurement items from state cooperative contracts.

      i. The District may request additional volume discount pricing for large volume orders, provided the state cooperative contractor is willing to offer additional discounts for large volume orders, by issuing a "Request for Price Quotations" to a vendor on a state cooperative contract for the procurement item being purchased. The District may not, however, coerce, intimidate or in any way compel a vendor on a state cooperative contract to offer additional discount pricing.

      ii. The Request for Price Quotations shall include:

         (1) A detailed description of the procurement item;
         (2) The estimated number or volume of procurement items that will be purchased;
         (3) The period of time that price quotations will be accepted, including the date and time the price quotations will be opened;
         (4) The manner in which price quotations will be accepted;
         (5) The place where price quotations shall be submitted; and
         (6) The period of time the price quotation must be guaranteed.

iii. Price quotations shall be kept confidential until the date and time of the opening and may not be disclosed to other vendors on state cooperative contracts until after the date and time of the opening. Email quotations are acceptable.

iv. Price quotations should be opened in the presence of a minimum of two witnesses.

v. Price quotations will become public at the time of the opening.

c. A state Cooperative Contract may not be used for:

i. An anti-competitive practice such as bid rigging; steering a contract to a preferred state cooperative contractor; utilizing auction techniques where price quotations are improperly disclosed and contractors bid against each other's price; disclosing pricing or other confidential information prior to the date and time of the opening; or any other practice prohibited by the Procurement Code.

d. All sales to the District resulting from quotations received under the process conducted in accordance with Subsection E.1.b. will be recorded as usage under the existing state cooperative contract, are subject to the administrative fee associated with the state cooperative contract, and will be reported to the Division of Purchasing and General Services.

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 that more than one equally low preferred bidder or contractor qualifies for the reciprocal preference, the Procurement Official shall consider the preferred bidders or contractors to be tied and will follow the process specified in Section 63G-6a-608 of the Procurement Code and Subsection VIII.C.13 of this Policy.

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. Written records of procurements for which an expenditure of $100 or more is made shall include the details required by Section 63G-6a-2002(4) of the Act (the name of the vendor, a description of the procurement item, the date of the procurement, and the expenditure amount) and be maintained for the longer of six years or the time otherwise required by law.

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. 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 Official requisitions for their requirements of supplies, contractual services, materials and equipment including such details and information as may be required by the Procurement Official.

G. Surplus Property and Salvage:

1. Disposal of Surplus Property:

   a. Surplus District property is to be disposed of in a manner that is in the best interest of the District. All surplus property shall be reported to the Board including, after disposal of the surplus property, a report describing the property, whether the property has been or will be replaced, and the consideration received for the property by the District.

   b. The Procurement Official is authorized to dispose of District surplus property the salvage value of which does not exceed $_________[2] that will not be required for future District use. The disposal of surplus property having a value in excess of the designated threshold requires prior Board authorization. Surplus property is to be disposed of in a commercially reasonable manner as the Procurement Official or the Board, should the Board so elect, sees fit, with all net proceeds of the disposal to be the property of the District.

   c. Surplus property may be delivered, for disposal, to a reputable online, auction or other disposal service at the discretion of the Procurement Official or as directed by the Board.

   d. Surplus property which is sold through a public auction may be purchased by a District employee.

   e. The foregoing 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.

   f. Local units of government, such as a municipality, another district or a school district located in the county in which the district is located, or a municipality, district, county or school district located in a different county,

[2] Until this blank is filled in, the threshold will be $2,000.

may be (but are not required to be) given a preference in the acquisition of the District's surplus property.

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.

3. Donation, Disposal, or Destruction of Surplus Property: The Procurement Official may donate to a governmental or charitable organization, destroy, or dispose of as waste any surplus property that is estimated in good faith to be worth less than $______[3] without involvement of the Board, and may dispose of property having an estimated value in excess of the designated threshold with Board approval if:

   a. The surplus property fails to sell at auction;

   b. The cost of selling the surplus property is greater than or equal to the value of the surplus property;

   c. The surplus property is no longer usable;

   d. The surplus property is damaged and either cannot be repaired or the cost of repair is greater than or equal to the value of the surplus property in a repaired state; or

   e. The surplus property can be replaced for less than the cost of repairing the surplus property.

4. Sale of Previously Purchased Procurement Item: Should surplus property be sold to a person from whom the District originally acquired the property (a "buyback purchaser"), Section 63G-6a-117 of the Procurement Code will apply. If the District sells property to a buyback purchaser for an amount in excess of the amount the District paid for the property, the District shall:

   a. Require the buyback purchaser to pay cash for the item;

   b. Not accept the excess repurchase amount in the form of a credit, discount or other incentive on a future purchase that the District may make from the buyback purchaser; and

   c. Not use the excess repurchase amount to acquire an additional procurement item from the buyback purchaser.

[3] Until this blank is filled in with a different dollar value, the threshold will be $100.00.

5. Removal of Useful Components: Ancillary or component parts or equipment may be removed from vehicles, trailers or equipment that is intended to be sold as surplus, for further use by the District or by another local government located in the state of Utah pursuant to G.1.f. above.

6. Surplus Electronic Data Devices: Before an electronic data device is transferred or otherwise disposed of:

   a. Any software owned or licensed by the District shall be removed as required by the applicable software license agreement;

   b. Information that is classified as protected, private or controlled under the Government Records Access and Management Act, Title 63G, Chapter 2 of the Utah Code, will also be removed, as will other district-owned records and data;

   c. Steps will be taken to ensure that the service contract for the device is null and void or is transferrable to the new owner of the device; and

   d. If the device is not transferred to a new owner, the foregoing steps will be completed or the device will be destroyed in such a manner as to guarantee that information and data cannot be retrieved.

H. **Inspection:** The Procurement Official 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 solicitation or contract. The Procurement Official 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 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, promoting economies or savings in District procurement, such as reducing the administrative burden in the procurement process or providing an incentive for a vendor to provide a volume or term discount or improve productivity through capital investment or better technology, or otherwise will be beneficial to the District. This determination may, but need not be, in writing.

1. Exceptions: Section 63G-6a-1204 does not apply to a contract for the design or construction of a facility, a road, a public transit project, or a contract for the financing of equipment, the contract term for which may exceed five years as determined by the District.

2. 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 Official, as provided in Section 63G-6a-1204, that:

    a. A longer period is necessary in order to obtain the procurement unit,

    b. A longer period is customary for industry standards, or

    c. A longer period is in the best interest of the District.

    The Procurement Official's written determination shall be included in the file for the subject procurement.

3. 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.

4. Indefinite Term: Based upon a written determination by the Procurement Official as provided in paragraph 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.

    a. Acting as the procurement official of the District, the Board has determined, and hereby determines, that it may be in the best interest of the District to be served by professionals having an institutional knowledge of the District, on the same basis as it best serves the District to retain valuable long-term District employees, and that professional services, including but not limited to design professional services, as defined in the Act, may be procured for an indefinite term and be terminable at will by the District.

B. Type of Contract:

1. Generally: Subject to the limitations of this Section 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 will be used, the Procurement Official will

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 contemplated contract type; 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). 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 (“cost plus”) contract unless the contract form is approved by the Procurement Official; 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: 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 permitted contract type or that it is impracticable to obtain the procurement item using any other type of permitted contract, and the proposed contractor’s accounting system will timely develop accurate cost data and allocate costs in accordance with generally accepted accounting principles.

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

1. Written Funding: A written finding by the Procurement Official under Section 63G-6a-1208 generally is required before either installment payments or prepayments are allowable. However, the Procurement Official’s determination that a prepayment is necessary or beneficial to the District need not be in writing when (i) it is customary in the industry to prepay for the procurement item or (ii) the District will receive an identifiable benefit by prepaying, such as a lower cost, the receipt of additional procurement items, early delivery, better service or better contract terms.

D. Multiple Award Contracts: As authorized under Section 63G-6a-1204.5 of the Act, the District may enter into multiple award contracts with two or more bidders or offerors being awarded a contract under a single solicitation. When it is anticipated that the District may enter into multiple award contracts before issuing the invitation for bids or request for proposals, the invitation for bids or request for proposals may state that the District may enter into multiple award contracts at the end of the procurement process provided, however, that the failure to include that statement in the invitation for bids or request for proposals will not preclude the District from entering into multiple award contracts at the end of the procurement process if doing so is determined by the Procurement Official to be in the best interest of the District.

1. Lowest Cost: The contracts awarded to more than one contractor under a single solicitation may state that orders will be placed first with the low bidder, unless the lowest cost bidder cannot provide the needed procurement item as and when desired by the District, in which event the next lowest cost vendor who is able to provide the procurement item as and when desired by the District may receive the order.

2. Contract Awarded by Category: Multiple award contracts may also be awarded under one solicitation with contracts being awarded by category based upon the lowest cost bid or proposal per category, with only one vendor being awarded a contract for each category.

3. Line Item Contracts: In addition, multiple award contracts may be awarded by line item, provided that the solicitation indicates that a contract may be awarded based on the lowest bid per line item, task or service and only one vendor may be awarded a contract for each line item, task or service.

4. Other Objective Methodology: Multiple award contracts may also be awarded based on any other specific objective methodology approved by the Procurement Official. For example, multiple award contracts may be issued to design professional firms based on the potential vendor's or contractor's field or area of expertise, or vendors may be selected for particular projects or deliveries using a rotation system organized alphabetically, numerically or randomly, or on any other basis specified in the solicitation and/or the resulting contracts.

5. Best Value: The District may place orders with any multiple award contract vendor or contractor based on the procurement item that best meets the needs of the District or based on the best value as determined by cost and non-price criteria specified in the solicitation.

6. Favored Vendor Prohibition: A multiple award contract may not be used to steer purchases to a favored vendor or use any other means or methods that do not result in fair consideration being given to all vendors who have been awarded a contract under a multiple award.

V.SMALL PURCHASES

A. General: Small purchases shall be conducted in accordance with the requirements set forth in Section 63G-6a-506 of the Procurement Code and this Part V. Unless otherwise required as part of another standard procurement process being used pursuant to requirements of this Part V, small purchases do not require a solicitation or public notice.

1. Individual Procurement Threshold: The individual procurement item threshold is $5,000. When purchasing an individual procurement item costing up to $5,000, the District may select the best source by direct award without seeking competitive bids or quotes.

2. <u>Single Procurement Aggregate Threshold</u>: The single procurement aggregate threshold is $10,000 for multiple individual procurement items purchased from one source at one time.

3. <u>Annual Cumulative Threshold</u>: The annual cumulative threshold for purchases made from the same source is $50,000.

4. <u>Information Technology</u>: The threshold for purchasing information technology from and the same source is $500,000.00.

5. <u>Vendor Prequalification</u>: Should the District elect to pre-qualify vendors and/or develop an approved vendor list for a small purchase, the District will follow the process described in Section 63G-6a-507 of the Act or Part 15 of the Procurement Code for the selection of design professional services.

6. <u>Rotation System</u>: Whenever practicable, the District will use a rotation system or another system designed to allow for competition when using the small purchases process.

B. <u>Small Purchases Threshold for Design Professional Services</u>:

1. <u>Threshold Amount</u>: The small purchase threshold for "design professional" (architecture, engineering, master planning and programing, or commercial interior design) services is a maximum amount of <u>$100,000</u> per project.

2. <u>Procedure</u>: Design Professional services of $100,000 or less may be procured by direct negotiation after reviewing the qualifications of a minimum of three design professional individuals or firms. If Design Professional services may be utilized with some frequency, an approved vendor list, preferably including at least three pre-qualified vendors, may be utilized following the process described in Section 63G-6a-507 of the Act. The District will rank the Design Professional firms in order and begin fee negotiations, up to <u>$100,000</u>, with the highest ranked firm. If an agreement cannot be reached with the highest ranked individual or firm, the District will move to the next highest ranked individual or firm and so on, until a fee agreement is reached. If a fee agreement cannot be reached with the first group of selected individuals or firms, the District may select additional Design Professional individuals or firms using the same process, or may cancel the procurement.

3. <u>Procurement With No Approved Vendor List</u>: If the District does not have an approved vendor list, the Procurement Official may nevertheless obtain the services of a design professional using the small purchases approach by identifying at least three firms or individuals that are reasonably determined to be capable of providing the desired design professional services, conducting due diligence to obtain information that is deemed to be reliable regarding each firm or individual, and then ranking the firms and individuals on the list. Once the rankings have been established, procedures stated in B.2 above will be used to obtain the services of a design professional.

4. Specifications: The District will include minimum specifications when using the small purchase threshold for Design Professional services.

C. Small Purchases Threshold for Construction Projects:

1. Threshold: Except as otherwise specified, the small construction project threshold is a maximum of $250,000 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-506 of the Act to prequalify potential vendors and in Section 63G-6a-507 to develop an Approved Vendor List, or other applicable selection method 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 $100,000: The District may procure small construction projects up to a maximum of $100,000 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 $100,000 to $250,000: The District may procure small construction projects costing more than $100,000 up to a maximum of $250,000 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. If the District requests competitive quotes from vendors/contractors on an approved vendor list, vendors may be selected using a random or other rotation system, based on each vendor's expertise or field, or another method approved by the Procurement Official may be used to select vendors from whom price quotes will be obtained. In any event, the District may obtain an additional price quote from the vendor that provided the lowest price quote on the most recently completed construction procurement conducted by the District using an approved vendor list.

6. Up to $2,500,000 Using an Approved Vendor List: The small construction project threshold per individual project, using an approved vendor list, is a maximum of $2,500,000 for direct construction costs, including design and allowable furniture or equipment costs.

   a. For individual construction projects costing more than $250,000 up to a maximum of $2,500,000, all vendors/contractors on the District's approved vendor list will be invited to submit bids in accordance with the provisions set forth in Part 6 of the Procurement Code, except that public notice requirements in Part 6 are waived. The quotes or bids are to include minimum specifications, and the District may award the work to the contractor with the lowest price 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.

b. 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 $250,000 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 $250,000, in the Procurement Official's discretion.

D. Quotes for Small Purchases between $5,001 and $50,000:

1. From $5,000 to $10,000: For procurement item(s) other than design professional services, other professional or consulting services, or construction, where the cost is greater than $5,000 up to a maximum of $10,000, the District will obtain at least two price quotations based on 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 $10,000 to $50,000: For procurement item(s) costing more than $10,000, up to a maximum of $50,000, the District will obtain at least two competitive quotes that include minimum specifications and may purchase the procurement item from the responsible vendor offering the lowest quote that meets the specifications.

3. Above $50,000: For procurement item(s) costing more than $50,000, the District will conduct an invitation for bids or other procurement process outlined in the Procurement Code.

4. 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.

E. Small Purchases of Professional Service Providers and Consultants:

1. Up to $100,000: The small purchase threshold for professional service providers and consultants, other than design professionals, is a maximum amount of $100,000 per budget year.

2. Procedure: The services of professional service providers and consultants, other than design professional services, may be obtained using the approach described in B. above, which is applicable to design professional services, with such modifications as may be deemed to be appropriate by the Procurement Official. After reviewing the qualifications of a minimum of three professional service providers or consultants, the District may obtain professional services or consulting

services. Up to a maximum cost of $100,000 by direct negotiation after reviewing the qualification of a minimum of three firms or individuals.

3. Cost Not Primary: The District may base the selection on documented factors such as experience, knowledge and reputation, rather than based solely on cost, but will seek the best value for the District.

F. **Optional Competitive Procurement:** Notwithstanding the foregoing, the District may require any acquisition of supplies, materials or equipment to be competitively bid or be the subject of a request for proposals if, in the determination of the Board or the Procurement Official, 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 Official or the person responsible for accounts payable of the District.

H. **Open Charge Accounts:** The District, for convenience, may maintain one or more open charge accounts with vendors that regularly provide supplies and materials and may utilize credit cards. Purchases on the account must be approved by the Procurement Official 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 and charge account 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 the Act or this Policy.

VI. VENDOR PREQUALIFICATION

A. **Prequalification of Potential Vendors:** The District may establish approved vendor lists in accordance with the requirements of Section 63G-6a-507 of the Act.

B. **Approved Vendor Lists Using the Small Purchase Process:**

1. Small Purchase Thresholds: Contracts or purchases from an approved vendor list may not exceed the thresholds stated in Part V of this Policy. Thresholds for other approved vendor lists may be established by the Procurement Official.

2. Request for Proposals or Qualifications: An approved vendor list may be established using the request for proposals process or the request for statements of qualifications process, as deemed appropriate by the Procurement Official.

C. **Quotes from Vendors:**

1. Number of Quotations: The number of required quotes or quotations ("quotes") stated in this Policy are minimum requirements. Whenever practicable, more quotes may be requested than the prescribed minimum number, up to obtaining quotes from all vendors on an approved vendor list.

2. Lowest Quote from Prior Procurement. In each instance, the District may obtain an additional quote from the vendor that provided the lowest cost quote on the most recently completed procurement conducted using an approved vendor list.

3. Lowest Quote for Current Procurement. Unless otherwise stated in or allowed under this Policy, the District will purchase the procurement item from the vendor on the approved vendor list that provides the lowest cost quote for the specified procurement item.

VII.SPECIFICATIONS

A. CONTENT: Specifications for the procurement item(s) being sought will be included in solicitation documents.

1. Economy and Competition: Specifications will be drafted with the objective of clearly describing the District's requirements and encouraging competition.

   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 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 2, persons with a conflict of interest, or who anticipate responding to the solicitation 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 may 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 to be in the best interest of the District by the Procurement Official. Notwithstanding anything to the contrary stated in this Policy, however, a person

or firm that responds to a Request for Information issued by the District or presents an unsolicited offer will not be precluded from participating in a subsequent solicitation that includes specifications or information from the response to the Request for Information or from the unsolicited offer. Furthermore, the ownership prohibition shall not apply to owning stock in a publicly traded company that represents no more than a 1% interest in the company.

a. Violations of the above may result in:

i. The bidder or offeror being declared ineligible to be awarded the contract;
ii. The solicitation being canceled;
iii. Termination of an awarded contract; or
iv. Any other action determined to be appropriate by the Procurement Official or 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 reasonably practicable are also included in the specification.

b. Brand name or equal specifications should include a description of the particular required design and functional or performance characteristics. There should be a good faith effort to describe specifications that are unique to the referenced brands in sufficient detail to enable a vendor to respond with an equivalent product, if one is available.

c. When a manufacturer's specification is used in a solicitation, the solicitation will state the minimum acceptable requirements of an equivalent. When reasonably practicable, the District will name at least two manufacturer's specifications.

4. Brand Name Sole Source Requirements:

a. If only one brand or product can meet the District's requirements set forth in the specifications, the District may conduct the procurement in accordance with Section 63G-6a-802 of the Act and will solicit as many providers of the brand as is practicable.

b. If there is only one provider that can meet the requirements, the District will make the purchase as a sole source procurement in accordance with Section 63G-6a-802 of the Act.

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 obtain information, comments or suggestions, as provided in Section 63G-6a-409 of the Act.

1. Use: A request for information may not be used to negotiate fees, make a purchase, determine whether a procurement may be made without utilizing a standard procurement procedure, or enter into a contract, but may be used to seek a wide range of information including:

    a. The availability of a procurement item;

    b. Delivery schedule;

    c. Industry standards and practices;

    d. Product specification;

    e. Training;

    f. New Technology;

    g. Capabilities of potential providers of a procurement item; and

    h. Alternate solutions to meet the procurement need.

2. Confidentiality: A request for information should indicate the procedure for business confidentiality claims and other protection provided by the Government Records Access and Management Act, Title 63G, Chapter 2 of the Utah Code. *See* Utah Code Ann. § 63G-6a-409(5).

B. Competitive Bids and Proposals - Over $50,000.00: 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 $50,000.00 generally will be awarded only after competitive sealed bids or proposals have been requested and received. Sealed written bids or proposals are to be obtained 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 Part 6 of the Act and as provided in this Policy.

1. Invitation for Bids: 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 providing lines for bidder information such as the bid price, acknowledgment of the receipt of addenda issued by the District if any, and the bidder's signature.

   b. Bidders may be required to submit descriptive literature and/or product samples, free of charge unless otherwise stated in the invitation for bids, to assist in the evaluation to determine whether a procurement item meets the specifications and other requirements of the invitation for bids. If not destroyed by testing, product samples 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 in amounts set forth in the invitation for bids and as prescribed by applicable law.

   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 deadline for 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 Official, 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 Official, 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 will result in the disqualification of any bidder that does not attend. At the discretion of the Procurement Official, listening to or viewing an audio or video recording of a pre-bid conference or site visit may be substituted for in-person attendance.

c. Attendance at a pre-bid conference may be conducted via any of the following as determined by the Procurement Official:

i. Attendance in person;
ii. Teleconference participation;
iii. Webinar, ZOOM, or similar participation; or
iv. Other electronic media approved by the Procurement Official.

d. A site visit may generally only be attended in person provided, however, at the discretion of the Procurement Official, 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 may 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 the attendance log, minutes of the pre-bid conference and any documents distributed at the pre-bid conference or site visit, or any oral modification made to any of the solicitation documents which is to be reduced to writing, as an addendum to the solicitation.

4. Public Notice: Public notice of the invitation for bids is to be given a reasonable time prior to the date set forth therein for the opening of bids, in accordance with Section 63G-6a-112 and this Section C.

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 d. 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 posted closing time, 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 may 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 cause will not excuse the bid or a modification to a bid from being late.

i. All bids or modifications to bids received by physical delivery will be date and time stamped or marked.

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.

7. Errors in Bids: The following shall apply to the correction or withdrawal of an inadvertently erroneous bid, or the cancelation of an award or contract that is based on an unintentionally erroneous bid. A decision to permit the correction or withdrawal of a bid or the cancellation of any award or contract shall be supported in a written document signed by the Procurement Official.

a. Errors attributed to a bidder's error in judgment may not be corrected.

b. Provided that there is no change in bid pricing or the cost evaluation formula, errors not attributed to a bidder's error in judgment may be corrected if it is in the best interest of the District and correcting the mistake maintains the fair treatment of other bidders.

i. Examples include:

(1) Missing signatures,
(2) Missing acknowledgment of receipt of an addendum;
(3) Missing copies of professional licenses, bonds, or insurance certificates, provided that copies are submitted by the deadline established by the Procurement Official to correct this mistake;
(4) Typographical errors;
(5) Mathematical errors not affecting the total bid price; or
(6) Other errors deemed by the Procurement Official to be immaterial or inconsequential in nature.

c. The Procurement Official shall approve or deny, in writing, a bidder's request to correct or withdraw a bid.

8. <u>Errors Discovered After the Award of Contract</u>:

a. Errors discovered after the award of a contract may only be corrected if, after consultation with the Procurement Official and the District's legal counsel, it is determined that the correction of the mistake does not violate the requirements of the Procurement Code or this Policy.

b. Any such correction must be supported by a written determination signed by the Procurement Official.

9. <u>Re-solicitation of a Bid</u>:

a. The District may cancel the solicitation and issue a new invitation for bids if the Procurement Official 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.

10. <u>Bid Award</u>: Unless the District elects to cancel the procurement (which the District may do, at the discretion of the Procurement Official, provided that the cancelation is not an attempt to steer the award to a favored vendor) 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 Official, cost may not be divided or evaluated on any other basis than the entire term of the contract, excluding renewal periods. The foregoing may not apply, however, if the cost for the entire term of the contract cannot be calculated with a reasonable degree of certainty. In that instance, costs that may be calculated with certainty may be used as the basis for the award.

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 Official or Board is authorized, in situations where time, economic or other 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.

11. 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 Official determines that the price submitted is fair and reasonable and other prospective bidders had a reasonable opportunity to respond, that there is no expectation that a new invitation to bid would result in additional bids, or that a rebid would not be in the best interest of the District or there is not adequate time for a 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.

12. Multiple or Alternate Bids:

a. Multiple or alternate bids will not be accepted from a bidder 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 Official will only accept the bidder's first bid and will not accept any other bids constituting multiple or alternate bids.

13. Methods to Resolve Tie Bids:

a. In accordance with Section 63G-6a-608 of the Act, in the event of tie bids, and only one for the tie bids was submitted by a Utah resident bidder, the contract shall be awarded to the Utah resident bidder, provided the bidder indicated in the bidder's response to 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 Official 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 may be used as deemed appropriate by the Procurement Official.

14. 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.

15. Multiple Stage Bidding Process: Multiple stage bidding may be conducted when deemed by the Procurement Official to be in the best interest of the District and as stated in the solicitation.

a. The Procurement Official 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: The request for proposals ("RFP") procurement process shall be conducted in accordance with the requirements of Part 7 of the Procurement Code 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. An RFP may be conducted in stages to qualify offerors for subsequent stages or to narrow the number of offerors that will move on to subsequent stages. A multiple stage request for proposals solicitation will 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 that may used to determine which proposals will 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 Official 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 Official, 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. <u>Protected Records</u>:

a. The following are protected records, and may be redacted by the offeror subject to the procedures described below in accordance with the Governmental Records Access and Management Act (GRAMA) Title 63G, Chapter 2 of the Utah Code.

i. A trade secret, 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 GRAMA.
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.

5. <u>Notification:</u>

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.

6. <u>Process for Submitting Proposals with Protected Business Confidential Information</u>:

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. <u>Pre-proposal Conferences/Site Visits</u>:

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 Official:

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 Official, 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 offeror 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. <u>Addenda to Request for Proposals</u>:

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 Official, 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 Official, 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, except as determined under d. below.

    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.

    d. 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 will be accepted as being on time.

11. Errors in Proposals: The following shall apply to the correction or withdrawal of an unintentionally erroneous proposal, or the cancellation of an award or contract that is based on an unintentionally erroneous proposal. A decision to permit the correction or withdrawal of a proposal or the cancellation of an award or a contract shall be supported in a written document, signed by the Procurement Official.

    a. Mistakes attributed to an offeror's error in judgment may not be corrected.

    b. Unintentional errors not attributed to an offeror's error in judgment may be corrected if it is in the best interest of the District and correcting the error maintains the fair treatment of other offerors.

i. Examples include:

(1) Missing signatures,
(2) Missing acknowledgement of an addendum;
(3) Missing copies of professional licenses, bonds and insurance certificates, provided that copies are submitted by the deadline to correct the mistake established by the Procurement Official;
(4) Typographical errors;
(5) Mathematical errors not affecting the total proposed price; or
(6) Other errors deemed by the Procurement Official to be immaterial or inconsequential in nature.

c. Unintentional errors discovered after the award of a contract may only be corrected if, after consultation with the Procurement Official and the District's legal counsel, it is determined that the correction of the error does not violate the requirements of the Procurement Code or this Policy.

12. <u>Evaluation of Proposals</u>:

a. The evaluation of proposals shall be conducted in accordance with Part 7 of the Procurement Code.

b. An evaluation committee consisting of at least three individuals may ask questions of offerors to clarify proposals, provided that the questions are submitted and answered in writing. The record of questions and answers shall be maintained in the file.

c. The evaluation of cost in an RFP shall be based on the entire term of the contract, excluding renewal periods.

i. Unless an exception is authorized in writing by the Procurement Official, 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. <u>Correction or Withdrawal of Proposal</u>:

a. In the event an offeror submits a proposal that on its face appears to be impractical, unrealistic or otherwise in error, the Procurement Official may contact the offeror to:

i. Confirm the proposal;

ii. Permit a correction of an immaterial error in the proposal as provided in Section 63G-6a-114 of the Act;
iii. Request the offeror to clarify information in the proposal as provided in Section 63G-6a-115 of the Act; or
iv. Permit the withdrawal of the proposal.

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.

14. Interviews and Presentations:

a. Interviews and presentations may be held as outlined in the RFP.

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 Official 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. An evaluation committee may request best and final offers when:

i. No single proposal addresses all of the specifications;
ii. All of the proposals are unclear or deficient in one or more respects;
iii. All cost proposals exceed the identified budget or the District's available funding; or
iv. Two or more proposals receive an identical score and it is the highest score.

b. Only offerors meeting the minimum qualifications or scores described in the RFP are eligible to respond to a call for best and final offers.

c. 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 other deficiencies in the offeror's proposal not called for in the request for best and final offers issued by the District.

d. 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.

e. The best and final offers process is an optional step that may only be conducted during the evaluation phase of the RFP process and may not be conducted as part of the contract negotiation process.

f. The District will not use the best and final offers process to allow offerors a second opportunity to propose on the entire RFP.

g. If a proposal modification is made orally during the interview or presentation process, the modification must be confirmed in writing.

h. A request for best and final offers shall:

i. Comply with Section 63G-6a-707.5 of the Act;
ii. Include a deadline for submission that allows offerors a reasonable opportunity to prepare and submit their responses;
iii. Indicate how proposal modifications in response to a request for best and final offers will be evaluated;

i. If an offeror does not submit a best and final offer, its immediate previous proposal will be considered as its best and final offer;

j. Unsolicited best and final offers will not be accepted.

16. <u>Cost-benefit Analysis Exception: CM/GC</u>:

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-707(10) 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 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.

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 or only one vendor on an approved vendor list responds to an invitation to provide goods or services, the evaluation committee or Procurement Official 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 or Procurement Official determines that the proposal meets the minimum requirements, pricing and terms are fair and reasonable, and the proposal is in the best interest of the District, the District may make an award.

c. If a contract is awarded to the sole offeror, the Procurement Official shall maintain records that document why no more offers were received.

d. 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. To prevent the evaluation committee from analyzing proposals that cannot be considered for award, either the evaluation committee, or the Procurement Official prior to distributing copies of proposals to the evaluation committee, may conduct an initial review of any applicable pass/fail minimum requirements or minimum score threshold 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. Thresholds may be based on minimum scores for each evaluation category, the total of each minimum score for each evaluation category based on the total points available, or a combination the above. Thresholds may not be based on a natural base on scores that was not defined or stated in the RFP or on a predetermined number of offers, unless specifically authorized by the Procurement Official. 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. Qualifications;
iii. Certifications;
iv. Licensing;
v. Experience;
vi. Compliance with state or federal regulations;
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 Official will meet with the evaluation committee and any staff members who will have access to the proposals to:

(1) Explain 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 of the Act and in this Policy.

c. Unless an exception is authorized by the Procurement Official, in order to avoid cost influencing the evaluation committee's scoring of non-price criteria, in accordance with Section 63G-6a-707 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 is expected to 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 an 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 Official 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 Official, 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. If, at any time during the evaluation process, the evaluation committee or the Procurement Official determines that no single proposal adequately addresses all of the specifications stated in the RFP, all proposals are unclear or deficient in one or more respects, cost proposals exceed the identified budget or the District's funding, or two or more proposals receive an identical evaluation score that is the highest score then, with the approval of the Procurement Official, best and final offers may be requested from responsible and responsive offerors and be evaluated 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 Official.

g. The District shall follow the procedures set forth in Section 63G-6a-707 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 Official shall prepare a cost justification statement for the committee recommendation and any applicable cost-benefit analysis.

i. The Procurement Official may replace any member on the evaluation committee or reconstitute the committee in any way deemed 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 Official from serving on an evaluation committee.

19. Criteria for Scoring Criteria Other Than Cost:

a. Proposals apparently meeting the mandatory minimum requirements stated in an RFP will be scored on each, evaluation criteria, other than cost, based upon criteria stated in the RFP using 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. <u>Evaluation Committee Members Required to Exercise Independent Judgment</u>:

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 Official. 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 Official 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:

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 Part V of this Policy. The award of a contract for engineering, architectural, master planning and programming or commercial interior design services is governed by Part XV of this Policy.

b. Subject to Section IV.A. of this Policy, contracts with consultants providing professional or technical services, such as accounting, legal and design professional services, may be extended from year-to-year in the discretion of the Procurement Official in accordance with Section 63G-6a-1204(7) of the Act.

23. Publicizing Awards:

a. 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;
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: 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 not responsive or an offeror is not responsible at any time even if the proposal initially passed the pass/fail review mentioned in Section VIII.E.18.a.

25. Public-Private Partnerships: The District shall award a contract for a public-private partnership, as defined 63G-6a-103 of the Act, using the request for proposals standard procurement process as set forth in Part 7 of the Act.

F. Annual Renewals of Purchase Contracts: Subject to the Act, 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 Official.

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;

d. Requires that the District is to determine that the bidder's or offeror's product meets applicable specifications; or

e. 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 when 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 Official 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 Official 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 Official shall reject a bid or offer from a bidder or offeror that is determined to be nonresponsible. The requirements for a bidder or offeror to be "responsible" are defined in Section 63G-6a-103 of the Act. The unreasonable failure of a bidder or offeror to promptly supply information in response to an inquiry with respect to responsibility may be grounds for a determination of non-responsibility of that bidder or offeror.

2. Nonresponsive Offer: The Procurement Official may not accept a bid or proposal that is not "responsive" as defined in Section 63G-6a-103 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 may be rejected.

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 Official. In the event a solicitation is cancelled, the reasons 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: Any or all bids or competitive sealed proposals may be rejected in whole or in part when doing so is deemed to be in the best interest of the District, and the District may, in its discretion, re-invite bids or re-solicit competitive sealed proposals.

a. After a notice of award has been issued, but before a written contract between the successful vendor and the District has been signed, the District may cancel the notice of award based upon information which, if it had been known prior to the issuance of the notice of award, would have been cause for the rejection of the otherwise successful bid or proposal.

b. In particular, an offer that is determined to be nonresponsible or nonresponsive will be rejected, as will a bid or offer received from any person that is suspended, debarred or otherwise ineligible as of the deadline for receipt of solicitation responses.

B. Re-solicitation:

1. No Response: In the event there is no response to an initial solicitation, the Procurement Official 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 Official 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 the bids or proposals that the specifications, scope of work or other requirements contained in the solicitation documents were not met by any bidder or offeror, and all solicitation responses have been determined to be nonresponsive or nonresponsible, the solicitation shall be cancelled.

1. Determination: Solicitations may be cancelled before award but after opening all bids or offers when the Procurement Official determines in writing that:

a. Inadequate, erroneous 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. All otherwise acceptable bids or offers received are at unreasonable prices, or only one bid or offer is received and the Procurement Official 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;

h. No responsive bid or offer has been received from a responsible bidder or offeror;

i. An infraction of the Utah Code, an applicable rule, or a policy has occurred; or

j. Other circumstances or reasons that constitute reasonable cause as determined by the Procurement Official.

D. **Alternative to Cancellation:** In the event administrative difficulties are encountered, before award but after the deadline for receipt of submissions that may delay the award beyond the bidders', offerors' or other persons' acceptance periods, the bidders, offerors or persons should be requested, before the expiration of their solicitation responses, to extend in writing the acceptance period (with the consent of sureties, if any) 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 Official 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.

F. **Award of a Contract After Cancellation for Cause or by Mutual Agreement:**

1. Controlling Interest of the District: If a contract awarded through a standard procurement process is cancelled for cause or by mutual agreement within the first 12 months of the contract term and the procurement item is still determined to be needed, the Procurement Official may make a determination concerning whether it is in the best interest of the District to award a contract for the balance of the scope of work set forth in the solicitation to a responsible vendor that responded to the original solicitation with a responsive solicitation response that meets all of the minimum score thresholds set forth in the solicitation:

   a. Having the next lowest bid in response to an invitation for bids; or

   b. With the next highest total score or the next authorized score to award a contract in accordance with the RFP, an approved vendor list, the design professional or other professional services procurement process; or

   c. To issue a new solicitation for the procurement item.

2. Equitable Treatment of Participants: In making a determination under Subsection F.1, the Procurement Official shall consider the equitable treatment of all persons involved in the procurement process.

3. Cancellation for Convenience/Timing. A new contract may not be awarded under this Subsection F if the original contract is cancelled by the District for convenience, if to do so would extend a contract beyond the contract period identified in the solicitation, or if the contract is cancelled after the first 12 months of the original contract period.

X. EXCEPTIONS – PROCUREMENT WITHOUT COMPETITION

A. Contracts Awarded Without Competition: The Procurement Official 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 8 below exists. In the event 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. When practical, the Procurement Official will conduct a price analysis before awarding a sole source contract. 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.ii or iii below), a description of the procurement item, and any other information desired by the Procurement Official 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 award to a specific supplier, service provider, or contractor is a condition of a donation or grant that will fund the full cost of the supply, service or construction item;
   iii. 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;
   iv. Transitional costs are a significant consideration in seeking the procurement item and a cost benefit analysis demonstrates 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;
   v. The procurement item is a component or replacement part for which there is no commercially available substitute and which can be obtained only from the manufacturer;
   vi. The procurement item is an exclusive maintenance service or warranty agreement;
   vii. The procurement item is a utility service for which only one public service provider is available in the area;
   viii. Compatibility is the overriding consideration in making the purchase;
   ix. A used procurement item that presents a unique, specialized or time limited buying opportunity; or
   x. The Procurement Official determines, after diligent inquiry, that awarding a contract through a standard procurement process is impractical and is not in the best interest of the District.

2. <u>Continuation of Previous Purchases</u>: When the purchase is a continuation of previous purchases, and there exists a clear potential economic benefit to the District to negotiate a contract directly with the firm that supplied the initial purchase.

3. <u>No Response to Bid Invitation</u>: When the District does not receive a responsive, responsible response to its announcement, request for proposals or invitation to bid.

4. <u>Cooperative Contract</u>: Without conducting a standard procurement process, the District may make purchases from state cooperative contracts as provided in Section 63G-6a-2105 of the Act without signing a participating addendum if the solicitation issued by the State's Chief Procurement Officer included a statement indicating that the resulting contract would be issued for the benefit of other public entities. 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, or limit the ability of the District to

participate in, sponsor, conduct or administer a cooperative procurement with another Utah procurement unit or public entity in accordance with the requirements of Section 63G-6a-2105(4) of the Act, which will require a participating addendum.

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. An emergency procurement may only be used when circumstances create harm or risk of harm to public health, welfare, safety, or property.

   a. Urgent or unexpected circumstances or requirements alone may not justify an award for a contract without using a standard procurement process. Circumstances that may create harm or risk to health, welfare, safety, or property may justify an emergency procurement without engaging in a standard procurement process include:

      i. Damage to a facility or infrastructure resulting from flood, fire, earthquake, storm, or explosion;
      ii. Failure or imminent failure of a public building, equipment, road, bridge or utility;
      iii. Terrorist activity;
      iv. Epidemic;
      v. Civil unrest;
      vi. Events that impair the ability of the District to function or perform required services;
      vii. Situations that may cause harm or injury to life or property; or
      viii. Other conditions as determined in writing by the Procurement Official.

   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 District 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. When it is practical to do so, the Procurement Official should 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 Official, emergency purchases may be made by the department in charge without notifying the Procurement Official, but such purchases shall be reported to the Procurement Official on the first working day after the occurrence. Where circumstances permit, the

Procurement Official may propose lists of approved vendors for emergency purchases.

e. A written determination 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.

6. Alternative Procurement Methods:

a. The District may utilize alternative procurement methods to acquire procurement items such as those listed below when it is determined in writing by the Procurement Official to be more practicable or advantageous to the District:

i. Used vehicles;
ii. Hotel conference facilities and services;
iii. Speaker or trainer honorariums; and
iv. Any other procurement item for which a standard procurement method is not reasonably practicable.

b. When making this determination, the Procurement Official may take into consideration whether:

i. The potential cost of preparing, soliciting and evaluating bids or proposals is expected to exceed the benefits normally associated with such solicitations;
ii. The procurement item cannot be acquired through a standard procurement process; and
iii. The price of the procurement item is fair and reasonable.

c. In the event that it is so determined, the Procurement Official may elect to utilize an alternative procurement method which may include:

i. Informal price quotations;
ii. Direct negotiations; and,
iii. Direct award.

7. Unique Conference and Convention Facilities: Conference and convention facilities may be engaged without using a standard procurement process if they have unique special amenities, such as location and services.

8. Certain Promotional Activities: International, national or local promotion of the District expenses may be incurred without using a standard procurement process with Board approval.

B. Transition Costs – Cost Benefit Analysis:

1. Definitions: For purposes of this Section B, the following definitions shall apply:

   a. "Competing type of procurement item" means a type of procurement item that is the same, equivalent to, or superior to the existing type of procurement item currently under contract in all material aspects including performance, specifications, scope of work, and provider qualifications, certification, and licensing.

   b. "Competing provider" means a provider other than the existing provider under a contact that provides a competing type of procurement item.

   c. "Significant," "unreasonable or cost-prohibitive" transitional costs are defined as costs associated with changing from an existing provider of a procurement item to another provider of that procurement item or from an existing type of procurement item to another type that constitutes a measurably larger amount that likely would have an influence on or affect the award of a contract if a competitive procurement were to be conducted for the procurement item being considered, and provides a compelling justification for not conducting a competitive standard procurement process.

2. Transitional Costs that Must Be Considered: The transitional costs that must be considered in a cost-benefit analysis include:

   a. Costs that are directly associated with changing from an existing provider of a procurement item to a competing provider of that procurement item or from an existing type of procurement item to a competing type of procurement item; and

   b. A full lifecycle cost analysis of the existing type of procurement item and competing type of procurement items to determine which procurement item is more cost-effective.

3. Transitional Costs that May Be Considered: Transitional costs that may be considered in a cost benefit analysis include:

   a. Costs identified in Section 63G-6a-103(93) of the Act;
   b. Costs offered by a competing provider for a competing type of procurement item in a competitive bid or RFQ process conducted within the last 12 months;
   c. costs offered by a competing provider for a competing type of procurement item in a competitive bid or RFP process conducted before the most recent 12 months, updated using an applicable price index;
   d. written cost estimates obtained by the District from a competing provider for a competing type of procurement item; and
   e. other transitional costs determined to be applicable by the Procurement Official.

4. Information Not to Be Considered: Transitional costs or other information that may not be considered in a cost-benefit analysis include:

   a. Costs that are prohibited in Section 63G-6a-103(93) of the Act;

   b. Data provided by the existing provider for establishing the market value of the existing type of procurement item;

   c. A competing provider's price for a competing type of procurement item;

   d. Costs associated with any other procurement item other than the existing type of procurement item or a competing type of procurement item;

   e. Non-monetary factors, such as the provider's performance, District preference, and other data or information that is not specific to the transitional costs associated with the existing type of procurement item or a competing type of procurement item;

   f. Factors other than monetary transitional costs directly associated with changing from an existing provider of a procurement item to a competing provider of that procurement item or from an existing type of procurement item to a competing type of procurement item; and

   g. other transitional costs or information deemed inappropriate or unreliable by the Procurement Official.

5. Completion: When appropriate or required, the District, under the direction of the Procurement Official, will complete a written cost-benefit analysis. The cost-benefit analysis should not be overly time -consuming to complete or involve hiring costly consultants or financial analysts.

C. Trial Use or testing of procurement item including New Technology: The trial use or testing of a procurement item, including new technology, shall be conducted as set forth in Section 63G-6a-802.3 of the Act.

D. Extension of a Contract without engaging in a standard procurement process: The Procurement Official may extend an existing contract without engaging in standard procurement process if it is necessary to avoid a lapse in a critical service mitigating a circumstance that is likely to have a negative effect on public safety, safety, health and welfare, or property: and the district is engaged in a standard procurement process for the procurement item for a limited period as provided in in 63G-61-802.7 of the Act.

E. Notice of Intent to Award a Contract Without Engaging in a Standard Procurement Process: The District may issue a notice of intent to award a contract without engaging in a standard procurement process as follows:

1. Content: At a minimum, the notice of intent to award a contract without engaging in a standard procurement process will include the following information:

a. A description of the procurement item or the proposed scope of work;

b. The total dollar value of the procurement item including, for the applicable procurement item, the actual or full life cycle cost, including maintenance and service agreements;

c. The duration of the contract; and

d. A brief summary of research that resulted in the sole source determination respecting the unavailability of other sources, transitional costs or other circumstances that justify an award without using a standard procurement process and the determination that the procurement is in the best interest of the District.

2. Notice of Intent Form: The District may, but is not required to, use the "Notice of Intent to Award a Contract Without Engaging in a Standard Procurement Process" form developed by the Division Purchasing and General Services when a procurement is made without conducting a standard procurement process.

3. Threshold: A notice of intent to award a sole source procurement costing over $50,000 shall be published, and less costly sole source procurements may be published in the discretion of the Procurement Official, in accordance with Section 63G-6a-112 of the Act.

4. Waiver of Requirement: The requirement to publish a notice for a sole source or other procurement without engaging in a standard procurement process is waived:

a. For public utility services;

b. If the award to a specific supplier, service provider, or contractor is a condition of a donation or grant that will fund all or virtually all of the cost of the supply, service, or construction item; and

c. For other circumstances as determined in writing by the Procurement Official.

5. Contest of Notice: A person may contest a sole source procurement prior to the award of the contract before the closing of the public notice period set forth in Section 63G-6a-112 of the Act by submitting the following information in writing to the Procurement Official:

a. The name of the contesting person;

b. A detailed explanation of the challenge, including documentation showing that there are other competing sources for the procurement item;

c. If transitional costs are a significant factor in the sole source procurement, evidence and arguments demonstrating that transitional costs are not significant, unreasonable, or cost-prohibitive; or

d. Reasons why a standard procurement process is in the best interest of the District.

6. Investigation and Determination: Upon receipt of information contesting a sole source procurement, the Procurement Official shall conduct an investigation to determine the validity of the challenge and make a written determination either supporting or denying the challenge.

XI. PROCUREMENT OF CONSTRUCTION

A. State Law: District construction projects generally are governed by Part 13 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 Ann. § 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, and otherwise applicable requirements of this Policy shall be superseded and replaced by the provisions of Title 11, Chapter 39.

B. Construction Cost Estimate: The Manager or Procurement Official shall cause plans and specifications for construction projects, including the estimated cost of the improvements, 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 RFP 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 $250,000 or less, the District may make the improvement using an independent contractor without calling for formal bids or proposals for a construction project costing up to $2,500,000 by following requirements stated in Subsection V.C.

C. Extra Work and Change Orders: The Manager or Procurement Official 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. <u>Availability of Funds or Adjustment in Scope of Work</u>: If the certification discloses a resulting increase in the total project or contract budget, the Manager or Procurement Official shall not execute or make the change order unless sufficient funds are available or the scope of the project or of the 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.

D. <u>Modification of Specifications</u>: The Manager or Procurement Official 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. <u>Permanent Modifications</u>: 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 developments within the boundaries of the District, the Manager or Procurement Official shall so notify the Board within a reasonable time.

2. <u>Appeal to the Board</u>: At the Manager's or Procurement Official's discretion, specific requested waivers or modifications of the District's construction specifications may be presented to the Board for final resolution and any developer or other interested party may appeal the Manager's or Procurement Official's decision regarding the modification of construction specifications to the Board.

3. <u>Status of Decision Prior to Board Action</u>: Until the Manager's or Procurement Official'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. <u>Construction Contract Management</u>: The method of construction contracting management utilized for any given project shall be determined by the Manager or the Procurement Official 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. <u>Recommendations of Engineer</u>: 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. <u>Factors to Be Considered</u>: It is intended that the Manager or Procurement Official 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 Manager or Procurement Official, 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.

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.

   i. <u>Single Prime (General) Contractor</u>. 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. <u>Multiple Prime Contractors</u>. 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. <u>Design-Build</u>. 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 Manager or Procurement Official 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 Ann. § 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.

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 agreement 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 if one of the parties to the agreement is domiciled in Utah and construction in Utah is involved, as provided in Utah Code Ann. § 13-8-3. Additional unenforceable, contract provisions are identified in Title 13, Chapter 8 of the Utah Code.

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 Ann. § 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 Ann. § 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 Ann. § 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 Ann. § 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 Ann. § 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.

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 Official. 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 to be 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 Official may request additional cost or pricing data; or

   c. The Procurement Official 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 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 XIII, which are issued as allowed by Utah Code Ann. § 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 before engaging in a standard procurement process; or
      iii. Identifying price outliers that are significantly lower or higher than the other bids or 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. Audit: The District may, at reasonable times and places, audit or cause to be audited by an independent third party firm, by another procurement unit, or by an agent of the District, the books, records, and performance of a contractor, prospective contractor, subcontractor, or prospective subcontractor.

7. Retention of Books and Records: Contractors shall maintain all records related to the contract for at least six years after the final payment, unless a longer period is required by law.

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 a purchase discount, rebate, allowance, recovery 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 Official 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 Official may explicitly incorporate federal cost principles into a solicitation, and thus into any contract awarded pursuant to that solicitation. The Procurement Official 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 Official specifying the reasons for the deviation. The written determination shall be made part of the contract file.

11. Failure by Vendor: The District may consider a vendor to be in breach of its contract and may initiate debarment or suspension proceedings against a vendor or pursue any other legal action, based on any of the following:

   a. Failure to maintain or provide records in accordance with the contract;

   b. Failure to respond to an audit;

   c. Failure to correct errors or repay overcharges or acts of fraud documented in an audit; or

   d. Other valid reasons as determined by the Procurement Official.

XIV. MULTIPLE AWARD CONTRACTS – INDEFINITE QUANTITY CONTRACT

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 them under 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 for:

   a. Coverage on a regional basis or based on other criteria specified by the District in the solicitation such as:

      i. Delivery;
      ii. Service;
      iii. Product availability; or
      iv. Compatibility with existing equipment or infrastructure.

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:

   a. Indicates that contracts may be awarded to more than one bidder or offeror;

   b. Specifies whether contracts will be awarded on a regional basis or based on a specified requirement of the District; and

   c. Describes specific methodology or a formula that will be used to determine the number of contract awards.

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 provide adequate regional coverage, meet a specified requirement of the District, or satisfy delivery or product availability 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 (for example 5%) 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 on a regional basis or based on other 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, Request for Statements of Qualifications 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 only one bidder was awarded a contract 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 Official 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. **<u>Contract Types</u>:** The District may use contract types as authorized by Section 63G-6a-1205 of the Act.

C. **<u>Prepayments and Installment Payments</u>:** Prepayments and installment payments are subject to the restrictions contained in Section 63G-6a-1208 of the Act.

D. **<u>Leases of Personal Property</u>:**

1. <u>Requirements</u>: 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 costs of termination are set forth in the lease; and
      iii. The lease is not used to avoid a competitive procurement.

2. <u>Completion Requirement</u>: Lease contracts will be conducted with as much competition as practicable under the circumstances.

3. <u>Modification of Contract Terms</u>: 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 Manager, the Procurement Official 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 a notice of any material variation may be included in the invitation for bids or requests for proposals.

XV. PROCUREMENT OF DESIGN PROFESSIONAL SERVICES

A. **<u>Hiring a Professional Architect, Engineer, Master Planner and Programmer, or Commercial Interior Designer</u>:** The District generally will consider, as a minimum, in the selection process to secure architecture, engineering, master planning and programming, or commercial interior design services ("design professional services") (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 specific individual(s) assigned or to be assigned to the project and the time commitments of each to the project; and (c) the project schedule and approach to the project that each firm (or individual) will take. The District may engage the services of a design professional based on the above and/or other identified criteria rather than based solely on the lowest cost. The provisions of Part 15 of the Procurement Code apply to the procurement of design professional services.

1. <u>Evaluation Committee</u>: The Procurement Official shall designate members of the Evaluation Committee. The evaluation committee must consist of at least three members who are qualified under Section 63G-6a-1503 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 design professionals.

   b. A request for statement of qualifications will state:

      i. The type of procurement item to which the request for statements of qualifications relates;
      ii. The scope of the work to be performed;
      iii. The instructions and the deadline for providing information in response to the request for statements of qualifications; and
      iv. 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; and
         (8) Other pertinent information.

   c. Key personnel identified in a statement of qualifications may not be changed without the advance written approval of the Procurement Official.

   d. Design professionals 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 Section 63G-6a-1503.5 of the Act to rank (score) design professionals.

4. Negotiation and Award of Contract: The Procurement Official or designee shall negotiate a contract with the most qualified firm or individual for the required services at compensation determined to be fair and reasonable.

5. Failure to Negotiate Contract With the Highest Ranked Firm or Individual:

   a. If fair and reasonable compensation, contract requirements, and contract documents cannot be agreed upon with the highest ranked firm or individual, the Procurement Official shall advise the firm or individual in writing of the termination of negotiations.

   b. Upon failure to negotiate a contract with the highest ranked firm or individual, the Procurement Official shall proceed in accordance with Section 63G-6a-1505 of the Procurement Code.

6. Notice of Award:

a. The District may award a contract to the highest ranked firm or individual 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 and to the extent allowed by law, contracts with consultants providing design professional services may be extended from year-to-year in the discretion of the Procurement Official.

C. Other Professional Services: A contract with a consultant providing other professional or technical services, such as accounting or legal services, may be entered into as a small purchase under Part V or using the Request for Statements of Qualifications procedure applicable to design professionals or the Request for Proposals procedure.

XVI. BONDS

Performance, payment 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 estimated to cost more than $50,000 generally will 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, and the Procurement Official may require a bid bond for a construction contract that is estimated to cost $50,000 or less.

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 Official 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 Official 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 estimated to cost in excess of $50,000, 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 responsible bidder or offeror with the next lowest responsive bid or the next highest ranked offer.

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 Official 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

e. 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 estimated to cost in excess of $50,000, 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 responsible bidder or offeror with the next lowest responsive bid or the next highest ranked offer.

1. Waiver: The Procurement Official may waive any bonding requirement if it is determined in writing by the Procurement Official 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.

2. 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 Utah Code Ann. § 14-1-19.

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 Part XVII shall apply *in addition* to other legal requirements, including, but not limited to, Utah Code Ann. §§ 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 Ann. § 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 Ann. § 52-3-1(1) (a father, mother, husband, wife, son, daughter, sister, brother, grandfather, grandmother, uncle, aunt, nephew, niece, grandson, granddaughter, 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 Manager 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 Ann. §§ 17B-1-110 and 52-3-1, which generally prohibit 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.[4] 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 Ann. § 67-16-5. Similarly, this restriction

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[4] A sales tax will apply to construction materials that aren't installed by the District's own employees. See UTAH CODE ANN. § 59-12-104(2)(a).

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. **<u>Personal Purchases</u>:** 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, which approval is to be granted sparingly, if at all. The District shall immediately 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. <u>No Personal Use or Ownership - Exceptions</u>: Notwithstanding the foregoing prohibition, with the approval of the Manager, 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. <u>Personal Purchases - Validity</u>: 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. **<u>Favored Vendor</u>:** District employees and officers are prohibited from taking any act, or refusal or failure to act, with the intention of unfairly, by means of deceit or in violation of law, favor one vendor over another in the process of awarding a contract or making a purchase or that otherwise results in an action or treatment that a reasonable person would consider to be unfair or have the appearance of being unfair. Any violation of this restriction shall be subject to discipline up to and including termination.

J. **<u>Personal Relationship, Favoritism, or Bias Prohibitions</u>:** District employees and officials are prohibited from participating in precontract discussions or decisions relating the procurement administration process if they have a relationship or a bias that would appear to a reasonable person to influence their independence in performing their assigned duties relating to the procurement process. This restriction shall not be construed as preventing an employee from having a bias in response to contents of the solicitation response or in regard to the solicitation criteria.

1. <u>Written disclosure</u>: If an employee has a personal, relationship or bias for or against any individual, group, organization or vendor responding to the invitation to bid,

RFP or other solicitation, the employee must make a written disclosure of the relationship or bias to the employee's supervisor and the supervisor may take appropriate action, which may include recusing the employee from discussions or decisions relating to the solicitation, contract or administration matter in question.

2. Allowable Relationships and Social Acquaintances: It is not a violation for an employee or official to participate in discussions or decisions relating to the procurement, contract or administration process to have a professional relationship with a person, contractor or vendor responding to a solicitation or that is under contract with the District, provided that there is compliance with the Utah Public Officers' and Employees' Ethics Act and other applicable state laws and this Policy.

K. Procurement Professional[5]: 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.

1. Socialization With Vendors and Contractors: A Procurement Professional shall not:

a. Participate in social activities with vendors or contractors that will interfere with the proper performance of the Procurement Professional's duties;

b. Participate in social activities with vendors or contractors that will 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.

XVIII. CONTROVERSIES AND PROTESTS

A. Procurement Code Provisions:

1. Part 16: Controversies and protests shall be conducted in accordance with the requirements set forth in Part 16 of the Act. Unless otherwise designated by the Board, the Procurement Official shall be the "Protest Officer".

[5] It is anticipated that very few special districts or special service districts will employ a "Procurement Professional" who effectively is dedicated to procurement activities, in which event Subsection K will not apply.

a. An individual is not precluded from acting, disqualified, or required to recuse himself or herself from acting as the Protest Officer due to having acted in another capacity during the procurement process.

2. Part 19: Part 19 of the Procurement Code contains general provisions regarding a protest or an appeal including:

   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. Costs awarded 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 list of protest or appeal determinations that are final and conclusive unless they are arbitrary and capricious or clearly erroneous.

3. No District Legal Assistance: The District will not assist a vendor in writing or filing a procurement protest or appeal. Due to the complex nature of protests and appeals, any person involved in the process is encouraged to seek advice from the person's legal counsel.

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.

2. Protest Document. A person filing a protest shall include in the filing document:

a. The person's address of record and e-mail address of record; and

b. A concise statement of the grounds upon which the protest is made.

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 (the "intervenor").

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 Part XVIII 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;

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 Part XVIII.

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 Procurement Official, after consultation with the District's attorney, makes a written determination that the award of the contract without delay is in the best interest of the District.

F. Proceedings to Debar/Suspend Potential Contractors:

1. Debarment: After reasonable notice to the person/entity involved and a reasonable opportunity for that person/entity to be heard, the Procurement Official, after consulting with the District's attorney, shall have authority to debar a person/entity for cause from consideration of award of a contract for a period not exceeding three years.

2. Suspension: The Procurement Official, after consultation with the District's attorney, 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 Ann. § 63G-6a-904, 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 Official 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 Official 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 Parts 17 and 18 of the Act.

I. **<u>Timing and Finality of Decision</u>:**

1. <u>Adverse Decision Presumed After 30 Days</u>: 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 the protest was filed with the Protest Officer, or within such longer period as may be agreed upon by the parties, the protester, may proceed as if an adverse decision had been received.

2. <u>Finality</u>: Except as otherwise specifically provided in this Part XVIII, a decision of the Procurement Official shall be effective until stayed or reversed on appeal.

3. <u>Written Decision</u>: Once available, a copy of the decision shall be immediately mailed or otherwise furnished to the protester, 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 protester, prospective contractor, or contractor (a "vendor") timely files and appeal to an appeals panel established by the Procurement Policy Board in accordance with Part 17 of the Act within the applicable 7 day statute of limitations period specified in Section 63G-6a-1702 of the Act.

J. **<u>Violation of Law</u>:** 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.

K. **<u>Options After Adverse Determination</u>:** 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.

L. **<u>Fraudulent Conduct by Contractor</u>:** 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 fraudulent 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.

M. **<u>Appeal to the Board</u>:** Nothing provided in this Part XVIII shall limit the ability and authority of the Board to provide for a two-step appeal process at the District level <u>provided</u> that the entire proceeding is completed within the time limits stated in this Part XVIII and in Part 16 of the Procurement Code. Furthermore, the Board may designate itself as the Protest Officer at any time in the Board's sole discretion.

Approved by the Board on the ______ day of ______, 20___

____
Title: ________________________

EXHIBIT "G"

Nordic Valley Improvement District Public Comment Policy

- **Public Comments Welcome:**
  Nordic Valley District (the "District") welcomes public comments at meetings of its Board of Trustees (the "Board"). Comments may be made in person or in writing as outlined below.

- **Introduction:**
  Each speaker is required to provide an introduction stating the speaker's full name, address, and telephone number. If a speaker is making comments on behalf of a business, citizens group or other association, the name and contact information for that organization should also be stated.

- **Recommendations:**
  (1) A comment can express simple support or dissent for action to be taken by the Board.
  (2) A constructive comment supported with evidence, data, and information is more likely to influence a decision of the Board.
  (3) Speakers with detailed, complex, or technical comments are strongly encouraged to provide the District with a written outline of their comments at least 7 days prior to a meeting; these speakers are also strongly encouraged to meet with District staff prior to a meeting.

- **Time Limit:**
  Each speaker is limited to three (3) minutes to present comments. At the Chair's discretion, or in light of the number of public comments, the time for individual comments may be extended or limited.

- **Relevance:**
  Speakers must address topics that are relevant to the District's business or matters that are on the meeting's agenda. For agenda items, at the discretion of the Chair, public comments may be heard at the time an agenda item comes before the District. Comments unrelated to District matters will not be entertained. The Chair may call an end to any individual's comments or to the public comment period if comments do not relate to District business or an agenda item.

- **Decorum:**
  All remarks should be addressed through the Chair in a respectful manner. Speakers are expected to refrain from personal attacks, inflammatory language, or remarks that question the motives of Board members, staff, or other individuals. The Chair may interrupt or terminate a speaker's comments if the comments are deemed disruptive or disrespectful.

- **Removal:**
  If a speaker fails to abide by a request or directive of the Chair, the speaker may be removed from the meeting. If deemed appropriate, the assistance of law enforcement officers may be requested.

- **Written Comments:**
  Written comments may be submitted to the District by hand delivery of such comments (Eden Professional Center, 2580 North Highway 162, Suite D, Eden, Utah, 84310) or by email to: rob.behunin@gmail.com. Written comments will be provided to Board members. These may be included in the official meeting record but will not be read aloud during the meeting unless requested by the Chair.

RESOLUTION No. 2024-10-04- ___

A RESOLUTION ADOPTING BYLAWS, POLICIES AND PROCEDURES GOVERNING THE OPERATION, MANAGEMENT AND ACTIVITIES OF THE NORDIC VALLEY SEWER IMPROVEMENT DISTRICT

RECITALS

A. The Nordic Valley Sewer Improvement District ("District") is responsible for providing sanitary sewer and culinary water services within the boundaries of the District;

B. The District has not previously conducted any business activities, and the Weber County Commission has recently appointed three new members of the District's Board of Trustees;

C. The Board of Trustees recognizes the need to adopt policies and procedures governing the operation, management and activities of the District;

D. The Board of Trustees has determined that the best interests of the District to utilize policies developed and published by the Utah Association of Special Districts as its initial policies;

E. Utah Code Annotated Section 17B-1-301 requires that the Board of Trustees manage and conduct the business and affairs of the District and that all powers of the District be exercised through the Board of Trustees; and

F. Utah Code Annotated Section 17B-1-301 expressly authorizes the Board of Trustees to adopt bylaws for the orderly functioning of the Board and to adopt and enforce rules and regulations for the orderly operation of the District and for carrying out the District's purposes.

RESOLUTION

IT IS RESOLVED by the Board of Trustees of the Nordic Valley Sewer Improvement District as follows:

1. Policies and Bylaws Adopted. The Board of Trustees of the Nordic Valley Sewer Improvement District hereby adopts the following bylaws, policies and procedures for the orderly operation and management of the District:

A. The Bylaws of the Nordic Valley Improvement District,[1] attached hereto as Exhibit "A" and incorporated herein by this reference;

B. The Board Meeting Policy of the Nordic Valley Improvement District, attached hereto as Exhibit "B" and incorporated herein by this reference;

C. The Conflict of Interest Policy of the Nordic Valley Improvement District, attached hereto as Exhibit "C" and incorporated herein by this reference;

D. The Critical Infrastructure Records Policy of the Nordic Valley Improvement District, attached hereto as Exhibit "D" and incorporated herein by this reference;

E. The Records Access and Management Policy of the Nordic Valley Improvement District, attached hereto as Exhibit "D" and incorporated herein by this reference;

F. The Purchasing Policy of the Nordic Valley Improvement District, attached hereto as Exhibit "F" and incorporated herein by this reference;

G. The Public Comments Policy of the Nordic Valley Improvement District, attached hereto as Exhibit "G" and incorporated herein by this reference;

2. Purchasing Official. For purposes of the Purchasing Policy adopted above, the District Clerk is designated as the "Procurement Official" of the District.

3. Authority of the Chair to Implement Policy. The Chair of the Board of Trustees is hereby authorized and directed to ensure the implementation of the Bylaws and Policies adopted herein. The Chair is further authorized to delegate these responsibilities to other members of the Board or to staff as deemed appropriate.

4. Severability. If any section, clause, or provision of this Resolution is declared to be invalid by a court of competent jurisdiction, the remainder shall not be affected thereby.

5. Effective Date. This Resolution shall take effect immediately upon its passage and approval by the Board of Trustees of the Nordic Valley Sewer Improvement District.

[approval and signatures to follow on next page]

[1] The Board anticipates that the District will change its name from the "Nordic Valley Sewer Improvement District" to the "Nordic Valley Improvement District: and therefore the bylaws and policies adopted herein intentionally use the name "Nordic Valley Improvement District."

PASSED and ADOPTED by unanimous vote of the Midvalley Sewer District Board of Trustees on October 4, 2024.

NORDIC VALLEY SEWER IMPROVEMENT DISTRICT

____

Chair, Board of Trustees

Attest:

____

District Clerk

Voting	Aye	Nay
Robert Behunin		
Laurant Jouffray		
John Lewis		