

# CENTRAL UTAH WATER CONSERVANCY DISTRICT

## *Administrative Code*

**June 2020** (Section 11 Updated 11/2020)



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## CHAPTER 1 – GENERAL

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### **§ 1100 DEFINITIONS**

Whenever used in this Administrative Code, the terms defined in this chapter shall have the meaning indicated herein.

#### **§ 1101 Act**

“Act” or “Procurement Code”, means the Utah Procurement Code found in Title 63G, Chapter 6a of the Utah Code

#### **§ 1102 Administrative Assistant**

The Administrative Assistant to the Board

#### **§ 1103 Board**

The Board of Trustees of the District

#### **§ 1104 Bonneville Unit**

The Bonneville Unit of the Central Utah Project as defined in the Definite Plan Report dated August 1964, as subsequently modified and supplemented

#### **§ 1105 Central Utah Project**

The Central Utah Project (CUP) as defined in the Definite Plan Report dated August 1964 as subsequently modified; and the 1988 and 2004 supplements.

#### **§ 1106 Central Water Project**

The Central Water Project (CWP) is part of the District works as a District funded project as most recently defined in the final Value Engineering Study Report, dated October 2011 as subsequently modified and updated by annual capital improvement plans.

#### **§ 1107 Chairman**

The Chairman of the Board and the President of the District

#### **§ 1108 Chief Engineer**

The District’s chief engineer, so designated by appointment from the General Manager

#### **§ 1109 Chief Financial Officer/District Clerk**

The District’s chief financial officer and District Clerk

#### **§ 1110 Code**

The CUWCD Administrative Code

**§ 1111 Controller**

The Controller of the District

**§ 1112 Court**

The Fourth Judicial District Court for Utah County, State of Utah

**§ 1113 CUWCD**

The Central Utah Water Conservancy District

**§ 1114 District**

The Central Utah Water Conservancy District

The area served by the District shall include the following counties: Salt Lake, Utah, Duchesne, Wasatch, Uintah, Sanpete, and parts of Summit and Juab.

**§ 1115 General Manager/Chief Executive Officer**

The General Manager/Chief Executive Officer of the District

**§ 1116 Deputy GM**

The Deputy General Manager is a staff position created by the Board. The position may or may not be filled and serves at the pleasure of the General Manager. Duties include those delegated by the General Manager.

**§ 1117 Officers, Departments, Committees, and Employees**

Officers, departments, committees, and employees shall mean officers, departments, committees, and employees of the District, unless the context clearly indicates otherwise.

**§ 1118 Secretary-Treasurer**

The Secretary-Treasurer of the Board and of the District

**§ 1119 State**

The State of Utah

**§ 1120 Trustee**

A member of the governing Board

**§ 1121 UCA**

Utah Code Annotated (1953) as amended

**§ 1122 Vice-Chairman**

The Vice-Chairman of the Board and Vice-President of the District

## **§ 1123 Water Conservancy District Act**

The Water Conservancy District Act, Utah Code Ann. § 17B-2a-1001 et seq. (2007) as amended

## **§ 1200 SEAL, LOGOTYPE, PRINCIPAL PLACE OF BUSINESS, AND MISSION**

### **§ 1201 Seal**

The Seal of the District shall be circular in shape with the words “The Central Utah Water Conservancy District” inscribed around the perimeter of the Seal and the words “Corporate Seal Utah” inscribed within the center of the Seal.

UCA § 17B-1-301(2)(c)

### **§ 1202 Logotype**

The following logotype is adopted as the District’s logotype and the General Manager is authorized to determine the manner of its use:



### **§ 1203 Principal Place of Business**

The principal place of business and office of the District shall be in the building at 1426 East 750 North, Suite 400, City of Orem, State of Utah, 84097, which building shall be known and designated as the “District Headquarters.”

### **§ 1204 Mission, Vision, Values and Objectives of District**

#### **§ 1204.01 Mission, Vision, and Values**

Our mission is to responsibly plan for the future by developing, delivering, and efficiently using our limited water resources.

Our vision is to provide a safe and secure water supply, to empower and challenge employees, and to be a leader in the water industry.

We value safety, integrity, quality, and people.

### **§ 1204.02 Acknowledgment**

The Board recognizes that (1) support for and successful completion of the Central Utah Project and other District projects and activities is dependent upon all sectors of its constituents: farmers, ranchers, developers, public sector governments, business, sportsmen, and environmentalists; (2) the District's employees are the primary producers and deliverers of its products; (3) the District's efforts in planning and developing a reliable and dependable water supply are dependent on the initiative and creativity of each employee in the performance of their job; and (4) District services improve as the individual efforts of its employees improve.

### **§ 1204.03 Policy**

It is the District's policy to develop and efficiently use water supplies for the benefit of its inhabitants through the most cost effective and environmentally prudent methods. The water supplies shall be developed for any and all beneficial uses consistent with the mission and statutory authority of the District. In furtherance of this policy, water rights shall be acquired by any lawful means and used for any lawful beneficial use, including without limitation, irrigation, municipal, industrial, hydropower generation, and instream flows.

UCA § 17B-2a-1002

## ***§ 1300 STATE LAW***

### **§ 1301 Controlling Authority**

In the event that any provision of this Code is found to be inconsistent with Utah law, then Utah law shall be the controlling authority over the Code provision in question.

## **CHAPTER 2 – BOARD, COMMITTEES, AND TRUSTEES**

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### ***§ 2100 BOARD OF TRUSTEES***

#### **§ 2101 Composition**

The Board is composed of the individual Trustees appointed to the Board by the governor of the State pursuant to statute. The Board is the governing body of the District and, except as delegated herein, holds all powers of the District.

UCA §§ 17B-2a-1005(1), 17B-1-301.

#### **§ 2102 Powers**

The Board shall exercise and control or authorize the exercise and control of all the business and affairs of the District, subject to the limitations of this Code, the State Constitution, the Act and other laws of the State. The Board's powers include the power:

- (a) to have perpetual succession;
- (b) to, on behalf of the local district, acquire, use, hold, manage, occupy, and possess property necessary to carry out the purposes of the District, dispose of property when the board considers it appropriate, and institute and maintain in the name of the District any action or proceeding to enforce, maintain, protect, or preserve rights or privileges associated with District property;
- (c) to lease, sell or otherwise dispose of water, waterworks, water rights, and real and personal property;
- (d) to acquire, construct or cause to be constructed, operate, occupy, control and use buildings, works or other facilities for carrying out the purposes of the District;
- (e) to exercise all powers and perform all functions in the operation of the local district and its properties as are ordinarily exercised by the governing body of a political subdivision of the State and as are necessary to accomplish the purposes of the District;
- (f) to construct and maintain works and facilities within, across or along any easement, public street, highway, stream, watercourse, or public lands;
- (g) to contract with the United States or any of its agencies, the State or any of its agencies, or other governmental agencies or with any person, or corporation, public or private, for the construction, operation and maintenance of facilities or any other purpose incident to the exercise of its powers;

- (h) to fix rates for the sale or lease of water;
- (i) to employ and retain personnel or services; to create, establish or maintain offices and positions as shall be necessary or convenient for the transaction of District business; to elect, appoint or employ officers, attorneys, engineers, or agents;
- (j) to adopt plans and specifications for construction of facilities;
- (k) to study, investigate, and promote water development within the District;
- (l) to generate, distribute or sell electric power from power plants owned or operated by the District;
- (m)to invest District funds;
- (n) to borrow money and incur indebtedness and to refund indebtedness incurred by the District;
- (o) to adopt policies and procedures not in conflict with the Constitution and laws of the State for carrying on the business and affairs of the District;
- (p) to sell water and water service to individual customers and charge sufficient rates for water and services supplied;
- (q) to enter into contracts with any incorporated municipality or other districts under the provisions of any law of the State for the:
  - (i) joint operation of any water facilities or for the exchange or lease of water rights;
  - (ii) operation or use of any water facilities owned or operated by any municipality or district; or
  - (iii)sale of water by one contracting party and for its purchase and payment by one or more contracting persons or corporations; and
- (r) to do and perform any and all things authorized by statute and necessary or convenient to the full exercise of its powers.  
UCA §§ 17B-1-301, 17B-2a-100

### **§ 2103 Quorum**

A majority of the appointed Trustees shall constitute a quorum.  
UCA § 17B-1-310(1)(a)(i)

### **§ 2104 Board Action**

The vote of a majority of the Trustees in attendance at a meeting (either in person or by electronic conference) at which a quorum is present, in any matter, within their duties, shall constitute the Board's determination, except as otherwise herein provided. The Board may not take action on a matter not appearing on the posted agenda for a particular meeting unless one of the following conditions exist:

- (a) a determination by a majority vote of the Board that an emergency situation as defined in Section 2201.03(a) exists;
- (b) a determination by a two-thirds vote of the Board, or, if a two-thirds vote of the Board is not represented, a unanimous vote of those Trustees present, that the need to take action arose subsequent to the agenda being posted; or
- (c) the item was posted as required by Section 2208.03 for a meeting of the Board occurring not more than five calendar days prior to the date of the present meeting, and at the prior Board meeting the item was continued to the present meeting at which action is being taken.

### **§ 2105 Presumption of Assent**

A Trustee who is present at a meeting of the Board at which action on any matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered into the minutes of the meeting or unless he shall file his written dissent to such action with the Secretary-Treasurer before the adjournment of the meeting. A written dissent shall not apply to a Trustee who voted in favor of such action.

### **§ 2106 Review of Code**

The Board's Executive Committee work with staff to review the Code to make sure that it is current and reflects the continuing policy of the Board and current statutes.

### **§ 2107 Indemnification of Trustees**

- (a) District Obligation to Indemnify
  - (i) The District shall, upon written request by a Trustee, indemnify and defend all Trustees from and against all actions, claims and expenses of any nature arising as a result of the performance of their duties, within the scope of their employment or under color of authority, except where such claim is based on or resulted from fraud or malice; or
  - (ii) from the Trustees driving a vehicle or being in actual physical control of a vehicle while under the influence of alcohol or any illegally used drug or being physically or mentally impaired so as to unreasonably perform their job function because of illegally used drugs, alcohol or a combination thereof; or



- (iii) where, in a judicial or administrative equivalent, false testimony to the issue under inquiry.  
UCA § 63G-7-202

(b) Trustee Request for Indemnification

Prior to the District’s defense of any Trustee, the Trustee shall submit a written request to the District for such defense:

- (i) within ten days after service of process upon the Trustee; or
- (ii) within a longer period that does not prejudice the District in maintaining a defense on the Trustee’s behalf; or
- (iii) within a period that does not conflict with notice requirements imposed on the District in connection with insurance carried by the District relating to the risk involved. If the Trustee fails to make such written request, or fails to reasonably cooperate in the defense, the District need not defend or continue to defend the Trustee, nor pay any judgment, compromise, or settlement against the Trustee in respect to the claim.  
UCA § 63G-7-902

(c) District’s Refusal to Defend Trustee

Upon receipt of a written request to defend a Trustee, the District shall inform the Trustee, in writing within 10 days, if it will provide a defense and, if it refuses to do so, the basis for its refusal.

**§ 2200 MEETINGS**

**§ 2201 Types**

**§ 2201.01 Regular Meetings**

Prior to the end of each calendar year, the Board shall designate the time and place of the Regular meetings of the Board to be held during the next calendar year. Regular meetings are defined as those meetings that are conducted in person or via electronic means. Notice of the Regular meetings shall be given as provided in Section 2202.

(a) General

As provided in Section 52-4-207 of the Utah Code Annotated 2007, as amended (the “Utah Code”), any regular or special meeting of the Board of Trustees (the “Board”) of the Central Utah Water Conservancy District, (the “District”), may be held in whole or in part by in person means and/or of a telephonic, telecommunications or computer conference

("Electronic Conference") means. Any member of the Board ("Trustee") who participates in a Board meeting by means of an Electronic Conference shall be deemed present at such meeting for all purposes whatsoever, including the determination of whether a quorum is present and voting on all matters that shall come before such meeting.

(b) Notice to Public and Trustees

Public notice as required by the Open and Public Meetings Law, Title 52, Chapter 4 of the Utah Code, shall be provided to the public and to each Trustee so that each Trustee may participate and be counted as present for all purposes.

(c) Trustees Participating Electronically

Trustees who plan to participate in a Board meeting by means of an Electronic Conference will be responsible to notify the Secretary-Treasurer of the Board prior to the meeting, and to provide the necessary information to facilitate such attendance.

(d) Anchor Location

An anchor location will be designated in the notice of the meeting as the physical location from which the Electronic Conference originates or from which the Trustees are connected. The anchor location will provide space and facilities for the physical attendance and participation of interested persons and the public at the anchor location, including providing for interested persons and the public to hear by speaker, or other equipment, all discussions and deliberations of those Trustees participating in the Board meeting by means of an Electronic Conference. Suitable electronic connections shall be provided for those Trustees who have indicated they will be participating in the Board meeting by means of an Electronic Conference.

(e) Conduct of Meeting

An initial roll will be taken at the commencement of each Board meeting where Trustees may be participating in the meetings by means of an Electronic Conference. The person conducting the meeting shall confirm that all Trustees participating in the meeting by means of an Electronic Conference can hear one another and can hear all persons present at the anchor location of the meeting. All votes will be recorded and will include those Trustees connected by means of an Electronic Conference.

**§ 2201.02 Special Meetings**

Special meetings of the Board may be called at any time by the Chairman, or in case of vacancy in the office of the Chairman or inability of the Chairman to act, by the Vice-Chairman. Upon request of five or more Trustees, the Chairman shall call a Special meeting. Notice of a Special meeting shall be given as provided in Section 2202.

### **§ 2201.03 Emergency Meetings**

The Board may hold Emergency meetings in the event of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities.

(a) For purposes of this section, “emergency situation” means any of the following:

- (i) Work stoppage or other activity which poses a threat to or severely impairs public health, safety, or both; or
- (ii) Crippling disaster or naturally occurring event which poses a threat to or severely impacts public health, safety, or both

(b) The notice requirements of Section 2202 may be disregarded in the event an Emergency meeting is called and the best practicable notice is given. No Emergency meeting may be called unless an attempt has been made to notify all Trustees and a majority votes in the affirmative to hold the meeting. The Secretary-Treasurer shall notify those newspapers, radio stations, or television stations requesting notice of Board meetings of the fact of the holding of the Emergency meeting, the purpose of the meeting and any action taken at the meeting as soon after the meeting as possible.

UCA § 52-4-202(5).

(c) Notwithstanding the provisions of Section 2205, the Board shall not meet in closed session during an Emergency meeting

UCA § 63G-7-902(4)(a).

### **§ 2201.04 Annual Meeting**

The Annual meeting of the Board shall be held during a Regular Board meeting to be designated by the Board each year. Notice of the Annual Meeting shall be given pursuant to Section 2202.01(c).

### **§ 2201.05 Executive Committee Meeting**

Executive Committee meetings consisting of the chairmen of all standing committees, the Board president and the Board vice-president, do not require public notice. Such meetings may be conducted when necessary and appropriate and may be held electronically for the convenience of those participating, consistent with Section 2403.04(e) below.

## **§ 2202 Notices of Meetings**

### **§ 2202.01 Public Notice**

(a) Regular Meetings

- (i) The Board shall give public notice at least once each year of its Regular meetings scheduled during the year. The notice shall specify the date, time and place of Regular meetings.
- (ii) The Secretary-Treasurer shall give not less than 24 hours' public notice of each of its meetings by a) posting written notice at its principal office; b) providing written notice to at least one newspaper of general circulation within the geographic jurisdiction of the District; and c) posting on the Utah Public Notices website.

UCA §52-4-202

(b) Special and Emergency Meetings

- (i) No public notice of Emergency meetings is required but notice of Emergency meetings of the Board shall be given as provided in Section 2201.03. Notice of adjourned Special meetings shall be given as provided in Section 2206.
- (ii) The Secretary-Treasurer shall give notice of Special meetings by delivering personally or by mailing written notice to each Trustee and to each local newspaper of general circulation, radio or television station requesting written notice. Such notice shall be delivered so as to be received at least 24 hours before the time of the meeting as specified in the notice. In addition, the Secretary-Treasurer shall post written notice at the District headquarters and on the Utah Public Notice website at least 24 hours prior to the time of the meeting.

(c) Annual Meeting

- (i) In addition to the notice requirements applicable to Regular meetings, and notice to Trustees, notice of the Annual meeting of the Board shall be given by publication at least once in a newspaper of general circulation within the District no more than 14 days and no less than five days prior to the date of the Annual meeting, and on the Utah Public Notice website. The notice shall contain: (1) notice of the Annual meeting; and (2) the names of the Trustees of the District.

**§ 2202.02 Notice to Trustees**

Notice of Regular meetings of the Board shall be sent by the Secretary-Treasurer to all members of the Board by ordinary mail at least five days in advance of each such meeting and such notice shall designate the time and place of the meeting. The notice here required may be waived by unanimous consent of all members of the Board. In the event the Secretary-Treasurer is unable to act, said notices may be sent by any other officer of the Board.

## **§ 2203 Place of Meetings**

Except as provided hereafter, all meetings of the Board shall be held in the room known and designated as the “Board Room” located in the District Headquarters. The time or location of a Board meeting may be changed to another convenient location upon:

- (a) approval of the proposed change in time and/or location by a majority of the Trustees at a Regular meeting of the Board held at the District’s principal place of business; or
- (b) posting a notice at the District’s principal place of business at least 3 days prior to the meeting at a changed time or location and publication of notice of the time and place of the meeting at least once in a newspaper of general circulation within the District prior to the meeting; or
- (c) by reason of fire, flood, earthquake, or other emergency, it shall be unsafe to meet in the Board Room, meetings may be held for the duration of such emergency at such place as is designated by the Chairman, either within or without the boundaries of the District, in which event notice of such place of meeting shall be given in the manner required for giving notice of Special meetings.

## **§ 2204 Meetings Open and Public**

With the exception of Executive Committee meetings, all Board meetings shall be open and public, and all persons shall be permitted to attend any public meeting, except as provided in Section 2205.

A member of the public shall not be required, as a condition to attendance at a meeting of the Board, to register that person’s name or other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to attending. This section shall not prohibit the removal of any person who willfully disrupts the meeting to the extent that orderly conduct is seriously compromised.

UCA §§ 52-4-201, 52-4-301.

## **§ 2205 Closed Meetings**

### **§ 2205.01 Procedure**

The Board may go into closed session for any purpose authorized by law by a two-thirds vote of the Trustees present at any meeting of the Board for which notice was properly given pursuant to UCA § 52-4-202, provided a quorum is present. The reason(s) for holding a closed meeting and the vote cast by each member, by name, for or against the proposition to hold such a meeting shall be entered on the minutes of the meeting. The Chairman shall designate those persons who are to remain to assist the Board in its deliberations. All other persons shall leave the meeting room.

The purposes presently authorized by statute for closed meetings are:

- (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, or lease of real property when public discussion of the transaction would disclose the appraisal or estimated value of the property under consideration or prevent the public body from completing the transaction on the best possible terms;
- (e) strategy sessions to discuss the sale of real property when:
  - (i) public discussion of the transaction would disclose the appraisal or estimated value of the property under consideration or prevent the public body from completing the transaction on the best possible terms;
  - (ii) the public body had previously given public notice that the property would be offered for sale; and
  - (iii) the terms of the sale are publicly disclosed before the public body approves the sale;
- (f) discussion regarding deployment of security personnel or devices or systems; or
- (g) investigative proceedings regarding allegations of criminal misconduct.  
UCA §§ 52-4-204, 52-4-205

**§ 2205.02 Termination of Closed Session**

The Board may return from closed session to open session on a majority vote of the Board.

**§ 2205.03 Action During Closed Session**

The Board may not authorize or approve any ordinance, resolution, rule, regulation, contract or appointment during a closed session.

UCA § 52-4-204

**§ 2206 Adjourned Meetings**

The Board may adjourn any Regular, Adjourned Regular, Special, Adjourned Special, Emergency or Adjourned Emergency, meeting to a time and place specified by a majority vote of the Trustees, whether or not a quorum is present, at any meeting of the Board. When a Regular or Adjourned Regular meeting is adjourned as provided in this section, the resulting Adjourned Regular meeting is a Regular meeting for all purposes. Notice of an Adjourned meeting shall be given as provided in Section 2202.01(a)(ii).

## **§ 2207 Minutes of Board Meetings**

### **§ 2207.01 Contents**

#### **(a) Open Meetings**

The minutes of all open portions of Board meetings shall contain the date, time and place of the meeting together with the names of all Trustees present and absent and the substance of matters proposed, discussed, or decided and a record, by Trustee of individual votes taken, names of all individuals who appeared, the substance in brief of their testimony, and any other information a Trustee requests be entered in the minutes.

UCA § 52-4-203

The minutes will be prepared in a reasonable time after the meeting, and the minutes as so prepared shall be available, upon request, to the public, even though they have not yet been approved. Copies may be made of the unapproved minutes at the cost of the person making the request but shall be clearly marked as “unapproved.”

#### **(b) Closed Meetings**

Minutes of closed meetings shall include the date, time and place of the meeting, the names of members present and absent, the names of all others present, except where disclosure of such names would infringe on the confidence necessary to fulfill the original purpose of closing the meeting, the reasons for holding the closed meeting and the vote, either for or against the proposition to hold such meeting cast by each Trustee by name. If a closed meeting is held for the purpose of discussing the character, professional competence, or physical or mental health of an individual under Utah Code § 52-4-205(1)(a) or to discuss the deployment of security personnel, devices, or systems under Utah Code § 52-4-205(1)(f), the person presiding shall sign a sworn statement affirming that such was the sole purpose for closing the meeting. If a closed meeting is held under Utah Code § 52-4-205(1) for any other purpose, the Board shall either tape record the closed portion of the meeting or keep detailed written minutes that disclose the content of the closed portion of the meeting. Pursuant to Utah Code § 52-4-206(5), such minutes are protected records under Title 63, Chapter 2 of the Utah Code.

UCA §§ 52-4-205, 52-4-206(5)

### **§ 2207.02 Approval of Minutes by Board**

Written minutes of Board meetings will be presented to the Board at its following meeting for amendment and approval. The tape recording of the meeting is then to be erased according to District records policy and applicable state statute.

## **§ 2208 Board Agenda**

### **§ 2208.01 Deadline for Submission of Material**

The deadline for submission to the Secretary-Treasurer of items for Board meeting agendas shall be 10 days prior to the Board meeting to allow time for review and inclusion on the agenda for the Board meeting.

### **§ 2208.02 Public Appearances**

The Board agenda shall make provision for public appearances before the Board pursuant to Section 2209.01(b).

### **§ 2208.03 Posting of Agenda**

At least 24 hours before a Regular or Special meeting, the Secretary-Treasurer shall (1) post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting on the Utah Public Notices Website and in the lobby of the District Headquarters; and (2) provide the agenda to at least one newspaper of general circulation within the geographic jurisdiction of the District or to a local media correspondent.

The agenda shall specify the time and location of the meeting.  
UCA § 52-4-202

## **§ 2209 Miscellaneous Board Rules**

### **§ 2209.01 Communications to Board**

#### **Monthly Staff Reports**

The packet prepared and provided to the Trustees in advance of each Board meeting shall contain the monthly reports of the General Manager. These reports are to be orally summarized at the Board meeting mentioning only significant changes from previous reports.

#### **(a) Appearances Before Board and Committees**

- (i) Any person desiring to appear before the Board at a Regular meeting shall file a written request to do so with the office of the General Manager at least 15 days before the Regular meeting. The request shall state the nature of the matter to be considered by the Board. The Executive Committee shall then determine whether the matter (1) should be placed on the agenda for the Regular meeting, (2) should be referred to a Board committee, or (3) should be referred to District staff to handle.



(ii) Upon referral to a committee, the committee chair shall place the matter on the committee's agenda. If the committee determines that the matter should be referred to the Board, or if it is considered by the Board in the first instance, the Chairman shall place the matter on the agenda.

(iii) Persons making their appearance before the Board shall do so when called by the Chairman. They shall state the purpose of their appearance and may address the Board on matters within the Board's subject matter jurisdiction, subject to reasonable time limits on the issue and individual speakers as established by the Chairman.

### **§ 2209.02 Use of Board and Committee Facilities**

All requests for use of the Board and committee rooms shall be submitted to the Secretary-Treasurer. The use of such rooms by outside agencies and groups shall be limited to matters connected with water or other governmental purposes and will be authorized pursuant to Section 9203.

### **§ 2209.03 Availability for Public Inspection of Certain Board and Committee Material**

The Secretary-Treasurer shall make available, for inspection by the public prior to commencement of and during a Board or Board committee meeting, copies of the meeting agenda and of any written material that is not exempt from public disclosure under Section 11103 and that has been distributed in advance to the Board or committee members for discussion or consideration at the meeting. If non-exempt written material is distributed to the Trustees during their discussion at the meeting, copies thereof shall be made available for public inspection at the same time or as soon thereafter as practicable.

## **§ 2300 BOARD OFFICERS**

### **§ 2301 Establishment of Offices**

There shall be one office of Chairman of the Board and President of the District, one office of Vice-Chairman of the Board and Vice-President of the District, one office of Secretary-Treasurer of the District, one office of District Clerk, and one office of Administrative Assistant.

#### **§ 2301.01 Terms of Office; Limitations**

For officers elected or appointed at the Annual meeting, the term of office of officers of the Board shall commence immediately following the Annual meeting. Elected officers shall hold office through the next Annual meeting or until their successors are elected. The term of all other officers shall commence immediately following their election or appointment. Appointed officers shall serve until removal or resignation.

- (a) A Trustee may not serve as Chairman for more than four, consecutive, full, one-year terms nor as Vice-Chairman for more than four, consecutive, full, one-year terms. There shall be no limitation on the number of terms the Secretary-Treasurer and District Clerk may serve.
- (b) A Trustee shall not be eligible to serve in a combination of offices of the Board.
- (c) The offices of Chairman and Vice-Chairman shall be held by members of the Board. The office of Secretary-Treasurer of the Board need not be held by a member of the Board. Unless otherwise determined by the Board, the office of Secretary-Treasurer shall be held by the General Manager who shall be elected by a majority of the Trustees at each Annual meeting. Unless otherwise determined by the Board, the office of District Clerk shall be held by the Chief Financial Officer. The offices of Treasurer and District Clerk may not be held by the same person.  
UCA § 17B-1-309(1)(b)

### **§ 2301.02 Selection of Officers**

The Board will convene at the Annual Board meeting to elect offices of chairman and vice chairman for the upcoming year. All voting will be accomplished through secret ballots in the following manner: Each trustee will be given a ballot on which to indicate his choice for chairman. The ballots will be counted, and the two top candidates will be announced. A second round of secret ballots will then be taken to determine the chairman. If after the first round of balloting one candidate has received over 70% of the ballots cast, a second round will not be needed, and that candidate would be elected. After the chairman is elected, the vice chairman will be selected in the same manner

### **§ 2301.03 Vacancy in Office**

Whenever a vacancy occurs in the office of Chairman, Vice-Chairman, Secretary-Treasurer or District Clerk during a term of office, the Trustees shall, at their next meeting, whether Regular, Emergency, or Special, elect a successor to fill the vacancy for the unexpired term, following the selection procedure provided in Section 2301.02.

### **§ 2301.04 Removal from Office**

Any officer elected or appointed by the Board may be removed by a two-thirds vote of the Board whenever in its judgment the best interests of the District would be served.

## **§ 2302 Duties of Officers**

### **§ 2302.01 Chairman**

The Chairman shall be the presiding officer of the Board and the District and shall perform the following duties:

- (a) preside at all meetings of the Board and District;

- (b) execute all contracts, agreements, bonds, resolutions and other documents approved and authorized by the Board, except as otherwise delegated by the Board;
- (c) organize the Board as necessary into committees;
- (d) appoint selection committees in consultation with the General Manager for the purpose of making recommendations to the Board (selection committees may include outside individuals; however, the chair of any committee will be a Trustee);  
preside at ceremonial activities sponsored by the District and represent the District at other ceremonial activities upon invitation;
- (e) serve as the spokesman for the Board, unless otherwise directed by the Board. When the Chairman speaks as an individual member of the Board, he shall state that he is representing his own views and not the consensus of the Board; and
- (f) the Chairman shall have no duties regarding the day-to-day activities of the District and shall not direct the General Manager or staff in the performance of their duties.

#### **§ 2302.02 Vice-Chairman**

The Vice-Chairman shall perform all of the duties of the Chairman, including acting as President of the District when the Chairman is unable for any reason to act or when for any reason there is a vacancy in the office of Chairman.

#### **§ 2302.03 Secretary-Treasurer**

The Secretary-Treasurer shall perform or cause to be performed the following duties:

- (a) serve as Secretary-Treasurer of the District;
- (b) be custodian of the records of the District and of its corporate seal;
- (c) attest under the corporate seal of the District, all certified copies of the official records and files of the District that may be required by the Act, or by any person ordering the same and paying the reasonable cost of transcription;
- (d) provide written notice of the expiration date of the terms of office of Trustees or vacancy in the office of Trustee as required by law and the Code;
- (e) publish notice of public hearings and other notices as directed by statute or by the Board;
- (f) receive, hold, and disburse all funds of the District as may be required;
- (g) be custodian of all money, bonds, or other securities of the District;

- (h) determine the cash requirements of the District and provide for the investment of all District funds;
- (i) receive and deposit all public funds and money payable to the District within three business days after collection, including all taxes, licenses, fines, and intergovernmental revenue, promptly deposit all said funds into appropriate District bank accounts and keep an accurate detailed account of such receipts and deposits;
- (j) collect all special taxes and assessments as provided by law and ordinance;
- (k) give to every person paying money to the District, a receipt or other evidence of payment, specifying, as appropriate, the date of payment and upon which account paid and file the duplicate of the receipt;
- (l) sign all checks prepared by the District Clerk after determining that a sufficient amount is on deposit in the appropriate bank account of the District to honor the check; and
- (m) assist the Board in other matters assigned by the Board.  
UCA §§ 17B-1-633 to 17B-1-635

**§ 2302.04 District Clerk**

The District Clerk shall perform or cause to be performed the following duties:

- (a) maintain the financial records for each fund of the District and all related subsidiary records, including a list of the outstanding bonds, their purpose, amount, terms, date, and place payable;
- (b) keep accounts with all receiving and disbursing officers of the District, preaudit all claims and demands against the District before they are allowed and prepare the necessary checks in payment. The District Clerk shall certify on the voucher or check copy, as appropriate, that:
  - (i) the claim has been preaudited and documented;
  - (ii) the claim has been approved in one of the following ways:
    1. a purchase order directly approved by the General Manager or other authorized employee;
    2. a claim directly approved by the Board; or
    3. a claim approved by another authorized officer; and

(iii)the claim does not over expend the appropriate budget established by the Board.

- (c) assist the Board in other matters assigned by the Board or required by law  
UCA §§ 17B-1-631, -632, -635, -638

## **§ 2400 COMMITTEES**

### **§ 2401 Rules Governing Committees**

#### **§ 2401.01 Definitions**

Unless otherwise qualified, the term “committee” includes standing committee, special committee, ad hoc committee, and subcommittee.

- (a) Special meetings. Special meetings of any committee shall be called upon order of its chair or by a majority of the members of the committee.
- (b) Reports. The reports of the committees shall be in writing. Reports of standing, special and ad hoc committees shall be addressed to the Board; the report of a subcommittee shall be addressed to its parent standing committee.
- (c) Quorum. Those members of a committee in attendance at a meeting of the committee shall constitute a quorum.
- (d) Attendance of committees. Insofar as possible, all committees shall meet at their scheduled time. All Trustees have the right to attend any committee meeting. However, only members of the committee may vote on matters considered by the committee.
- (e) Obligations of Staff. All references and assignments to Board committees include, without the necessity of specific instruction, the request to the General Manager to designate the appropriate staff to render assistance and perform such functions and services to the committees as may be required.
- (f) Meetings open to Public. To the extent required by law, meetings of committees shall be open and public. A committee otherwise required by law to hold open and public meetings may go into closed session in the same manner and for the purposes set forth in Section 2205.
- (g) Ad Hoc Committees. Ad hoc committees may be created by the Chairman of the Board to undertake special assignments on behalf of the Board. An ad hoc committee shall exist for a specific term or until its special assignments are completed, whichever comes first, and may be disbanded by the Chairman of the Board. Its existence may be extended for an added term or assignments added by action of the Board. Unless

otherwise specified, members of an ad hoc committee shall be appointed by the Board Chairman and shall serve at his pleasure.

### **§ 2401.02 Subcommittees**

Subcommittees may be created by any standing committee of the Board to undertake specific assignments on behalf of the committee. The standing committee creating a subcommittee shall establish the term of the subcommittee and may extend such term as it deems desirable. Unless otherwise specified, members of a subcommittee shall be appointed by the Chairman of the subcommittee's parent committee and shall serve at his pleasure.

### **§ 2401.03 Temporary Membership on Committees**

Whenever any member of a standing, special, or ad hoc committee is absent from their committee assignment for an extended period, the Chairman may appoint another Trustee to serve on such committee in place of the absent Trustee for the duration of the absence when such appointment is important to the effective functioning of the committee.

### **§ 2401.04 Agendas**

Committee agendas shall be posted and acted upon pursuant to Section 2208.

### **§ 2401.05 Action by Committees**

An action taken by a committee shall be a recommendation to the Board as a whole and has no binding effect on the District or Board.

## **§ 2402 Standing Committees**

### **§ 2402.01 Establishment of Standing Committees**

The following standing committees are hereby established to assist the Board in administering and coordinating the affairs of the District:

- (a) Executive Committee;
- (b) Engineering and Operations Committee;
- (c) Finance, Audit, and Budget Committee;
- (d) Public Affairs Committee;
- (e) CUPCA Committee;
- (f) Legal and Legislative Committee; and
- (g) Environmental and Conservation Committee

### **§ 2402.02 Chairman and Members of Standing Committees**

The members and chairmen of standing committees with the exception of the Executive Committee shall be appointed by the Board Chairman and submitted to the Board for approval. The Chairman of each committee may appoint a committee vice chairman and notify the Board of such appointment. The committee chairmen and members of each standing committee shall serve through the next Annual meeting or until their successors are selected. Trustees will serve on one committee. The Chairman and Vice-Chairman shall be members of each and all committees; however, they shall have the right to vote only on matters brought before the Executive Committee.

### **§ 2402.03 Duties of Chairmen of Standing Committees**

The Chairman of each standing committee shall:

- (a) preside at all meetings of the committee;
- (b) designate the Vice Chairman or other committee member to act in his absence;
- (c) report to the Board on all committee actions;
- (d) report to the Executive Committee on activities or problems of the committee.

## **§ 2403 Executive Committee**

### **§ 2403.01 Membership**

The membership of the Executive Committee shall consist of the Chairman of the Board, Vice-Chairman of the Board and the Chairman of each standing committee and may include the Chairman of an ad hoc committee at the discretion of the Chairman of the Board.

### **§ 2403.02 Officers**

The Chairman shall serve as the Chairman of the Executive Committee and the Vice-Chairman shall serve as the Vice-Chairman of the Executive Committee.

### **§ 2403.03 Time of Meetings**

The Executive Committee may meet prior to the Board meeting and at other times as determined by the Chairman and Vice Chairman.

### **§ 2403.04 Duties and Functions**

The Executive Committee may study, advise, and make recommendations with regard to:

- (a) policies and procedures to be considered by the Board;

- (b) questions raised by the officers and staff in intervals between Board meetings and in unexpected situations or emergencies;
- (c) act on behalf of the Board in unexpected situations and emergencies, subject to subsequent approval or ratification of such acts by the Board whenever such approval or ratification is required by law;
- (d) provide policy guidance where appropriate to those Trustees and District staff members who are associated with organizations in which the District has membership;
- (e) the agenda for Board meetings, either by electronic means or in Executive Committee meetings as determined by the Chairman. If the Board finds it appropriate and/or necessary, closed meetings may be held by telephonic, telecommunications, or computer conference; and
- (f) in collaboration with the General Manager or his designee, will recommend policies and coordinate functions as they apply to all local, state and federal legislation; hearings and other activities related to federal appropriation of funds for Central Utah Project construction; and Board activities with federal, state, and local officials.

#### **§ 2403.05 Action by Board Officers**

If, in the opinion of the Chairman, it is impracticable that the full Executive Committee perform a function to be performed by the Executive Committee between Board meetings, such function may be performed by the Chairman or Vice Chairman of the Board and the General Manager of the District, acting at a meeting called for that purpose, with equal effect as if performed by the full committee.

### **§ 2404 Other Standing Committees**

#### **§ 2404.01 Membership**

Each of the standing committees, other than the Executive Committee shall consist of a maximum of four Trustees appointed by the Chairman of the Board and approved by the Board.

#### **§ 2404.02 Time of Meetings**

Meetings shall usually be held on the days of Regular meetings of the Board and as otherwise determined by the Chairman of the committee.

#### **§ 2404.03 Duties and Functions**

- (a) Engineering and Operations Committee

The Engineering and Operations Committee, in collaboration with the General Manager, shall:



- (i) recommend policies and coordinate functions as they apply to engineering, construction, operation and maintenance of all Central Utah Project and District works;
- (ii) review and recommend the design, plans, specifications, construction, and inspection of all District works;
- (iii) coordinate with the Federal Government on all activities related to the design, construction, operation and maintenance of Central Utah Project works;
- (iv) review and recommend to the Board payments to contractors on all District construction;
- (v) review and recommend contracts relating to District construction and planning;
- (vi) coordinate activities in transferring Central Utah Project works to the District; and
- (vii) review those portions of the tentative budget associated with engineering, construction, operation and maintenance matters.

(b) Finance, Audit, and Budget Committee

The Finance, Audit, and Budget Committee, in collaboration with the General Manager or his designee, will advise, recommend policies and coordinate functions as they apply to the following: finances and investments, asset acquisition and disposal, annual budgetary process and procedures, tax levies, water rates and other assessments. The Committee will review those portions of the tentative budgets associated with finance and administrative matters and will assess the entire budget for reasonableness and consistency with prior years. The Committee will also meet with the District's independent auditors and review findings and recommendations. This committee shall make sure the internal audit function objectively assesses the effectiveness of management's internal control program. The committee shall make sure that financial statement audits are performed by a qualified, independent accounting firm and issues identified during those audits are reviewed and resolved as appropriate. The committee shall make sure hotline complaints are investigated and findings are addressed appropriately.

(c) Legal and Legislative Committee

The Legal and Legislative Committee, in collaboration with the General Manager or his designee, will recommend policies and coordinate functions as they apply to all action as to claims, litigation, condemnations against or by the District; the allotment and contracting of Central Utah Project and District waters; changes in District boundaries; the purchase and sale of water stock; amendments to the Administrative Code and personnel policies;

and review those portions of the tentative budgets associated with legal and legislative matters.

(d) Public Affairs Committee

The Public Affairs Committee, in collaboration with the General Manager or his designee, will review and recommend policies; establish methods by which the general public can at all times be kept informed of District activities, programs, affairs, and accomplishments; coordinate information and educational activities of the District; and review those portions of the tentative budget associated with public affairs matters.

(e) CUPCA Committee

The CUPCA (Central Utah Project Completion Act) Committee is an ad hoc committee created to develop Central Utah's water resources through the timely implementation of the CUP Completion Act in an economically responsive manner that emphasizes public involvement, environmental values, and conservation of resources.

(f) Environmental and Conservation Committee

The Environmental and Conservation Committee, in collaboration with the General Manager or his designee, will review and recommend environmental and conservation activities. This Committee will interface with the recipients of District administered funds. They will be aware of and report on environmental and conservation activities as they pertain to the responsibilities of the District. The Chairman will also act as Chairman of the Prioritization Committee, with the committee members also serving on the Prioritization Committee, under CUPCA section 207.

**§ 2405 Other Committees; Miscellaneous Committee Matters**

**§ 2405.01 Special Committees**

At the discretion of the Board, special committees may be established and assigned such tasks as the Board may determine.

**§ 2500 TRUSTEES**

**§ 2501 General**

**§ 2501.01 Appointment**

Each Trustee is appointed by the governor of the State with the advice and consent of the Senate from three nominees submitted by the governing body of each county which comprises a division within the District. If a division of the District consists of more than

one county, the county legislative bodies of those counties shall collectively compile the list of three nominees.

UCA § 17B-2a-1005

**§ 2501.02 Qualifying for Office**

Before entering upon the duties of their office, each person appointed to be a Trustee shall:

- (a) take and subscribe to an oath or affirmation before an officer authorized to administer oaths that they will support the Constitution of the United States and the State of Utah, (pursuant to Article IV, Section 10 of the Utah Constitution), and will honestly, faithfully, and impartially perform the duties of their office and that they will not be interested directly or indirectly in any contract let by the District;
- (b) post a surety bond to be paid for by the District in an amount to be determined by the Board of Trustees;
- (c) live within the division that they are appointed to represent; and be a registered voter at the location of the member’s residence.

UCA §§ 17B-1-302, 17B-1-303, 17 2a-1005.

**§ 2501.03 Assumption of Rights and Powers of Office**

Upon qualifying for office, a person shall assume all rights and powers and be subject to all liabilities, duties, and obligations of a Trustee. The rights, powers, and duties of a Trustee do not include giving orders or directing the activities of the General Manager or any other employee.

**§ 2501.04 No Proxy**

No Trustee may appoint another individual, including a Trustee, by proxy or otherwise, to assume his responsibilities or vote in his behalf as a Trustee.

**§ 2501.05 Number of Trustees**

The Board shall consist of not more than twenty-one Trustees; the actual number presently established by the Court in the decree creating the District is eighteen. The Court has established representation from the geographical divisions of the District as follows:

Geographical Division	Number of Trustees
Salt Lake County	5
Utah County	3
Duchesne County	3
Wasatch and Summit	2
Uintah County	3
Juab County	1
Sanpete County	1
UCA § 17B-2a-1005(2)(a)(ii)	

### **§ 2501.06 Term of Office**

The term of office of a Trustee as established by the State legislature is four years and will begin as established by State law. Notwithstanding a Trustee's failure to qualify on the commencement of his term of office or a failure on the part of the governor to timely appoint, a Trustee's term of office will begin on the day following the expiration of his predecessor's term of office or, if the Trustee is reappointed, his previous term of office.  
UCA §§ 17B-1-303, 17B-2a-1005

### **§ 2501.07 Vacancy in the Office of Trustee**

A vacancy in a Trustee's term of office shall be deemed to exist upon the death, resignation, or disqualification of a Trustee, or if a Trustee has been declared of unsound mind by court order or convicted of a felony. The Secretary-Treasurer shall give notice of all vacancies in Trustee's terms of office to the governor of the State, to the governing bodies of the counties charged with nominating a successor and to all District Trustees. The Secretary-Treasurer shall publish notice of the vacancy pursuant to statute.  
UCA §§ 17B-1-303, 17B-2a-1005

## **§ 2502 Compensation**

### **§ 2502.01 Trustee Compensation**

Each Trustee shall receive \$3,500 per annum (*See UCA § 17B-1-307 for maximum*), paid in quarterly installments as compensation. Mileage for attendance at Board meetings and other expenses that are incurred will be reimbursed according to State law and Section 2600.

### **§ 2502.02 Miscellaneous**

#### **(a) Per Diem**

Trustees may receive per diem as allowed by State law (*UCA § 11-55-103*), which is presently \$60.00 per half day (lasts up to four hours) and \$90.00 (lasts longer than four hours see Utah Admin Code R25-5-4 for rates) for a full day up to a total of twelve days, per diem compensation, in addition to the compensation provided in Section 2502.01 for attendance at up to 12 meetings or activities per year for the performance of other duties assigned to trustees by the Board.

The following activities shall be eligible for per diem:

- (i) attendance at meetings where approved by the Chairman or requested by the General Manager;
- (ii) attendance at committee meetings held on days other than the Regular Board meeting;

- (iii) attendance at local water board meetings where attendance is solely because of membership on the CUWCD Board;
- (iv) attendance at county commission meetings where the Trustee's participation is requested;
- (v) attendance at Appropriations Hearings and other activities in Washington, D.C.;
- (vi) attendance at Special or Emergency Board meetings;
- (vii) attendance at inspections of Central Utah Project and District facilities; and
- (viii) upon approval of the Board Chairman, a Trustee may receive the per diem for District business, or attending seminars, conferences, etc., that the Board normally attends.

(b) Expenses

Trustees shall also be paid expenses incurred as a result of the performance of their duties pursuant to Section 2600.

(c) Participation in Group Insurance Plan

A member of the Board of Trustees may participate in a group insurance plan provided to employees of the District on the same basis as employees of the local district. The amount that the District pays to provide a Trustee with coverage under a group insurance plan will be included as part of the Trustee's compensation. Any shortage between the amount of compensation a Trustee receives, and the cost of the insurance coverage must be paid by the Trustee.

UCA §17B-1-307.

(d) Other Benefits

Trustees are considered part-time appointed officials. They are not eligible for retirement benefits unless state statute indicates otherwise.

## ***§ 2600 TRUSTEES' TRAVEL & BUSINESS-RELATED EXPENSES***

### **§ 2601 General Rules**

It is the policy of the District to reimburse Trustees for costs associated with the conduct of District business.

### **§ 2601.01 Authorized Travel**

The Board recognizes the value to the District and to the Trustees in attending educational activities and encourages Trustees to attend such activities. Trustees, with the exception of the Chairman and Vice-Chairman, are authorized to attend one out-of-State convention, conference, seminar or workshop per year, except Intermountain AWWA Section meetings which may be held out of state, shall be considered the same as in state, unless otherwise authorized by the Executive Committee. The Chairman and Vice-Chairman are authorized to attend those meetings deemed beneficial to the District with approval of the Executive Committee.

- (a) The Chairman is authorized to designate those Trustees to attend the hearings and other events in Washington D.C.
- (b) Travel by Trustees incident to their official duties is authorized for reimbursement by the District.

### **§ 2601.02 Distinguishing Expenses**

Trustees traveling on District business with a spouse or other companion shall strictly distinguish expenses incurred as part of District business from expenses incurred on behalf of a spouse or companion and personal expenses. The District will not pay for expenses incurred on behalf of a spouse or companion or for personal expenses.

### **§ 2601.03 Reimbursement**

Requests for reimbursement shall be accompanied by receipts for all expenses, except incidental expenses under \$20 and those for which flat allowances are established (i.e. meals, mileage).

### **§ 2601.04 Reservations and Travel Arrangements**

Trustees shall coordinate arrangements for airline, rental car, and motel-hotel needs through the Administrative Assistant.

## **§ 2602 Reimbursable Expenses**

### **§ 2602.01 Lodging**

- (a) Reimbursable Charges

Trustees shall obtain the government rate for lodging charges, when available. When the government rate is unavailable, the most reasonable and prudent rate shall be obtained. When attending conferences, Trustees are expected to stay at the conference hotel, if possible.

(b) Lodging Receipt

A proper receipt for lodging accommodations must accompany each request for reimbursement. A proper receipt is a copy of the billing statement generally used by motels and hotels.

(c) Lodging at Other Than a Hotel/Motel

In those instances where Trustees elect to stay with friends or relatives while on District business rather than a motel/hotel or use their personal campers, mobile homes, other recreational vehicle for travel, or other personal lodging, the traveler will be reimbursed an amount per night consistent with the State rate for this type of lodging. See District reimbursement form for current amounts.

**§ 2602.02 Meal Allowance**

Overnight Travel

(a) The basic meal allowance for a 24-hour period of travel will be consistent with the State rates at the time of travel (See Admin Code R25-7-6). Receipts are not required for meal per diem reimbursement. See CUWCD reimbursement form for current amounts.

(b) The meal allowance for the day travel begins when the time travel commences as follows:

between midnight and 6:00 a.m.	Breakfast, lunch and dinner allowance is given
between 6:00 a.m. and noon	Lunch & dinner allowance is given
between noon and 6:00 p.m.	Dinner allowance is given
after 6:00 p.m.	No allowance is given

(c) The meal allowance for the day travel ends when the time travel ends as follows:

between midnight and 6:00 a.m.	No allowance is given
between 6:00 a.m. and noon	Breakfast allowance is given
between noon and 6:00 p.m.	Breakfast & lunch allowance is given
after 6:00 p.m.	Breakfast, lunch & dinner allowance is given

- (d) For all days between the day travel begins and the day travel ends, the meal allowance is that amount set in subparagraph (a) above.

#### Non-Overnight Travel

Trustees are entitled to reimbursement for meals when they do not travel overnight under the following conditions:

#### **Lunch**

- (a) A Trustee may receive a reimbursement consistent with the State rate when on an officially approved trip, requiring absence from the Trustee's home-based office between the hours of 10:00 a.m. and 2:00 p.m.
- (b) A Trustee may receive reimbursement for lunch under other circumstances approved by the Chairman.

#### **Dinner**

A Trustee may receive a reimbursement consistent with the State rate when on an officially approved trip and the arrival time to the home-based office is later than 6:00 p.m.

#### **Meals Included in a Registration Fee**

If a registration fee is paid by or reimbursed by the District, the value of the meals and/or lodging which are included in the registration fee will be deducted from the per diem rates according to the allowance listed above.

#### **§ 2602.03 Incidental Expense Allowance**

Sales tax and tips are included in the allowances for meals and lodging described above. Trustees will be reimbursed for actual out-of-pocket costs for other incidental items such as baggage fees, baggage tips, parking fees, toll fees, taxi and bus fares. However, no item of expense exceeding \$20.00 will be reimbursed without a written receipt. Separate taxi trips of less than \$20 need not be supported by receipts, but trip fares in excess of \$20 must be supported by a receipt.

#### **§ 2602.04 Transportation**

- (a) Intrastate Travel

In-state travel will generally be by motor vehicle rather than air. If a Trustee drives a privately-owned vehicle, reimbursement will be the current rate authorized by Internal Revenue Service rules. Mileage will be computed from the latest official State road map and will be limited to the most economical, usually traveled routes. Reimbursement to Trustees for mileage incident to attending Board meetings shall be for the actual mileage traveled.



(b) Interstate Travel

Out-of-State travel will usually be by commercial airline. Airfare is limited to coach class. Trustees may upgrade to first class or other upgraded seats at their own expense. Frequent flyer bonus points will stay with the Trustee and may be used as desired.

If a Trustee chooses to drive a privately-owned vehicle, rather than travel by air, reimbursement will be at the current rate authorized by Internal Revenue Service rules. The District will reimburse actual mileage up to 500 miles each way. In addition, allowable amounts for meals and lodging, and associated costs will be paid for the same period of time that would have occurred had the Trustee traveled by air. These reimbursements are all-inclusive and additional expenses outside the time period the flight would have taken (i.e., overnight lodging and meals) will not be reimbursed.

Mileage will be reimbursed for actual miles, but will be limited to the most economical, usually traveled routes.

## **§ 2603 Reimbursement Procedures**

### **§ 2603.01 Reimbursement by District**

Each trip shall be submitted on a separate Reimbursement Form. Individual vouchers will not be processed unless they consist of all the travel of the claimant for the reporting period involved.

(a) The Reimbursement Form should include all applicable receipts in excess of \$20.

### **§2603.02 Reimbursement by a Third Party**

Travel expenses reimbursed by a third party may be treated in one of the following ways:

Trustees may retain the amount reimbursed by the third party and accept no District reimbursement; or

Trustees may deposit the third-party reimbursement in total with the Controller as a refund of expenditure and obtain a regular travel reimbursement from the District.

A Trustee may not use a combination of the two options above and may not be reimbursed by the District and a third party for the same trip.

## **CHAPTER 3 – PERIODIC REPORTS**

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### ***§ 3100 ANNUAL REPORTS***

#### **§ 3101 Summary of Operations**

The Board shall annually cause a report to be compiled covering the work of the District for each year.

#### **§ 3102 Annual Independent Audit**

At the conclusion of each fiscal year, all receipts and disbursements of the Board and the District shall be audited by an independent certified public accountant to be selected by the Board. The audit report shall be prepared in conformity with generally accepted accounting principles as prescribed in the Uniform Accounting Manual for Special Districts and shall be posted to the District's website in a timely manner after completion.

UCA §§ 17B-1-639 to 17B-1-642

#### **§ 3103 Filing of Annual Reports**

A copy of the annual audit report furnished by the independent auditor shall be filed with the State auditor and shall be filed as a public document in the District office.

#### **§ 3104 Consideration of Management Letter**

The Board shall consider all recommendations in the management letter accompanying the independent audit and consider the adoption of policies to implement the recommendations where appropriate.

### ***§ 3200 MONTHLY STAFF REPORTS***

#### **§ 3201 General Manager's Report**

The General Manager shall provide a monthly summary to the Board showing the financial position and operations of the District, including actual receipts and expenditures and variances thereof from estimates, for the preceding month and for the year to date.

UCA § 17B-1-638

### ***§ 3300 MISCELLANEOUS REPORTS***

#### **§ 3301 Financial Reports**

The General Manager is authorized to publish an annual financial report and other more frequent reports as may be required to obtain and preserve District credit and as a means of keeping the financial community and investors in District securities regularly informed of the District's operations.

## CHAPTER 4 – WATER SERVICE POLICIES

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### **§ 4100 GENERAL**

#### **§ 4101 Service Area**

The Act authorizes the District to supply waters inside and outside of the District’s boundaries.

While the principal objective of the District is to provide the water needs within its boundaries, the Board may on a case by case basis consider and authorize the use of Central Utah Project or other District waters outside its boundaries on terms and conditions determined by the Board to be just and equitable.

#### **§ 4102 Types of Water Available**

The Board contemplates the following classes of water will be available for sale or allotment:

- (a) Municipal and Industrial (“M&I”);
- (b) Irrigation;
- (c) Exchange supplies for the above;
- (d) Other classes as the Board may designate.

### **§4200 M&I WATER ALLOCATIONS**

#### **§ 4201 General**

A principal purpose for the construction of the Central Utah Project is the development of a new source of M&I water. In addition to Central Utah Project water, the District and other State or local agencies may develop other M&I waters under separate programs.

#### **§ 4202 Availability of M&I Water**

The following areas of the District have been designated to receive Central Utah Project M&I water:

- (a) Salt Lake County;
- (b) Utah County;
- (c) Juab County;
- (d) Wasatch County;

- (e) Duchesne County;
- (f) Uintah County; and
- (g) Summit County (from converted CUP agricultural water)

### **§ 4202.01 Relationship Between District and Uintah Water Conservancy District**

By agreement dated May 26, 1977, between the District and the Uintah Water Conservancy District, the District agreed to assist in repaying the cost of M&I water developed by the Jensen Unit of the Central Utah Project. Through this agreement and by resolution of the Board on March 3, 1988, the District agreed to pay 34% of the allocated cost for M&I water for the Jensen Unit. The basis of this agreement is to ensure that the entities that subscribe for M&I Central Utah Project water from the Bonneville, Jensen, or Uintah Basin Replacement Project (UBRP) units of the Central Utah Project are treated equally and fairly. There is a paragraph addressing that issue in each of the M&I water contracts entered into by the District.

### **§ 4203 Allocation of M&I Waters**

Central Utah Project and other M&I waters developed by the District will be allocated and marketed under the following procedures:

- (a) The District, in collaboration with water distribution entities in each geographical division, will conduct water use and facilities needs studies to determine the present and future M&I water needs of each geographical division.
- (b) Central Utah Project and other waters developed by the District for use within the geographical divisions in which M&I water is available shall be marketed through existing water distribution entities. In Salt Lake County, Central Utah Project water will be marketed through the Jordan Valley Water Conservancy District and the Metropolitan Water District of Salt Lake and Sandy. In other geographical divisions, waters will be marketed through political subdivisions of the State, local governmental entities or non-profit, user-owned, water organizations in this order of preference. Where there is no existing water organization, or under other special circumstances, the Board may authorize the sale of water directly to the user.
- (c) The District and the Bureau of Reclamation will coordinate their activities to make Central Utah Project M&I water available in blocks as close as possible to the times of need as indicated in the Central Utah Project's water use studies.
- (d) At the discretion of the Board, and subject to the availability of its financial resources, the District will endeavor to help provide mainline delivery facilities to the geographical divisions.

### **§ 4204 Petition and Allotment Procedure**

After reviewing the water use reports for each geographical division and the quantities of M&I water developed by the Central Utah Project, the Board will make an allocation of M&I Central Utah Project water to each geographical division. The Board may increase or decrease the allocation to any geographical division prior to the approval of petitions for the full allocation of water for the geographical division. In order to receive M&I water pursuant to an allocation for a geographical division, a water distribution entity shall submit a petition to the District conforming to the requirements of the Act. After approval of the petition by the Board and the development of required facilities, the District will give the required notices and where appropriate make an allotment of water to the water distribution entity.

### **§ 4205 Conversion of Irrigation Water to M&I Uses**

Central Utah Project M&I water was not allocated to all geographical divisions, but the terms of the repayment contract between the District and the United States allow the conversion of Irrigation water to M&I water. Conversions of Irrigation water to M&I water may be implemented by the District upon completion of the following:

- (a) consultation with the county governing body of the county in which the use of Irrigation water is contemplated and other appropriate governmental and private entities;
- (b) the Board's determination that the conversion is compatible with the Project;
- (c) approval of the conversion by the Department of the Interior;
- (d) a reduction of Central Utah Project Irrigation water in proportion to the conversion.

The converted Irrigation water will be made available for M&I use pursuant to Section 4203.

### **§ 4206 Financial Assistance for M&I Allocations**

The District will apply the following priority schedule in the use of its funds for repayment of Central Utah Project facilities, and construction of District facilities to implement the marketing of Central Utah Project and District M&I water:

- (a) District participation in the repayment of Central Utah Project and District M&I water;
- (b) construction of treatment facilities to treat Central Utah Project and District M&I water;
- (c) construction of treatment facilities to treat non-project water being firmed up by Central Utah Project and District M&I water;
- (d) construction of treated water storage reservoir facilities for Central Utah Project and District M&I water to facilitate efficient treatment plant operation;

- (e) construction of aqueducts carrying Central Utah Project and non-Project water being firmed up by Central Utah Project and District M&I water;
- (f) permit use of facilities to process, store, or deliver non-project water on a space-available basis.

## ***§ 4300 IRRIGATION WATER ALLOCATIONS***

### **§ 4301 General**

The following areas of the District have been designated to receive Central Utah Project Irrigation Water:

- (a) Utah County (temporary),
- (b) Wasatch County,
- (c) Summit County,
- (d) Duchesne County, and
- (e) Uintah County.

## ***§ 4400 ALLOCATION OF OTHER WATERS***

### **§ 4401 General**

At the discretion of the Board, other classes of water will be made available through water-sales contracts, petitions and/or allotment proceedings to cover each situation and water distribution entity.

## ***§ 4500 WATER SERVICE REGULATIONS***

### **§ 4501 General**

Water service regulations shall be consistent with the Act, other applicable statutes, Federal Reclamation Law, where applicable, and this Code.

### **§ 4502 Water Costs and Charges**

In setting water costs and charges, the District, as a political subdivision of the State and a non-profit organization, will levy such water charges and/or tax levies as are necessary to meet the following costs:

- (a) construction, operation, maintenance, replacement costs, and accumulation of reserve funds in compliance with Contract No. 14-06-400-4286 with the United States dated

December 28, 1965, and any amendments thereto, for construction of the Bonneville Unit of the Central Utah Project, and other funds as may be determined as essential by the Board;

- (b) construction, operation, maintenance, and replacement costs incurred by the District in providing through its own financial arrangements water treatment facilities, aqueducts, pipelines, reservoirs, pumping plants, wells or other facilities to deliver water to its subscribers;
- (c) replacement costs for all facilities by accumulation of reserve funds in compliance with Board-adopted resolutions.

The Board may authorize District non-Project water to be processed through District treatment plants, delivered to treated water storage facilities and conveyed through District or Central Utah Project aqueducts on a space-available basis. The Board may establish a per-unit capital cost for the use of such facilities as repayment for use of Central Utah Project or District facilities.

All water contract holders shall pay its proportionate share of operation, maintenance, replacement, administrative and reserve costs.

## CHAPTER 5 – FINANCIAL MATTERS

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### **§ 5100 GENERAL**

#### **§ 5101 Fiscal Year**

The Fiscal Year of the District shall begin July 1 of each year and end on June 30 of the following year.

UCA § 17B-1-602

#### **§ 5102 Accounting System**

The General Manager shall prescribe the method of establishing, maintaining and reporting the accounts and funds of the District, its officers and employees, and financial statements prepared from those records, in conformance with generally accepted accounting principles and the Uniform Accounting Manual for Special Districts prepared and maintained by the State auditor. However, any material change in the general system of accounting shall be recommended by the Finance, Audit, and Budget Committee and approved by the Board.

UCA §§ 17B-1-603, -604

#### **§ 5103 District Clerk**

The Board designates the Chief Financial Officer as the District Clerk. The District Clerk or other person appointed by the General Manager shall attend the meetings and keep a record of the proceedings of the Board.

The District Clerk or other person appointed by the General Manager shall maintain a properly indexed record of all contracts made on behalf of the District.

The District Clerk or other person appointed by the General Manager shall maintain the financial records for each fund of the District and all related subsidiary records, including a list of the outstanding bonds, their purpose, amount, terms, date, and place payable.

The District Clerk or other person appointed by the General Manager shall keep records of activities with vendors of the District, shall preaudit all claims and demands against the District before they are allowed, and shall prepare the necessary checks in payment. The District Clerk shall certify on the voucher or check copy, as appropriate that:

- (a) the claim has been pre-audited and documented;
- (b) the claim has been approved in one of the following ways;
  - (i) purchase order directly approved by the Board or its delegate;



(ii) claim directly approved by the Board; or

(iii) claim approved by the appropriate staff members (See Section 5300)

(c) the claim does not over expend the appropriate departmental budget established by the Board.

UCA §§ 17B-1-631, -632, -635

The District Clerk/Chief Financial Officer or other member of management team is recommended to be a licensed or certified expert such as a Certified Public Accountant (CPA), Certified Government Financial Manager (CGFM), Certified Management Accountant (CMA), Certified Internal Auditor (CIA), Certified Fraud Examiner (CFE), Certified Government Auditing Professional (CGAP), and Certified Public Finance Officer (CPFO). Typically, this individual would have a least a bachelor's degree in accounting and each year should receive 40 hours or more of financial training related to accounting, budgeting, reporting, internal controls, fraud prevention and detection, software, and any other topic that is related to the management of finances.

#### **§ 5104 Secretary-Treasurer**

The Board designates the General Manager as Secretary-Treasurer. The District Clerk may not also be the Secretary-Treasurer.

The Secretary-Treasurer or his designee is custodian of all money, bonds, or other securities of the District.

The Secretary-Treasurer or his designee shall:

(a) determine the cash requirements of the District and provide for the deposit and investment of all monies by following the procedures and requirements of Title 51, Chapter 7, State Money Management Act;

(b) deposit all public funds and money payable to the District within three business days after collection, including all taxes, licenses, fines and intergovernmental revenue;

(c) keep an accurate detailed account of all monies received under Section 5104(b) in the manner provided in this part and as directed by the Board of the District; and

(d) collect all special taxes and assessments as provided by law and ordinance.

UCA § 17B-1-633.

**§ 5105 Financial Reports.**

The District Clerk, or other delegated person, shall prepare and present to the Board detailed monthly financial reports showing the financial position and operations of the District for that month and the year-to-date status.

UCA § 17B-1-638

**§ 5120 ESTABLISHMENT OF FUNDS**

The Board hereby establishes the following funds:

**§ 5121 Governmental Funds**

General funds;

- (a) Debt service fund;
- (b) Capital projects fund;
- (c) Central Utah Project Completion Act fund
- (d) Olmsted Replacement Fund
- (e) Central Water Project Fund

**§ 5122 Proprietary and Required Special Funds**

Jordanelle Hydro Enterprise Fund

UCA § 17B-1-605(1)(e).

**§ 5123 Fiduciary Funds**

June Sucker Recovery Fund

**§ 5150 LIMITATIONS ON ACCUMULATED FUND BALANCES**

Retained earnings or fund balances may accumulate in any fund with the following restrictions.

UCA § 17B-1-612(1)(a)

**§ 5151 General Fund**

(a) An accumulated fund balance in the general fund is restricted to the following purposes:

- (i) To provide working capital to finance expenditures from the beginning of the budget year until general property taxes or other applicable revenues are collected, thus reducing the amount which the District must borrow during the period, but this subsection does not permit the appropriation of any fund balance for District budgeting purposes except as provided in Section 5151(d);

UCA § 17B-1-612(1)(b)(i)

(ii) To provide a resource to meet emergency expenditures under Section 5409; and  
UCA § 17B1-612(1)(b)(ii)

(iii) to cover a pending year-end excess of expenditures over revenues from an unavoidable shortfall in revenues or increase in expenditures. This provision does not permit the appropriation of any fund balance to avoid an operating deficit for the fund during any budget year except as provided under Section 5151(d), or for emergency purposes under Section 5409.

UCA §§ 17B-1-612(1)(b)(iii), 17B-1-612(1)(d)

(b) The accumulation of a fund balance in the general fund may not exceed the most recently adopted general fund budget, plus 100% of the current year's property tax.

UCA §§ 17B-1-612(2)(a), and (b)(ii)

(c) If the fund balance at the close of any fiscal year exceeds the amount permitted under Section 5151(b), the excess shall be appropriated in the manner of Sections 5406.01 and 5402.01(b).

UCA § 17B-1-612(3)

(d) Any fund balance at the close of any fiscal year in excess of 5% of the total revenues of the general fund may be utilized for District budget purposes.

UCA § 17B-1-612(4)

(e) As a standard practice, the District shall keep no more than 25% of the current year's tax collections as year-end fund balance in the General Fund.

### **§ 5152 Debt Service Fund**

(a) An accumulated fund balance in the debt service fund may be used for the following purposes:

(i) payment on the following year's bond payments as authorized by bond covenants or other contractual agreements, and

(ii) board authorized reserves for future, long-term, debt payments, including debt service reserves and bond funds

### **§ 5153 Capital Project Fund**

(a) Within a capital projects fund the Board may, in any budget year, appropriate from estimated revenue or fund balances to a reserve for capital projects for the purpose of financing future specific capital projects, under a formal Long-Term Financial Plan adopted by the Board.

- (b) The reserves may accumulate from year-to-year until the accumulated total is sufficient to permit economical expenditure for the specified purposes.
- (c) Disbursements from these reserves shall be made only by a budget appropriation adopted in the manner provided by this chapter.
- (d) Expenditures from the above appropriation budget accounts shall conform to all requirements of this chapter relating to execution and control of budgets.
- (e) The accumulation of a fund balance in the capital projects fund shall not exceed the sum of the current year's budgeted capital projects plus the total amount being accumulated for identified projects.  
UCA § 17B-1-605(2), -612(2)

## **§ 5154 Reserves within the General Fund**

### **§ 5154.01 Liability Insurance Reserve**

The Board hereby establishes the Liability Insurance Reserve (“Insurance Fund”) to provide a self-insurance program for District liability insurance. The following provisions are determined:

- (a) All insurance claims will be paid from the Insurance Fund.
- (b) Interest on the Insurance Fund will accrue to the Insurance Fund.
- (c) If during any year, the Insurance Fund drops below \$5,000,000, then funds will be budgeted in increments of up to \$200,000 per year in the following year's budget to bring the Insurance Fund back to \$5,000,000.
- (d) The District's legal counsel will handle and defend or resolve any claims against the District.
- (e) The Chief Financial Officer of the District is hereby designated as the Risk Manager for the District Self-Insurance Program.

### **§ 5154.02 Bond Pledge Reserve**

The Board hereby establishes the Bond Pledge Reserve. Revenue Bond Covenants require the District to place funds on deposit to cover one quarter of the yearly budgeted operation and maintenance costs to operate Central Utah Project and District features.

## **§ 5155 Reserves Within the Capital Projects Fund**

### **§ 5155.01 Contingency Reserve**

The Board hereby establishes the Contingency Reserve to provide funds which can be used to meet other emergencies or calamities not foreseen by the Board. Each year, the amount of \$500,000 shall be budgeted to this fund until such time as the principle and interest have accumulated to \$10,000,000. Thereafter, interest will accrue to fund balance in the capital projects fund.

UCA § 17B-612(5)

### **§ 5155.02 Replacement Reserve**

The Board hereby establishes the Replacement Reserve pursuant to the Repayment Contract with the United States, as amended by the March 29, 1985 letter agreement with the United States, to provide for the replacement of any Central Utah Project facility not funded by the federal government, which facilities require capital improvements resulting from damage or maintenance in addition to normal wear. The Replacement Reserve, together with the Emergency Reserve, shall equal as a minimum, one year's operation and maintenance expenses. Central Utah Project water users' fees shall fund the Replacement Reserve. Interest earned on this fund shall accumulate to the balance.

### **§ 5155.03 Emergency Reserve**

The Board hereby establishes the Emergency Reserve pursuant to the Repayment Contract with the United States as amended by the March 29, 1985 letter agreement with the United States, to provide funds for emergency capital expenditures where such expenditures are not budgeted or where budget line items are insufficient or otherwise available. The Emergency Reserve, together with the Replacement Reserve, shall equal, as a minimum, one year's operation and maintenance expenses. Central Utah Project water users' fees shall fund the Emergency Reserve. Interest earned on this fund shall accumulate to the balance.

### **§ 5155.04 District Facility Reserve**

The Board hereby establishes the District Facility Emergency & Replacement Reserve pursuant to the petitions or agreements with water users to treat and store Central Utah Project and non-project water at the water treatment plants that the District operates. For each acre-foot of water that is treated, a charge will be collected for the reserve as provided in the contracts. Funds will be used for emergency capital and unusual O&M expenditures at the water treatment plants. Interest earned on the fund shall accumulate to the fund balance.

### **§ 5155.05 Project Facility Reserve**

The Board hereby establishes the District O&M Reserve to provide for repair and replacement of Central Utah Project Facilities. As project facilities age, the reserve will

be used to help fund repairs to those facilities, thus helping to stabilize otherwise fluctuating O&M costs. Project water users' fees and non-project water users' fees shall fund the Project Facility Reserve. Interest earned on this fund shall accumulate to the balance.

**§ 5155.06 WCWEP (Wasatch County Water Efficiency Project) Project Reserve**

The Board hereby establishes the WCWEP Project Reserve to provide for the repair and replacement of WCWEP facilities. As WCWEP facilities age, the reserve will be used to help fund repairs to those facilities, thus helping to stabilize otherwise fluctuating O&M costs. Wasatch County Water Efficiency Project water users' fees shall fund the WCWEP Reserve. Interest earned on this fund shall accumulate to the balance.

UCA § 17B-612(5)

**§ 5156 Reserves Within the Jordanelle Hydropower Enterprise Fund**

**§ 5156.01 Jordanelle Hydropower Reserves**

The District maintains reserves related to Jordanelle Hydropower in the Enterprise Fund, primarily for contingencies, revenue stabilization, and debt service.

**§ 5157 Reserves Within the Central Water Project Fund**

**§ 5157.01 Central Water Project Reserve**

The District maintains reserves related to Central Water Project Fund, primarily to provide for repair and replacement of Central Water Project Facilities. As project facilities age, the reserve will be used to help fund repairs to those facilities, thus helping to stabilize otherwise fluctuating O&M costs. Central Water Project water users' fees shall fund the Central Water Project Reserve. Interest earned on this fund shall accumulate to the balance.

**§ 5170 RECEIPT OF FUNDS**

**§ 5171 Qualified Depositories**

All funds of the District shall be received by the Secretary-Treasurer and deposited in qualified depositories designated by the Board and approved by the Utah Money Management Council. UCA § 17B-1-633

**§ 5172 Procedures for Deposits Received**

As checks or cash are received, the Administrative Assistant or delegate at District Headquarters will individually add each check to a "cash received" list. The list will describe the payor, the date received, and the amount of the check. The individuals receiving checks or cash should not be able to make general ledger entries or adjust customer accounts in the accounting system. A restrictive endorsement is stamped on the back of each check. The

checks and supporting information are daily delivered to the financial assistant. The “cash received” list is given to the controller on a monthly basis to ensure that all checks received are actually deposited. The financial assistant prepares a bank deposit slip in duplicate or uses the banks online deposit system to generate a deposit information report. If going to the bank to deposit, one copy of the deposit slip is given to the bank with the deposit. The other copy or deposit information report, along with supporting information and the bank’s receipt, is given to the controller. The financial assistant deposits these cash receipts in the District’s bank account within 3 days when possible. The financial assistant enters the cash receipts into the computer system and credits the appropriate customer or general ledger account. All voiding of cash receipts or customer accounts must be reviewed by the controller or other individual who did not make the correction. All cash and checks will be stored in a locked and secure location (e.g. safe, vault, lock box). The controller, or delegate shall review a daily report from the District’s bank accounts for other deposits such as ACH or other wire transfers and records them in the District’s accounting system.

### **§ 5173 Receipts or Other Evidence of Deposits Given**

The Secretary-Treasurer shall give or cause to be given to every person paying money to the District treasury, a receipt or other evidence of payment, specifying, as appropriate, the date of payment and upon which account paid and shall file the duplicate of the receipt.

UCA § 17B-1-634

### **§ 5174 Comingling of Personal Funds Prohibited**

It shall be unlawful for any person to commingle District funds with the person’s own money. If it appears that the Secretary-Treasurer or any other officer is making a profit out of public money or is using the same for any purpose not authorized by law, the Secretary-Treasurer or officer shall be suspended from office.

UCA § 17B-1-637

### ***§ 5190 INTEREST ON DELINQUENT ACCOUNTS***

#### **§ 5191 Contracted Interest Rate for Existing Contracts**

In all petitions, water sales contracts and other contracts of the District executed prior to the effective date of this Section, where an interest rate to be charged on unpaid amounts due and owing thereunder has been specified, interest shall continue to be charged at the contracted rate specified therein.

#### **§ 5192 Existing Contracts with Unspecified Interest Rates**

In all petitions, water sales contracts and other contracts of the District executed prior to the effective date of this Section, where no interest rate is specified, interest on all unpaid amounts due and owing thereunder shall accrue at the legal rate set forth in §15-1-1, Utah Code Annotated (1953), as amended (currently ten percent (10%) per annum) until paid in full. Interest shall not begin to accrue until thirty (30) days after the date payment is due.

### **§ 5193 Contracted Interest Rate for Future Contracts**

In all petitions, water sales contracts and other contracts of the District executed subsequent to the effective date of this Section, the standard rate of interest to be charged on all unpaid amounts due and owing thereunder shall be eighteen percent (18%) per annum until paid in full. Interest shall not begin to accrue until thirty (30) days after the date payment is due.

### **§ 5200 INVESTMENT OF DISTRICT FUNDS**

#### **§ 5201 General**

The policy of the District shall be to invest public funds in a manner that will provide, in the following priority, for (1) safety of principal or capital, (2) liquidity, and (3) return on investment. It shall also be the policy of the District that all invested funds shall be made in accordance with applicable State and local statutes, specifically the Money Management Act of 1974 and Rules of the State Money Management Council as currently amended (the “Act”), the provisions of which are hereby incorporated as a part of this policy.

This investment policy shall apply to all financial assets of the District including all component units. These funds and component units are accounted for in the District’s audited General-Purpose Financial Statement.

UCA § 51-7-1 et. Seq.

#### **§ 5202 Delegation to Secretary-Treasurer**

The responsibility for conducting investment transactions is hereby delegated to the Secretary-Treasurer who shall establish procedures for the operation of the investment program consistent with this investment policy.

No person may engage in an investment transaction except as provided under the terms of this policy and the procedures established by the Secretary-Treasurer. The Secretary-Treasurer shall be responsible for all transactions undertaken.

#### **§ 5203 Prudence**

The standard of prudence to be used by District investment officials shall be the “prudent person” standard and shall be applied in the context of managing an overall investment portfolio. Investments shall be made with that degree of judgment and care, under circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their own affairs. Investment officers acting in accordance with written procedures and this investment policy and exercising due diligence shall be relieved of personal responsibility for an individual security’s credit risk or market price changes, provided deviations from expectations are reported in a timely fashion and appropriate action is taken to control adverse developments.

UCA § 51-7-14



## **§ 5204 Ethics and Conflicts of Interest**

Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with proper executions of the investment program, or which could impair their ability to make impartial investment decisions. It shall be the responsibility of the employees and investment officials to report to the Secretary-Treasurer any conflicts of interest as stated in this section of the investment policy.

## **§ 5205 Authorized Investments**

Investments shall be made in compliance with the Utah State Money Management Act, Section 51-7-11. This Policy shall not restrict ability of the District to invest funds according to the limitations imposed by bond resolutions or indentures of trust adopted by the District for the funds held by a trustee under bond resolutions.

## **§ 5206 Diversification**

(a) *Diversification by Issuer:* The District will diversify its investments by institution (issuer). Diversification of investments with a single institution (issuer) will comply with applicable rules of the Money Management Council. Further, the District will restrict its investments to no more than 5% with a single issuer unless otherwise exempted in this policy.

(b) *Diversification by Investment Type:* District policy shall restrict investments to a maximum of 25% of the portfolio with a single investment type: i.e. no more than 25% in commercial paper, obligations of political subdivisions of the state (municipal bonds), corporate notes, repurchase agreements, or bankers' acceptances.

(c) The Issuer and Investment Type diversification restrictions do not apply to the Public Treasurers' Investment Fund (pool), money market funds, bank CD's, U.S. Treasury obligations, federal agency or instrumentality securities. All percentages are calculated as of the date of purchase.

## **§ 5207 Maximum Maturities**

To the extent possible, the District will attempt to match investments with anticipated cash requirements. The maximum maturity for any investment shall comply with the Utah State Money Management Act, Section 51-7-11

## **§ 5208 Reporting**

The Secretary-Treasurer will report the status of investments on a monthly basis to the Board of Trustees.

## **§ 5209 Competitive Transactions**

The District shall seek at least three competitive bids/offers for each transaction. If the District is offered a security for which there is no other readily available competitive offering, quotations for comparable or alternative securities will be documented.

### **§ 5210 Authorized Investment Advisors, Dealers and Institutions**

Investment transactions shall only be conducted through certified depositories, certified dealers, or directly with issuers of the investment securities. Financial institutions and investment brokers/dealers used by the District or the District's investment advisor must comply with Rule 16 of the Money Management Council.

The District may use investment advisers to conduct investment transactions on its behalf pursuant to Rule 15 of the Money Management Council.

District funds shall only be deposited with a permitted depository pursuant to the Money Management Act and the Rules of the Money Management Council.

Purchases of securities will be made on the basis of delivery vs. payment (DVP). The Secretary-Treasurer shall select a custodian whose responsibility it will be to hold all investment securities for the benefit of and in the name of the District.

### **§ 5211 Performance Benchmarks**

The investment portfolio shall be designed to attain a market rate of return throughout budgetary and economic cycles, taking into account prevailing market conditions, risk constraints for eligible securities, and cash flow requirements. The performance of the District's portfolio shall be compared to a total return index that meets the duration target of the portfolio.

### **§ 5212 Money Market Funds**

Money market mutual funds must be rated AAA or the equivalent, and the investment policies of the fund shall include seeking to maintain a constant share price.

### **§ 5213 Policy Revisions**

This Investment Policy shall be reviewed annually by the District. Any amendments shall be submitted to the Board of Trustees for approval.

## ***§ 5300 EXPENDITURE OF PUBLIC FUNDS***

### **§ 5301 General**

The District shall not make or incur expenditures or encumbrances in excess of total appropriations in the budget as adopted or as subsequently amended. Any such obligation contracted by any officer is not enforceable against the District. No check or warrant to cover any claim against any appropriation may be drawn until the claim has been processed as provided by this part.

It is the District's policy to expend public funds only for bona fide public purposes. The General Manager may expend public funds for food, refreshments, gifts, flowers, floral

arrangements, planters, or other emoluments for a District officer, employee, public official, or their family members when the General Manager determines that such expenditure meets a measurable and discernible public policy objective.

UCA § 17B-1-618, -619

### **§ 5302 Requisitions for Services and Supplies.**

Requisitions are completed by employees in need of supplies and non-routine services. One requisition is required for each vendor involved as per Section 5103b(i). Requisitions are required when the cost of the requested supplies and non-routine services exceeds \$2,000. Requisitions requests should be complete and provide the information asked for on the on-line form.

Requisitions should indicate whether the requested supplies or non-routine services have been properly included in the District's yearly budget. If not, an explanation should be attached to the requisition or on the online form explaining, in detail, the need for the expenditure. Requests for items not budgeted will be carefully reviewed with a heightened sense of awareness. Requests for such purchases will be approved or denied based upon need and available resources.

Routine payments such as utilities, payroll, telephone, investments and block notice payments or other payments authorized by the General Manager do not require a requisition for each payment. These items are initially authorized in the current year's budget and each payment is approved at District Headquarters.

All requisitions must be approved and signed by appropriate District personnel. This includes the department supervisor and controller. The signature of the General Manager or his designee is also required.

All related Federal laws, State laws and District procedures for procurement of construction, services, and supplies, including those defined in Chapter VIII of the Code, must be strictly followed.

To each requisition there must be attached, or incorporated by reference, the contract documents, bids, written or telephone quotes, and other documentation required by the provisions of the Code relating to procurement.

### **§ 5303 Purchase Orders**

The financial assistant will review the requisition for completeness and proper approval. If the document has been completed properly, a formal purchase order will be prepared. The financial assistant will sign the purchase order indicating that the process is complete. The order may then be placed with vendors for supplies or providers of services.

A copy of the purchase order is provided for the vendor, and another copy is filed with the invoice and check copy.

### **§ 5304 Receipt of Shipments**

All deliveries of supplies are counted and inspected by appropriate receiving personnel at District Headquarters, water treatment plants, and satellite offices. Employees will approve invoices for payment via computer software.

### **§ 5305 Processing of Invoices**

As vendor or service provider invoices are received by the financial assistant, they are matched with the purchase order to form a completed invoice package. A stamp is applied to each invoice to provide the required recording of the date received, vendor number, suggested general ledger account number, and a suggested routing schedule for appropriate approval.

The controller reviews the entire check payment package for reasonableness, verifies the accuracy of the account number noted on the package for general ledger recording, and initials or electronically authorizes the package for payment.

As invoices are electronically routed to various departments and staff members, the staff member will assure that approval is only made:

- (a) At prices arranged with the suppliers prior to placing an order;
- (b) According to agreed-upon terms of payment;
- (c) For goods of an acceptable standard; and
- (d) For goods actually received.

Each check has supporting documentation that includes the controller's and authorized staff initials or electronic authorizations evidencing their review. The approval process provides control over accurate payment of goods and services received.

The invoice package is then posted by the financial assistant into the computer system. The invoice package is then stamped "posted" to avoid duplication of posting. Payments are made only from original invoices if possible.

An edit listing is produced to verify the accuracy of the information input in the computer system. The check payment package and edit listing are returned to the controller for verification of the input information such as a date, vendor or service provider, amounts and discount date.

## **§ 5306 Authorization to Sign Checks**

Disbursements of the District shall be made by (1) checks hand-signed by the Secretary-Treasurer and countersigned by the Chairman of the Board, Vice Chairman of the Board, Chairman of the Finance Committee, or District Clerk; or (2) by a facsimile signature of the Secretary-Treasurer, and/or Chairman of the Board.

UCA § 17B-1-635

Any state or national bank designated by the Board as an official depository for funds of the District and approved by the Utah Money Management Council may be requested, authorized, and directed to honor checks, drafts, or other orders for the payment of money drawn in the District's name on its accounts when bearing the signatures as specified in the above paragraph.

## **§ 5307 Check Printer**

### **§ 5307.01 Facsimile Signature**

The facsimile signature is imprinted on all bank signature cards before they are sent to the banks.

### **§ 5307.02 Check Printing Security**

There is a two-step process to produce District checks: 1) the controller and the financial assistant have the password required to operate the check printing software and 2) other designated individuals have the password, which give them the authority to release the queue to print checks.

### **§ 5307.03 Procedures and Controls**

Two individuals (one from each category above) are required to print checks. Both individuals remain in the room for the entire process. The following items are recorded in the check control log: beginning and ending check number and the total number of checks being processed. The control log is initialed by both individuals to indicate a proper accounting of all checks.

### **§ 5307.04 Final Review**

Check invoice packages and the check registers are routed to the CFO by the financial assistant. The CFO conducts a final review to account for the total number of checks disbursed, completeness of check preparation, etc. While the expenditure has already been authorized, this final review acts as a secondary control over all disbursements issued. The CFO initials the check register as evidence of review.

## **§ 5308 Computer Checks**

### **§ 5308.01 Preparation**

Computer checks are printed during the month, as needed, for purchases of supplies or services, to maximize vendor or service provider discounts, and to meet due dates on individual invoices. District checks are generally produced by the computer and printed on blank check stock. The check printer fills in the MICR number, payee, date, check number, check amount, authorized signature, etc. The computer system also produces a check register of all checks printed.

### **§ 5308.02 Processing**

Following the preparation and final review of computer checks, the financial assistant mails the checks. The General Manager or designee inspects all completed check runs for accuracy.

## **§ 5309 Payroll Checks**

### **§ 5309.01 Origination**

Timecards are completed and approved by the individual employees and approved by their immediate supervisors. The timecards are remitted online for approval by the department heads. The department head's approval acts as a secondary control to ensure payroll hours are within an appropriate range and that payroll is paid only to valid employees. Approved timecards are given to the financial assistant.

### **§ 5309.02 Processing and Payment**

The financial assistant inputs/uploads the payroll hours from the timecards summary report of hours worked into the time-keeping system. The summary report of hours worked is compared to the total hours per the timekeeping edit register to ensure input accuracy. The edit register, summary report of hours worked, and timecards for the payroll run are reviewed for accuracy and completeness. The Human Resource Manager reviews the register and other payroll related payments for accuracy and authorizes them to be released. The payroll is then transmitted electronically by computer to the company that processes the payroll. Payroll checks, automatic deposit notifications, and payroll reports are generally returned on the following day by carrier. The checks are signed, as authorized by Section 5306, and mailed (or hand delivered at the District office) by the financial assistant.

### **§ 5309.03 Electronic Signatures**

The District's time keeping system requires employees to enter and certify their time electronically. Each employee is given a unique user identification for the system and is then allowed to choose his or her own private password. Both the user identification and the password are required to access the system.

When an employee authorizes their hours worked by “certifying” them electronically, it is deemed by the District to be the same as hand-signing a timecard.

Supervisors electronically “approve” time of their employees. More than one supervisory approval may be required.

The financial assistant enters the hours worked from the time-keeping system into the payroll system. If timecards have not been approved by payroll deadlines, the financial assistant will process the hours as presented and later obtain approval of the supervisor by hand-signature on the printed timecard.

## **§ 5310 Hand Checks**

### **§ 5310.01 Preparation and Processing**

In the event of a machine breakdown or other mechanical failure, the financial assistant prepares a hand check. The check is hand-signed by those authorized by Section 5306, and the control log is completed.

Hand checks are written against the same bank account using the same check stock as the computer checks. The financial assistant inputs the items into the computer system so that hand checks appear on the check register. The financial assistant routes the completed hand check and check approval documentation to the controller for review prior to issuing the check. The controller reviews each hand check for completeness and accuracy. The financial assistant then disburses the hand check.

## **§ 5311 Blank Checks**

### **§ 5311.01 Signing.**

The District does not issue any blank, signed checks.

### **§ 5311.02 Security**

Authorized check signers should not have access to blank checks. The District does not use pre-printed check stock.

## **§ 5312 Reconciliation Procedures**

### **§ 5312.01 Outstanding Check List**

On a daily basis, the financial assistant enters all cleared checks into the computer system. This list is generated daily by the District’s bank. The financial assistant generates an edit listing of all canceled checks and an outstanding checklist for use by the controller in performing the actual cash reconciliation.

### **§ 5312.02 Controller Performs Reconciliation**

The controller receives the monthly bank statements and reconciles each bank account on a timely basis. These reconciliations shall not be performed by the District Clerk or Secretary-Treasurer. Any adjustments found through the reconciliation process are immediately made directly into the computer system. The Chief Financial Officer reviews the bank reconciliation to ensure accuracy and completeness in a timely manner. The Chief Financial Officer initials the reconciliation as documentation of this review.

### **§ 5312.03 Documentation Filing**

To avoid duplication of payments and provide for proper record retention, when a check is issued, a copy of the check stub is immediately attached to the check payment package and is then filed. Another control to prevent duplication of payment is done by the computer that will not allow the same invoice (identical numbers and dates) to be paid twice.

## **§ 5400 ANNUAL BUDGET**

### **§ 5401 Laws and Regulations**

The District shall comply with all State laws regarding the preparation and oversight of the yearly budget. Copies of the approved budget are sent to the Utah State Auditor's office within 30 days of adoption pursuant to UCA § 17B-1-614.

### **§ 5402 Tentative Budget**

#### **§ 5402.01 Contents.**

(a) General.

The tentative budget for each governmental fund and capital fund, and an operating and capital budget for each proprietary and other required special fund for which a budget is required, shall be accompanied by a description of specific work programs and other supporting data required by law or requested by the Board and shall also provide in tabular form:

- (i) actual revenues and expenditures (budgeted and actual) for the last completed fiscal year;
- (ii) year to date and total estimated revenues and expenditures for the current fiscal year; and
- (iii) estimates of revenues and expenditures for the budget year, including the amount of revenue available to serve the needs of each fund and estimates of the portion to be derived from general property taxes and all sources other than general property taxes. UCA § 17B-1-607



The total of anticipated revenues shall equal or exceed the total of appropriated expenditures.

UCA § 17B-1-606(3)

(b) Budget Worksheet.

By March 10, the controller distributes to all department heads, and other individuals involved in preparing the budget, a “Budget Worksheet.” This worksheet enables the individual preparing the department budget to detail all proposed budgetary amounts for the future year. In addition to the budget worksheet, the controller distributes a copy of actual expenditures year-to-date versus the current budget through the month of February. Department heads will distribute the worksheets within their departments as needed for completion and justification of budget items. Worksheets will be returned to department heads in time to be received by the controller as scheduled each year.

The controller receives all department budget proposals and submits them to the General Manager. The General Manager can either tentatively approve the requests or asks for additional information and justification for proposed amounts from the responsible department heads, based upon their initial review. The controller updates the initial drafts of the department budgets as the preliminary amendments and additional information are submitted by all department heads. The General Manager may either modify the budget or tentatively approve it in its present form.

### **§ 5403 Preparation and Submission to Standing Committees**

The General Manager or his designee shall be responsible for the preparation of a tentative annual budget for each governmental fund, each capital fund, and each proprietary and special fund established by the Board. At or before the first regularly scheduled Board meeting in May, the General Manager shall submit to the various standing committees those portions of the budget for the next ensuing budget year applicable to the committee’s functions. Each standing committee shall review those portions of the budget submitted to it for review so that the General Manager may file with the Board, at or before the first regularly scheduled meeting in June, a tentative budget for each fund for which a budget is required.

### **§ 5404 Adoption by the Board**

Once the tentative budgets are approved by the standing committees, the controller drafts an initial overall District budget. If deemed necessary, the Finance, Audit, and Budget Committee of the Board may call a special meeting to review the budget. All trustees are invited to attend the meeting. The Finance, Audit, and Budget Committee’s suggestions are incorporated into the draft of the budget by the controller.

#### **§ 5404.01 Filing of Budgets with Board**

At or before the first regularly scheduled meeting of the Board in May, the General Manager shall file with the Board, a tentative budget for each governmental fund and

capital fund, and an operating and capital budget for each proprietary and other required special fund for which a budget is required.

UCA § 17B-1-607(1)

### **§ 5404.02 Review and Amendment**

The Board shall review, consider, amend, revise or tentatively adopt the budgets in any regular or special meeting called for that purpose prior to the public hearing, but no appropriation required for debt retirement and interest or reduction of any existing deficits required by law may be reduced below the minimums so required.

UCA § 17B-1-607(4)

### **§ 5404.03 Adoption**

The Board shall tentatively adopt the budgets and establish the time and place of a public hearing to consider its final adoption of the budgets.

UCA § 17B-1-609(1)

### **§ 5404.04 Available to Public**

The tentative budgets adopted by the Board and all supporting schedules and data are a public record and shall be available for public inspection for a period of at least seven days prior to the adoption of the final budgets.

UCA § 17B-1-608

## **§ 5405 Adoption of Final Budget**

### **§ 5405.01 Notice of Hearing**

Final approval of the Board's proposed budget is subject to a public hearing. Therefore, following the Board's May meeting, District staff advertises at least seven days prior to the hearing in at least one major newspaper of general circulation throughout the District that a public hearing will be held to accept the District's proposed budget for the upcoming year. If no newspaper press release is published, the notice requirement of this section may be satisfied by posting the notice in three public places within the District. The District's press release will outline the date, time, and place of the public meeting, inviting the public to attend and make oral and/or written comments about the proposed budget.

UCA § 17B-1-609(1)(b)

The District shall mail a copy of its tentative budget to constituent entities and customer agencies if requested by those entities and agencies and will begin operating on the tentative budget July 1.

(a) Prior to the final hearing, the District will schedule informal meetings with any constituent entity or customer agency, if requested to do so, to discuss any issues or answer questions regarding the budget.

(b) At the final hearing, the Board shall explain any questions and seek to resolve any objections raised at the time by a constituent entity, customer agency, or other person attending the meeting.

(c) The District may approve and implement the budget over any or all objections or concerns of the constituent entities or customer agencies.

UCA § 17B-1-702

### **§ 5405.02 Public Comment at Hearing**

At the time and place advertised, or any time or any place to which the public hearing may be adjourned, the Board shall hold a public hearing on the budgets tentatively adopted. All interested persons in attendance shall be given an opportunity to be heard on the estimates of revenues and expenditures or any item in the tentative budget of any fund.

UCA § 17B-1-610

### **§ 5405.03 Continuing Authority**

After the conclusion of the public hearing, the Board may continue to review the tentative budgets and may insert any new items, or may increase or decrease items of expenditure, that were the proper subject of consideration at the public hearing, but there may be no decrease in the amount appropriated for debt retirement and interest or reduction of any existing deficits, as provided by Section 5406.01. It shall also increase or decrease the total anticipated revenue to equal the net change in proposed expenditures in the budget of each fund.

UCA § 17B-1-611

### **§ 5405.04 Adoption of Final Budgets**

After considering the proposed budget and making any revisions thereto that it may deem advisable, the Board shall, by resolution, adopt a budget for the ensuing fiscal year for each governmental fund and capital fund and an operating and capital budget for each proprietary and required special fund for which a budget is required prior to the beginning of the fiscal year. Upon final adoption, the budgets shall be in effect for the budget year, subject to later amendment.

UCA § 17B-1-614, -615

### **§ 5405.05 Public Access**

A copy of the final budget for each fund shall be certified by the General Manager and filed in the District Headquarters and shall be available to the public during regular business hours.

UCA § 17B-1-615

## **§ 5406 Appropriations not to Exceed Estimated Expendable Revenues**

### **§ 5406.01 Responsibility of Board**

The Board shall not make any appropriation in the final budget of any fund in excess of the estimated expendable revenue for the budget year of the fund.

UCA § 17B-1-613(1)

In determining the estimated expendable revenue of the general fund for the budget year, there is included as an appropriation from the fund balance that portion of the fund balance at the close of the last completed fiscal year, not previously included in the budget of the current year, that exceeds the amount permitted in Section 5151.

UCA § 17B-1-613(2)

There is included as an item of appropriation in each fund for any budget year an existing deficit created in accordance with Section 5409 as of the close of the last completed fiscal year, not previously included in the budget of the current year, to the extent of at least 5% of the total revenue of the fund in its completed fiscal year. If the total amount of the deficit is less than 5% of the total revenue in the last completed fiscal year, the entire amount of the deficit shall be included. The entire amount of any deficit which results from activities other than those described in Section 5409 shall be included as an item of appropriation in each fund for any budget year not previously included in the budget of the current year.

UCA § 17B-1-613(3)

### **§ 5406.02 Responsibility of General Manager**

Except as authorized in Section 5409, the General Manager shall require all expenditures within each fund to conform with the fund budget and may not encumber any appropriation or authorize any expenditure against any fund balance unless there is sufficient unencumbered balance in the fund's appropriation.

UCA § 17B-1-617.

## **§ 5407 Transfer of Balances Between Accounts in the Same Fund**

An unencumbered or unexpended appropriation balance or portion of the balance within a fund may be transferred to another account within the same fund when approved by the Board. No appropriation for debt retirement and interest, reduction of deficit, or other appropriation required by law or covenant may be reduced below the minimums required.

UCA § 17B-1-620.

## **§ 5408 Amendment and Increase of Fund Budgets**

If during any budget year, an expense item is presented to the District for payment, and the payment thereof would exceed any line item in the approved budgets, that item will be referred to the Board for amendment of the appropriate budget pursuant to the following provisions prior to payment.

UCA § 17B-1-622.

### **§ 5408.01 Governmental and Capital Funds**

The Board may, at any time during the budget year, review the individual budgets of the governmental funds for the purpose of determining if the total of any of them should be increased. If the Board determined that the budget total of one or more of these funds should be increased, it shall follow the procedures established in Section 5405 for holding a public hearing.

UCA § 17B-1-621

After the conclusion of the hearing, the Board may, by resolution, amend the budgets of the funds proposed to be increased, so as to make all or part of the increases, both estimated revenues and appropriations, which were the proper subject of consideration at the hearing. Final amendments in the current year to the budgets of any of the funds established in Section 5121 shall be adopted by the Board on or before the last day of the fiscal year.

UCA § 17b-1-622

### **§ 5408.02 Proprietary and Required Special Funds**

The total budget appropriation of any fund described in Section 512 may be increased by resolution of the Board at any Regular, Special or Emergency meeting called for that purpose, if written notice of the time, place, and purpose of the meeting has been mailed or delivered to all Trustees at least five days prior to the meeting. The notice may be waived in writing or orally during attendance at the meeting by any member of the Board.

UCA § 17B-1-630

### **§ 5409 Emergency Expenditures**

If the Board determines that an emergency exists, such as widespread damage from fire, flood, earthquake, or other conditions that threaten the health, welfare or safety of the public, and that the emergency necessitates the expenditure of money in excess of the budget of the general fund, the Board may, by resolution, amend the budget and authorize the expenditures and incur any deficits in fund balance of the general fund reasonably necessary to meet the emergency.

UCA § 17B-1-623

### **§ 5410 Lapse of Appropriations**

All unexpended or unencumbered appropriations, except capital projects fund appropriations, lapse at the end of the budget year to the respective fund balance.

UCA § 17B-1-624

### **§ 5411 Loans from One Fund to Another**

Subject to restrictions imposed by bond covenants, statute, or other controlling regulations, the Board may authorize interfund loans from one fund to another at interest rates, repayment terms, and conditions prescribed by the Board.

UCA § 17B-1-626

## **§ 5412 Approval of District Expenditures**

The adoption of the final budgets by the Board shall be an appropriation by the Board for the purposes described in the budgets and no further action by the Board is required for expenditures within the amounts approved in the final budgets.

Notwithstanding this authorization, the Board shall review all District expenditures at the regularly scheduled Trustee meetings. General ledger expenditure reports will be reviewed for unauthorized payments by managers/supervisors after the books are closed each month.

UCA § 17B-1-642

## **§ 5500 LEVY OF TAX BY BOARD**

### **§ 5501 Determination by Board**

Prior to June 22 of each year, the Board shall determine the level of funds to be raised by taxation, taking into consideration other sources of District revenue, and shall, by resolution, fix a rate of levy which when applied to every dollar of taxable value of property within the District will raise such funds. In its computation of the total levy, the Board shall determine the requirements of each fund for which property taxes are to be levied and shall specify in its resolution adopting the tax rate the amount apportioned to each fund. The combined levies for all purposes in any year, shall be subject to the provisions of UCA § 17B-2a-1006.

UCA § 17B-1-627, § 17B-2a-1006, 59-2-901

### **§ 5502 Certification to Counties**

Prior to June 22 of each year, the Board shall certify to the governing body of each county having a portion of its territory within the District the levy fixed by the Board and direct that at the time and in the manner required by law for levying taxes for county purposes the county governing body shall levy upon the taxable value of all property within the District such levy, in addition to other taxes as may be levied by the county governing body at the rate so fixed and determined.

UCA §§ 59-2-912, 59-2-913

The District Clerk shall certify the resolution setting the levy to the county auditors of the counties in which the District is located, in accordance with UCA § 59-2-912, or in the case of a tax rate increase, in accordance with UCA § 59-2-920.

### **§ 5503 Notice and Hearings**

In the event the tax levied by the Board exceeds the certified tax rate for the District, the Board shall set, publish notice, and hold a hearing as required pursuant to the provisions of UCA §§ 59-2-918 and 59-2-919.

## **§ 5550 AUDIT REVIEW**

### **§ 5551 Annual Audit**

An independent audit of the District is required to be performed in conformity with UCA Chapter 2a, Title 51. The Board shall appoint a public accounting firm to serve as independent auditor for the purpose of complying with the requirements of this section and with UCA Chapter 2a, Title 51.

UCA §§ 17B-1-639, 17B-1-640

The District's chosen public accounting firm shall conduct an annual audit of the District's operations and financial statement each year-end. The annual audit will be completed in time to present to the Board by the November meeting. The Board will evaluate the results of the audit and will accept the audit results. As needed, the Finance and Audit Committee will meet with the public accounting firm to review the audit results and evaluate recommendations.

At the completion of each audit, the auditors will provide a management letter. The management letter details any material weaknesses, reportable conditions, or other recommendations that were noted during the course of the audit. If possible, District staff will try to resolve and correct these conditions during the audit (or give rationale to continue any noted conditions) so these factors can be included in the management letter.

A copy of the audited financial statements, management letter, and staff response thereto (which may be included in the management letter), are sent to the State Auditor's Office as required by State law.

UCA § 17B-1-639.

## **§ 5600 FIXED ASSETS**

### **§ 5601 Capitalization Policy**

All asset purchases are recorded as expenditures in the general fund or capital project fund. Individual assets with a cost in excess of \$5,000 are capitalized to the General Fixed Asset Account Group if the useful service life is expected to be one or more years.

### **§ 5602 Useful Life Ranges**

All assets should be depreciated over their estimated useful life. However, in order to provide greater consistency in financial records, the following estimated useful life ranges are normally followed:

3-5 years	Vehicles and small equipment;
5-15 years	Large equipment;
15-50 years	Buildings and building improvements; and
75 years	Pipelines owned by District.

### **§ 5603 Detail Records**

The District maintains an inventory of all valuable fixed assets regardless of whether the item is expensed, capitalized, or fully depreciated. All valuable fixed assets should be identified with a tag illustrating ownership by the District. Identification tags are issued and affixed to newly acquired fixed assets and recorded in the fixed asset detail during the payment process. This allows the District to safeguard its assets and know exactly what assets the District owns in the event of theft, destruction, fire, etc. Items purchased with federal funds are noted on the schedules.

### **§ 5604 Fixed Asset Periodic Inventory**

The controller and financial assistant perform a periodic inventory of all valuable fixed assets. All valuable fixed assets should be observed and counted at least once every two years. This accounts for all valuable fixed assets and ensures that the District's records are accurate.

### **§ 5700 PETTY CASH FUND**

#### **§ 5701 Access to Petty Cash**

The District maintains six petty cash accounts. The amount of each petty cash account and maximum single amount which can be disbursed is at the discretion of the General Manager. The accounts are at the following locations:

- (a) District Headquarters
- (b) Ashley Valley Water Treatment Plant
- (c) Don A. Christiansen Regional Water Treatment Plant
- (d) Duchesne Office
- (e) Duchesne Valley Water Treatment Plant
- (f) Wasatch County Water Efficiency Project Office

One person (petty cashier) at each location has access to the location's petty cash fund. The petty cash fund is maintained in a locked and secured area at all times.

#### **§ 5702 Cashing of Personal Checks**

Personal checks are never cashed through the petty cash fund.

#### **§ 5703 Performing Surprise Cash Counts**

Surprise petty cash counts are conducted by the controller at times randomly selected during the course of the year.



## **§ 5704 Reconciliation and Reimbursement**

Receipts are required for all petty cash disbursements. At any given time, the petty cash fund will have cash or receipts equaling the total approved amount of petty cash. As the cash amount is depleted, the petty cashier reconciles the petty cash and records all receipts on the outside of the reimbursement envelope with accompanying general ledger codes. The receipts are totaled, placed in the envelope, and then sent to the controller for reimbursement.

## **§ 5705 Documentation and Approval**

The controller reviews all requests for petty cash replenishment. After reviewing supporting documentation and account coding, the controller documents their approval by initialing the petty cash reimbursement envelope or signs off electronically through the invoicing system.

## ***§ 5750 STOP PAYMENTS ON CHECKS***

### **§ 5751 General**

When it becomes necessary to stop payment on a check, a request is electronically sent to the bank. The bank confirms that the check has not cleared, and then places the stop payment against the check.

A stop payment is placed on a check as soon as there is reason to believe it is lost or beyond the negotiable time period, which according to Utah banking laws is a period of six months from the date the check was issued.

## ***§ 5800 RECORD RETENTION***

### **§ 5801 Policy**

The check payment packages are maintained in accordance with the District's Records Retention Schedule for safekeeping and future reference.

## ***§ 5900 FINANCIAL ASSISTANCE FOR RELATED ACTIVITIES***

### **§ 5901 General**

The District will consider financial assistance to sponsors of a project directly related to the purpose for which the District was created, but no contributions to political, medical, welfare, or social groups may be authorized.

### **§ 5902 Requests for Assistance**

#### **§ 5902.01 Contents**

Requests from entities for District participation in projects or activities shall be made to the Board and shall contain the following information:

- (a) the name of the local sponsor or agency;
- (b) a description of the proposed project or activity and type of water to be used including design recommendations, specifications, and any other pertinent information;
- (c) a description of the local funding available to the sponsor or agency together with the suggested level of participation to be furnished by the District;
- (d) an estimate of completion time.

**§ 5902.02 Referral for Evaluation and Recommendation**

Upon receipt of a request for financial assistance, the Board shall assign a specific committee the responsibility of evaluating the application and making a recommendation to the board.

## CHAPTER 6 – OFFICERS

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### **§ 6100 CREATION OF EXECUTIVE OFFICES**

#### **§ 6101 Executive Offices**

The following executive offices are hereby created:

- (a) General Manager

#### **§ 6102 Method of Appointment and Removal**

##### **§ 6102.01 General Manager**

The General Manager shall be appointed by and shall hold office at the pleasure of the Board. Except in the case of removal for proven malfeasance in office, the Board shall cause the General Manager, upon his removal, to be paid any unpaid balance of his salary due to the date of his removal together with his salary and all other benefits, including, but not limited to, vacation time, sick leave and retirement, at the same rate for the next four calendar months following the date of his removal.

##### **§ 6102.02 Performance Review**

Prior to the Annual meeting, the Chairman and Vice-Chairman shall annually review the performance of the General Manager. The Chairman shall report on the review and make recommendations for salary and benefit package adjustments to the Board at least one month prior to the Annual meeting.

### **§ 6200 DUTIES OF EXECUTIVE OFFICES**

#### **§ 6201 General Manager**

##### **§ 6201.01 General**

The General Manager shall be the chief executive of the District and shall exercise all executive, administrative, and ministerial powers not specifically reserved to the Board by law, this Code or by order of the Board. The General Manager is charged with full responsibility for executing the policies and directives as established by the Board. With reference to District governance the General Manager shall have, but is not limited to, the following responsibilities:

##### **§ 6201.02 Organization and Administration**

Evaluate and modify existing District organization and procedures; enforce and observe applicable laws, rules, regulations, leases, permits, contracts, licenses, and privileges

granted to or enforceable by the District; attend all meetings of the Board and participate in its discussions and deliberations; consult with and advise supervisory personnel and employees; direct the day-to-day activities of the District; make inquiries into and conduct investigations into all District activities; examine all proposed contracts to which the District may be party; designate, in their absence, an officer to direct District activities and to make such decisions as are required in their absence; delegate responsibility to department heads and other supervisory personnel as in their judgement will benefit the operations and functions of the District; prepare and maintain an up to date inventory of all the property of the District.

### **§ 6201.03 Financial Matters**

Inform themselves of and analyze the District's financial condition; determine the adequacy of tax levies, special assessments and water rates and charges; evaluate revenue streams to meet long term obligations; establish an adequate accounting system; prepare financial estimates for the annual budgets and advise the Board of the financial condition and needs of the District; approve expenditures and execute such contracts as are necessary for the good order and functioning of the District, provided that such expenditures and contracts are within the appropriations contained within the appropriate budgets adopted by the Board.

### **§ 6201.04 Personnel**

Establish policies and procedures addressing safety and other employee-related programs within the District; employ and maintain a qualified staff capable of carrying out assigned job responsibilities; terminate personnel; appoint and remove department heads and other supervisory personnel; establish standards, qualifications and procedures to govern the employment of District personnel; implement and administer plans approved by the Board for the compensation of employees; develop, implement, and administer personnel rules and regulations approved by the Board.

### **§ 6201.05 Water Resource Development**

Develop and maintain programs to provide the maximum beneficial use of District and Central Utah Project water resources; file protests to water applications and changes after consultation with District legal counsel to protect District and Central Utah Project water rights; submit to the Board plans and programs relating to the development and needs of the District.

### **§ 6201.06 Facilities Construction and Management**

Operate and maintain District facilities in a sound and efficient manner; approve or reject change orders not to exceed \$100,000 based upon approval and recommendation to the General Manager by a department manager. All change orders above \$100,000 must be approved by the Board.

### **§ 6201.07 Public Relations and Education**

Develop an effective information and education program to build public relations for the District; maintain good relations with departments of federal, State, and local government.

### **§ 6201.08 Communications with Board**

Notify the Board of any emergency existing in any department; keep the Board fully informed by regular reports on all important aspects of the District's management.

### **§ 6202 Delegation of Duties**

The General Manager may fulfill the responsibilities of his office with the assistance of other District staff; nevertheless, the General Manager retains the ultimate responsibility for any tasks he delegates to others.

### **§ 6203 Changes in Responsibilities and Duties**

The Executive Committee may periodically review and change the General Manager's duties and responsibilities in order to provide adequate supervision and responsibility for District activities.

## ***§ 6300 DELEGATION AND INDEMNIFICATION***

### **§ 6301 Delegation to General Manager**

The Board intended, when it adopted Section 6201 of this Code, to delegate to the General Manager all powers which could lawfully be delegated to him, including, without limiting the foregoing delegation, the power to establish employee and housekeeping rules deemed by him necessary for the efficient and effective operation of the District.

### **§ 6302 Indemnification of General Manager**

#### **(a) Conditions for Indemnification**

- (i) The District shall, upon written request, indemnify and defend the General Manager from and against all actions, claims, and expenses of any nature arising as a result of the performance of his duties, within the scope of his employment or under color of authority, except:
- (ii) where such claim is based on or resulted from fraud or malice; or
- (iii) from the General Manager driving a vehicle or being in actual physical control of a vehicle while under the influence of alcohol, any drug or being physically or mentally impaired so as to unreasonably perform his job function because of drugs, alcohol or a combination of drugs or alcohol; or

(iv) where, in a judicial or administrative proceeding the General Manager intentionally or knowingly gave, under oath or its legal equivalent, false testimony to the issue under inquiry.

(b) District's Refusal to Defend General Manager

Within ten days of receiving a written request to defend a General Manager, the District shall inform the General Manager, in writing, if it will provide a defense and, if it refuses to do so, the basis for its refusal.

UCA § 63G-7-902(4)(a).

## CHAPTER 7 – CONFLICTS OF INTEREST

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### **§ 7100 CONFLICTS OF INTEREST PROHIBITED**

#### **§ 7101 Disclosure**

Every Trustee who is an officer, Trustee, agent, employee, or the owner of any interest in any business entity which is subject to regulation by the District shall disclose any such position held and the precise nature and value of the Trustee's interest. The disclosure shall be made (1) when the Trustee first becomes a Trustee; (2) whenever the Trustee's position in the business entity changes significantly or the value of their interest in the entity is significantly increased; and (3) whenever the District is considering taking an action that would implicate or affect the entity in which the Trustee has a position or interest.

UCA § 67-16-7

#### **§ 7102 Prohibited Activities**

Trustees shall not:

- (a) accept employment or engage in business or professional activity which might reasonably expect them to improperly disclose confidential information which they have gained by reason of their official position;
- (b) disclose confidential information acquired by reason of their official position, nor use such information for theirs or another's personal gain;
- (c) use or attempt to use their official position to further their own economic interests, or to secure special privileges or exemptions for themselves or others;
- (d) accept other employment which they might expect would interfere with the ethical performance of their public duties;
- (e) accept, receive, take, seek, or solicit directly or indirectly, any gift, compensation, or loan for themselves or another if:
  - (i) it would tend to influence them or a reasonable person in the discharge of their official duties; or
  - (ii) they knew or should know that the primary purpose is to reward them for official action taken; or,
  - (iii) they have recently been, is, or in the near future may be involved in any governmental action directly affecting the donor or lender.

- (f) The following are not considered a gift, compensation, or loan:
- (i) an occasional nonpecuniary gift, having a value of not in excess of \$50;
  - (ii) an award publicly presented in recognition of public services;
  - (iii) a bona fide loan made in the ordinary course of business by an institution engaged in making such loans;
  - (iv) a political campaign contribution;
- (g) receive or agree to receive compensation for assisting any person or business entity in any transaction involving the District;
- (h) participate in their official capacity or receive compensation in respect to any transaction between the District and any business entity in which the Trustee is also an officer, Trustee, or employee or owns a substantial interest; unless appropriate disclosure has been made under the requirements of §67-16-8 Utah Code Ann.;
- (i) commingle District funds with the Trustee's own money. If it appears that the Secretary-Treasurer or any other officer is making a profit out of public money or is using the same for any purpose not authorized by law, the Secretary-Treasurer or officer shall be suspended from office.  
UCA § 17B-1-637

Any Trustee who knowingly and intentionally violates the provision of this Code or of the provisions of the Utah Public Officer's and Employee's Ethics Act. §67-16-1, UCA. *et seq.*, shall be dismissed as a Trustee, and may be subject to additional penalties as prescribed by the above referenced act. Additionally, if a transaction is entered into in violation of UCA §§ 67-16-6, (Receiving compensation for assistance in a transaction involving the District), 67-16-7 (Requiring disclosure of substantial interest in regulated business), or 67-16-8 (Participation in transaction involving business in which a public official or employee has an interest), the District may rescind or void any contract or subcontract entered into in respect to such a transaction, without returning any part of the consideration received.

## **§ 7200 NEPOTISM**

### **§ 7201 Definitions**

“Relative” means: father, mother, husband, wife, son, daughter, sister, brother, uncle, aunt, nephew, niece, first cousin, mother-in-law, father-in-law, sister-in-law, brother-in-law, son-in-law, or daughter-in-law.



## **§ 7202 Policy**

Hiring the best qualified applicants available for all openings is the District's primary policy.

## **§ 7203 Prohibition**

Except as provided in Section 7205, hiring of relatives of present Trustees is prohibited.

## **§ 7204 Disclosure on Job Applications**

All job applicants shall specify on the District's application form if they have relatives who are present District Trustees. Those answering "yes" will be questioned on the relationship and will not be hired in violation of Sections 7203 or 7205. Any employee discovered to have falsified their application on this question will be terminated.

## **§ 7205 Exceptions**

### **§ 7205.01 Present Employees**

An employee at the time a Trustee is appointed and who is a relative of the Trustee will be allowed to continue employment.

### **§ 7205.02 Temporary Positions**

Relatives of present Trustees may be hired for temporary positions, but not given priority over other applicants, under three conditions:

- (a) the applicant must meet all qualifications and requirements of the position to be filled;
- (b) the employment relationship will be understood to be temporary; and
- (c) the relative will not be a manager/supervisor.

## CHAPTER 8 – PROCUREMENT

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### **§ 8100 BACKGROUND**

#### **§ 8101 Policy**

This shall be known as the Central Utah Water Conservancy District’s (the “District”) Purchasing Policy (the “Policy”).

#### **§ 8102 Purpose**

The purpose of this policy is to identify the procedure for approval and payment for all purchases or encumbrances by the District and to be sure 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 Trustees and employees.

#### **§ 8103 Applicability of the Utah Procurement Code**

The District is subject to the Utah Procurement Code (Utah Code Ann. §§ 63G-6a-101 et. seq.) and, as such, 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.

##### **§ 8103.01 Exception - State or Federal Law or Regulations**

Notwithstanding the provisions of Subsection 8103 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.

##### **§ 8103.02 Exception - Federal Funding/Grants**

When a procurement involves the expenditure of federal assistance or contract funds, the District shall comply with any mandatorily applicable federal law and regulations which are not reflected in this Policy. This Policy shall not prevent the District from complying with the terms and conditions of any grant, gift, or bequest that are otherwise consistent with law.

### **§ 8200 DEFINITIONS**

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

## **§ 8201 Board**

The legislative body of the District is referred to herein as the “Board”. For purposes of the Procurement Code and Policy, the Board is the applicable rule making authority for the District.

## **§ 8202 Statutory Definitions**

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.

## **§ 8203 Procurement Official**

The General Manager shall be 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.

## **§ 8204 Additional Definitions**

- (a) “Act” or “Procurement Code” means the Utah Procurement Code found in Title 63G, Chapter 6a of the Utah Code.
- (b) "Actual Costs" means direct and indirect costs which have been incurred for services rendered, supplies delivered, or construction built, as distinguished from allowable costs.
- (c) "Adequate Price Competition” requires a minimum of two competitive bids, proposals, or quotes from responsive bidders or offerors.
- (d) "Bid Bond" is either cash or an insurance agreement, accompanied by a monetary commitment, by which a third party (the Surety) accepts liability and guarantees that the bidder will not withdraw the bid. The bidder will furnish bonds in the required amount, and if the contract is awarded to the bonded bidder, the bidder must accept the contract as bid or the cash will be forfeited, or the surety will pay the specified bond amount to the District.
- (e) “Bid Rigging” is an agreement among potential competitors to manipulate the competitive bidding process, for example, by agreeing not to bid, to bid a specific price, to rotate bidding, or to give kickbacks.
- (f) "Bid Security" means the deposit of cash or a certified check, cashier's check, bank draft, money order, or bid bond submitted with a bid and serving to guarantee to the District that the bidder, if awarded the contract, will execute such contract in accordance with the bidding requirements and the contract documents.

- (g) "Brand Name or Equal Specification" means a specification which uses a brand name specification to describe the standard of quality, performance, and other characteristics being solicited, and which invites the submission of equivalent products.
- (h) "Brand Name Specification" means a specification identifying one or more products by manufacturer name, product name, unique product identification number, product description, SKU or catalogue number.
- (i) "Collusion" occurs when two or more persons act together to achieve a fraudulent or unlawful act. Collusion inhibits free and open competition in violation of law.
- (j) "Cost Analysis" means an evaluation of cost data for the purpose of arriving at estimates of costs to be incurred, prices to be paid, costs to be reimbursed, or costs actually incurred.
- (k) "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.
- (l) "Cronyism" is an anticompetitive practice that may violate federal and state antitrust and procurement laws. Cronyism in government contracting is a form of favoritism where contracts are awarded on the basis of friendship, association or political connections instead of fair and open competition.
- (m) "Manager" as used in this Policy refers to the "General Manager".
- (n) "Mandatory Requirement" means a condition set out in the specifications/statement of work that must be met without exception.
- (o) "Minor Irregularity" is a variation from the solicitation that does not affect the price of the bid, offer, or contract or does not give a bidder/offeror an advantage or benefit not shared by other bidders/offerors, or does not adversely impact the interests of the District.
- (p) "New Technology" means any invention, discovery, improvement, or innovation that was not available to the District on the effective date of the contract, whether or not patentable, including, but not limited to, new processes, emerging technology, machines, and improvements to or new applications of existing processes, machines, manufactures and software. Also included are new computer programs, and improvements to, or new applications of, existing computer programs, whether or not copyrightable and any new process, machine, including software, and improvements to, or new applications of, existing processes, machines, manufactures and software.
- (q) "Participating Addendum" means an agreement issued in conjunction with a Cooperative Contract that authorizes a public entity such as the District to use the Cooperative Contract.

- (r) "Payment Bond" is a bond that guarantees payment for labor and materials expended on the contract.
- (s) "Price Analysis" means the evaluation of price data without analysis of the separate cost components and profit.
- (t) "Price Data" means factual information concerning prices for procurement items.
- (u) "Surety Bond" (performance bond) means a promise to pay the District a certain amount if the principal (contractor) fails to meet some obligation, such as fulfilling the terms of a contract. The surety bond protects the District against losses resulting from the principal's failure to meet the obligation. In the event that any obligation is not met, the District may recover its losses via the bond.

## **§ 8300 GENERAL PROVISIONS**

### **§ 8301 Procurement Official**

Except as otherwise specifically authorized by the Board, no officer or employee of the District shall purchase/contract 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 89101.05 of this Policy.

### **§ 8302 Approval of Purchases**

The Board must approve an annual budget 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 pay expenditures 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 and approve all District expenditures on a quarterly or more frequent basis.

### **§ 8303 Availability of Funds**

No purchase shall be made, and no encumbrance shall be incurred unless funds sufficient to cover the purchase or encumbrance are available and the purchase is approved by the appropriate District officials as herein provided.

### **§ 8304 Delivery of Goods**

No officer or employee of the District shall request any merchant, dealer or other vendor to deliver goods to the District other than in compliance with the requirements of this Policy and pursuant to any required approval from the Board or the Procurement Official, except in the case of an emergency purchase as provided in Subsection 89101.05 of this Policy.

## **§ 8305 Cooperative Purchasing and Purchasing Preferences**

### **§ 8305.01 Cooperative Purchasing**

Nothing contained in this section 8300 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 after the contract has been awarded and signed and may not be disclosed to other vendors on state cooperative contracts until after the contract has been awarded and signed. Email quotations are acceptable.

- (iv) Price quotations will be opened in the presence of one or more witnesses.
- (c) A state contract may not be used for:
  - (i) An anti-competitive practice such as:
    1. Bid Rigging
    2. Steering a contract to a preferred state cooperative contractor;
    3. Utilizing auction techniques where price quotations are improperly disclosed, and contractors bid against each other's price;
    4. Disclosing pricing or other confidential information prior to the date and time of the opening; or
    5. Any other practice prohibited by the Procurement Code.
- (d) All sales to the District resulting from quotations received under the process conducted in accordance with Subsection 8305.01 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.

### **§ 8305.02 Preference for State Products and Resident Contractors**

Section 63G-6a-1002 of the Procurement Code provides for a reciprocal preference for the providers of procurement items produced, manufactured, mined, grown, or performed in Utah and Section 63G-6a-1003 provides a reciprocal preference for resident Utah contractors. In the event more than one equally low, preferred bidder or contractor qualifies for the reciprocal preference, the Procurement 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 8803.13 of this Policy.

### **§ 8306 Purchase Records**

#### **§ 8306.01 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 or digital copies will be used as supporting documentation for District purchases.

### **§ 8306.02 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.

### **§ 8306.03 Use of Forms**

All departments are required to file with the Procurement Official detailed requisitions for their requirements of supplies, contractual services, materials and equipment.

## **§ 8307 Surplus Property and Salvage**

### **§ 8307.01 Disposal of Surplus Property**

Surplus property having a value of \$5,000 or less may be disposed of in a commercially reasonable manner as the Procurement Official sees fit, with all proceeds of the disposal to be the property of the District. Surplus property with a value in excess of \$5,000 may not be disposed of until the Procurement Official has declared the property to be surplus, after which it may be disposed of for the benefit of the District in a commercially reasonable manner as directed by the Procurement Official. This requirement shall not apply when the surplus property, such as a vehicle or equipment, is being “traded in” on the purchase of substitute property, provided that the acquisition of the substitute property is in conformance with the requirements of this Policy.

### **§ 8307.02 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.

### **§ 8307.03 Donation, Disposal, or Destruction of Surplus Property**

The Procurement Official may donate to a charitable organization, destroy, or dispose of as waste any surplus property that is worth less than \$1,000 if:

- (a) The cost of selling the surplus property is greater or equal to the value of the surplus property; or
- (b) The surplus property is no longer usable; or
- (c) 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



- (d) The surplus property can be replaced for less than the cost of repairing the surplus property.

#### **§ 8307.04 Disposal of Excavated and other Material**

The Procurement Official or his designee is authorized to dispose of surplus excavated materials, or other materials from the District's construction projects as may be specified within its project specifications, with or without monetary consideration, in a manner to accomplish the purposes herein recited and determined by him best to serve the interest of the District.

#### **§ 8308 Inspection**

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

### ***§ 8400 CONTRACTUAL TERMS***

#### **§ 8401 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 a 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. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds. Prior to the utilization of a multi-year contract, it should be determined in writing that estimated requirements cover the period of the contract and are reasonably firm and continuing and that a multi-year contract will serve the best interest of the District by encouraging effective competition or otherwise promoting economies in District procurement.

##### **§ 8401.01 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, that is terminable at-will by the District, with or without cause, as provided in Section 63G-6a- 1204.

##### **§ 8401.02 Availability of Funds**

When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the multi-year contract shall be canceled and the contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred

but not amortized in the price of the supplies or services delivered under the contract. The cost of cancellation may be paid from any appropriation available for that purpose.

## **§ 8402 Type of Contract**

### **§ 8402.01 Generally**

Subject to the limitations of this section 8402, 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 must make a written determination as required by Section 63G-6a-1205(3) of the Act that the proposed contractor's accounting system will permit the timely development of all necessary cost data in the form required by the specific contract type contemplated; the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles; and the use of a specified type of contract, other than a firm, fixed-price contract, is in the best interest of the District taking into consideration the criteria specified in Section 63G-6a-1205(3)(c). The various contract types that may be used are identified in Section 63G-6a-1205(4).

### **§ 8402.02 Cost-Plus-a-Percentage-of-Cost**

As provided in Section 63G-6a-1205(5) of the Act, the District may not enter into a cost-plus-a-percentage-of-cost contract unless the contract form is approved by the Procurement Official, it is standard practice in the industry to obtain the subject procurement item through any cost-plus contract; and a percentage and the method of calculating costs stated in the contract are in accordance with industry standards.

### **§ 8402.03 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 type or that it is impracticable to obtain the supplies, services, or construction required except under such a contract, and the proposed contractor has an adequate accounting system to timely develop cost data and to allocate costs in accordance with generally accepted accounting principles.

## **§ 8403 Installment Payments**

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

## **§ 8500 SMALL PURCHASES**

### **§ 8501 General**

Small purchases shall be conducted in accordance with the requirements set forth in Section 63G-6a-506 of the Act. This section 8500 provides additional requirements and procedures and is to be used in conjunction with the Procurement Code.

### **§ 8501.01 Definition**

A "Small Purchase" is a procurement conducted by the District without using a standard procurement process.

### **§ 8501.02 Thresholds**

Small Purchase thresholds are as follows:

- (a) The "Individual Procurement Threshold" is a maximum amount of \$2,000 for a procurement item;
  - (i) For individual procurement item(s) costing up to \$2,000, the District may select the best source by direct award and without seeking competitive bids or quotes. See subsection 8504.01 for quotes.
  - (ii) Procurements shall not be divided into smaller amounts to avoid following procurement policies.

### **§ 8501.03 Vendor Prequalification**

The District will follow the process described in Section 63G-6a-410 of the Act to prequalify potential vendors in conjunction with Section 63G-6a-507 of the Act to develop an approved vendor list, or 63G-6a-15 of the Act for the selection of design professional services.

## **§ 8502 Small Purchases Threshold for Design Professional (DP) Services**

The practice of architecture as defined in Section 58-3a-Part1-102 or professional engineering as defined in Section 58-22-Part1-102 of the Utah Code applies within this Section.

### **§ 8502.01 Threshold**

The District may procure DP services for projects with DP fees estimated to up to \$100,000 by direct award without seeking competitive proposals after documenting that the selected firm is on the approved vendor list and is qualified and capable of completing the work within the required time frame.

### **§ 8502.02 Projects with DP Fees Estimated to Be Over \$100,000 and Up to \$250,000**

For projects with DP fees estimated to be greater than \$100,000 and less than \$250,000, the District may invite at least three firms from the approved vendor list to submit Requests For Proposals that include minimum specifications, and may award the work to the firm that is most qualified. If an approved vendor list is not established under Sections 63G-6a-410 and -507 of the Act, the District will procure DP services for projects with DP fees estimated to be more than \$100,000 using an invitation to provide Requests For Proposal or other approved source selection method outlined in the Procurement Code. The District

may do the same for DP projects with fees that are estimated to be less than \$100,000, in the District's discretion.

### **§ 8502.03 Projects with DP Fees Estimated to Be Over \$250,000**

District will procure DP services for projects with DP fees estimated to be more than \$250,000 using an invitation to provide Requests for Proposal or other approved source selection method outlined in the Procurement Code and will follow the procurement procedures as outlined in Section 63G-6a-1502.5. Selection will be based on qualifications of the firm and not cost.

### **§ 8502.04 Specifications**

The District will include minimum specifications when using the small purchase threshold for DP services.

## **§ 8503 Small Purchases Threshold for Construction Projects**

### **§ 8503.01 Threshold**

The small construction project threshold per individual project is a maximum of \$2,500,000 for direct construction costs, including design and allowable furniture or equipment costs;

### **§ 8503.02 Procedure**

The District will follow the process described in Section 63G-6a-410 of the Act to prequalify potential vendors and in conjunction with Section 63G-6a-507 to develop an Approved Vendor List, or other applicable selection methods described in the Procurement Code for construction services.

### **§ 8503.03 Specifications**

Minimum specifications will apply when using the small purchases threshold for construction projects.

### **§ 8503.04 Up to \$50,000**

The District may procure small construction projects up to a maximum of \$50,000 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.

### **§ 8503.05 From \$50,000 to \$100,000**

The District may procure small construction projects of \$50,000 up to a maximum of \$100,000 by obtaining a minimum of two competitive quotes that include minimum specifications and shall award 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 are met

**§ 8503.06 Over \$100,000 to \$2,500,000**

Between \$100,000 and \$2,500,000, the District may invite at least three contractors from the approved vendor list to submit quotes or bids that include minimum specifications, and may award the work to the contractor with lowest quote or bid that meets the specifications after documenting that all applicable building code approvals, licensing requirements, permitting and other construction related requirements will be met. If an approved vendor list is not established under Sections 63G-6a-410 and -507 of the Act, the District will procure construction projects costing more than \$100,000 using an invitation to bid or other approved source selection method outlined in the Procurement Code. The District may do the same for construction projects that cost less than \$100,000, in the District's discretion.

**§ 8504 Quotes for Small Purchases between \$2,001 and \$50,000:**

**§ 8504.01 From \$2,001 to \$5,000**

For procurement item(s) other than design professional services, other professional service providers and consultants, or construction projects, where the cost is greater than \$2,000 up to a maximum of \$5,000, the District may select the best source by direct award and without seeking competitive bids or quotes. This normally requires the purchase order approval process unless it is for payroll, benefit, utility, and other expenses authorized by the Procurement Official. State contracts may also be used instead of bids or quotes.

**§ 8504.02 Above \$5,000 to \$50,000**

For such procurement item(s) costing more than \$5,000, 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, or may use state contracts instead of obtaining quotes, or if not practicable to obtain two quotes or to use the lowest quote then provide a written explanation and Procurement Official approval. This normally requires the purchase order approval process unless it is for payroll, benefit, utility, and other expenses authorized by the Procurement Official.

**§ 8504.03 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 or may use state contracts instead of bids. This normally requires contracts, state bid information, or other documentation authorizing procurement.

#### **§ 8504.04 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.

#### **§ 8505 Small Purchases of Services of Professional Service Providers and Consultants**

##### **§ 8505.01 Up to \$100,000**

The small purchase threshold for professional service providers and consultants is a maximum amount of \$100,000 per scope of work issued.

##### **§ 8505.02 Procedure**

After reviewing the qualifications of a minimum of two professional service providers or consultants, the District may obtain professional services or consulting services:

- (a) Up to a maximum cost of \$50,000 by direct negotiation; or
- (b) Over \$50,000 up to a maximum of \$100,000 by obtaining a minimum of two quotes.

##### **§ 8505.03 Cost Not Primary**

The District need not select the professional service provider presenting the lowest cost quotation but may instead base the selection on other documented factors such as experience, knowledge and reputation.

#### **§ 8506 Optional Competitive Bidding**

Notwithstanding the foregoing, the District may require any acquisition of supplies, materials or equipment to be competitively bid if, in the determination of the Board or the Procurement Official, such action would be in the best interest of the District.

#### **§ 8507 Petty Cash**

A limited amount, as approved by the Procurement Official or designee, of “petty cash” may be maintained at the District offices or facilities 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 should be signed by the employee responsible for the purchase and approved by either the Procurement Official, or designee, or the person responsible for accounts payable of the District. Whenever feasible, the items purchased are to be listed on the petty cash reimbursement check or the petty cash envelope/register.

## **§ 8508 Open Charge Accounts**

The District, for convenience, may maintain one or more purchasing credit cards or open charge accounts with vendors who regularly provide supplies and materials. Each employee and their supervisor makes sure that there are receipts maintained for all credit card purchases and vendor statements are to be reconciled against those receipts prior to making credit card payments. The supervisor of each employee card holder reviews all card purchases for appropriateness. Unless there is a dispute arising from the reconciliation or otherwise, or sufficient funds are not immediately available, all credit card charges are to be timely paid so as to avoid finance charges. No open charge account is to be utilized to circumvent the competitive requirements of this Policy. Original credit/purchase card statements are received directly from the card company by the controller for initial review. The Controller oversees an internal audit of purchasing cards and District credit cards on a regular basis.

## **§ 8600 *VENDOR PREQUALIFICATION***

### **§ 8601 Prequalification of Potential Vendors**

General procurement provisions, including prequalification of potential vendors, approved vendor lists, and small purchases, will be conducted in accordance with the requirements set forth in Sections 63G-6a-410, -506 and -510 of the Act. This section 8600 provides procedures and is to be used in conjunction with the Procurement Code.

### **§ 8602 Approved Vendor Lists.**

#### **§ 8602.01 Thresholds**

The District may establish approved vendor lists in accordance with the requirements of Sections 63G-6a-410 and -507 of the Act.

- (a) Contracts or purchases from an approved vendor list may not exceed the following thresholds:
  - (i) Construction Projects: **\$2,500,000** per contract, for direct construction costs, including design and allowable furniture or equipment costs, awarded using an invitation for bids or a request for proposals;
  - (ii) Professional Service Providers and Consultants: **\$100,000**;
  - (iii) Design Professional Services: \$250,000; and
- (b) Thresholds for other approved vendor lists may be established by the Procurement Official.

## **§ 8700 SPECIFICATIONS**

### **§ 8701 Content**

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

#### **§ 8701.01 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 subsection 8701 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.

#### **§ 8701.02 Conflicts Generally Prohibited**

Except as specifically provided in this Subsection 8701.02, persons with a conflict of interest, or who anticipate responding to the proposal for which the specifications are written, may not participate in writing specifications. A person may be retained to assist in writing specifications, scopes of work, requirements, qualifications, or other components of a solicitation. A person assisting in writing specifications shall not, at any time during the procurement process, be employed in any capacity by, nor have an ownership interest in, an individual, public or private corporation, governmental entity, partnership, or unincorporated association bidding on or submitting a proposal in response to the solicitation provided, however, that this restriction shall not apply to a design build construction project or other procurements as determined in writing by the Procurement Official.

- (a) A non-employee of the District (such as a consulting engineer) who has prepared specifications for use by the District may participate in a District procurement using those specifications only if the person declares, in a writing delivered to the Procurement Official or his designee, an intent to do so and the Procurement Official or his designee makes a written determination, which is placed in the bid or contract file, indicating that it is in the best interest of the District to allow the identified non-employee to participate in the procurement, including an identification of specific benefits that are expected to be received by the District and a determination that



participation by the non-employee will not be prejudicial to the fair and equal conduct of the procurement process.

- (b) Violations may result in:
  - (i) The bidder or offeror being declared ineligible to be awarded the contract;
  - (ii) The solicitation being canceled;
  - (iii) Termination of an awarded contract; or
  - (iv) Any other action determined to be appropriate by the Board.

### **§ 8701.03 Brand Name or Equal Specifications**

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

### **§ 8701.04 Brand Name Sole Source Requirements**

- (a) If only one brand can meet the requirement, the District will conduct the procurement in accordance with Section 63G-6a-802 of the Act and solicit from as many providers of the brand as is practicable; and
- (b) If there is only one provider that can meet the requirement, the District will conduct the procurement in accordance with Section 63G-6a-802.

## **§ 8800 COMPETITIVE PROCUREMENT**

### **§ 8801 Request for Information (RFI)**

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 before issuing a solicitation as provided in Section 63G- 6a-409 of the Act.

#### **§ 8801.01 Use**

A request for information may not be used to negotiate fees, make a purchase, determine whether a procurement may be made under Part 8 or the Act (Exceptions to Procurement Requirements), or enter into a contract. To make a purchase or enter into a contract, the District is required to use a standard procurement process, or comply with an exception to the requirement to use a standard procurement process. A response to a request for information is not an offer and may not be accepted to form a binding contract.

If the District receives pricing information in response to a request for information, it shall ensure that the individual who serves on an evaluation committee to evaluate proposals that include a proposal as to which the pricing information applies does not have access to the pricing information except as provided in subsection 63G-6a-707(7).

#### **§ 8801.02 Confidentiality**

A request for information should contain instruction for claiming business confidentiality as follows: “In accordance with State Law, responses to RFIs are a public record and are subject to public review upon request. However, you may request any part of your RFI response be a protected record and not available for public release by complying with Utah Code Section 63G-2-309(1). To do this, you must provide the Owner with a written claim of business confidentiality and a concise statement of reasons supporting the claim of business confidentiality. All responses to RFIs will become and remain the property of the owner.”

- (a) **This is** if an RFI response contains information claimed to be business confidential or protected information, the offeror must submit two separate RFI responses as follows:
  - (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.

### **§ 8802 Competitive Bids and Proposals - Over \$50,000**

Except as otherwise allowed by law and this Policy (See small purchases § 8500), contracts for services, supplies, materials, or equipment where the amount to be paid annually by the District is more than \$50,000 shall be awarded only after competitive sealed bids or proposals have been requested and received. Sealed written bids or proposals are to be obtained for all such purchases in excess of \$50,000 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. State Contracts may be used instead of bids or proposals as appropriate.

### **§ 8803 Bidding Procedure**

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

#### **§ 8803.01 Invitation for Bids**

Except as otherwise provided in this Policy, contracts will generally be awarded by competitive sealed bidding. An invitation for bids will be issued when a contract is to be awarded by competitive sealed bidding.

- (a) The invitation for bids shall include the information required by Section 63G-6a-603 of the Act which includes a description of the procurement item that the District seeks, instructions for submitting a bid (including a deadline for submitting a bid), the objective criteria that the District will use to evaluate bids, the information about the time and manner of opening bids, and terms and conditions the District intends to include in a contract resulting from the bidding process. The invitation for bids may include a "Bid Form" or forms which provide lines for bidder information such as the following:
  - (i) The bidder's bid price
  - (ii) The bidder's acknowledged receipt of addenda issued by the District;
  - (iii) Identification by the bidder of other applicable submissions; and
  - (iv) The bidder's signature

- (b) Bidders may be required to submit descriptive literature and/or product samples to assist in the evaluation of whether a procurement item meets the specifications and other requirements set forth in the invitation for bids.
  - (i) Product samples must be furnished free of charge unless otherwise stated in the invitation for bids and, if not destroyed by testing, will upon written request within any deadline stated in the invitation for bids be returned at the bidder's expense. Samples must be labeled or otherwise identified as specified in the invitation for bids.
- (c) Bid, payment and performance bonds or other security may be required for procurement items as set forth in the invitation for bids. Bid, payment and performance bond amounts shall be as prescribed by applicable law or be based upon the estimated level of risk associated with the procurement item and may not be increased above the estimated level of risk with the intent to reduce the number of qualified bidders.
- (d) Bids must be based upon a definite calculated price
  - (i) "Indefinite quantity contract" means a fixed price contract for an indefinite amount of procurement items to be supplied as ordered by the District and does not require a minimum purchase amount, or provide a maximum purchase limit;
  - (ii) "Definite quantity contract" means a fixed price contract that provides for the supply of a specified amount of goods over a specified period, with deliveries scheduled according to a specified schedule; and
  - (iii) Bids may not be based on using or referencing another bidder's price, including a percentage discount, a formula, any other amount related to another bidder's price, or conditions related to another bid.

### **§ 8803.02 Addenda to Invitation for Bids**

Prior to the submission of bids, The District may issue addenda which may modify any aspect of the invitation for bids.

- (a) Addenda will be distributed within a reasonable time to allow prospective bidders to consider the addenda in preparing bids.
- (b) After the due date and time for submitting bids, at the discretion of the Procurement 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.

### **§ 8803.03 Pre-Bid Conferences/Site Visits**

- (a) Pre-bid conferences and/or site visits may be conducted to explain the procurement requirements. If there is to be a pre-bid conference or a site visit, the time and place of the pre-bid conference/site visit should be stated in the invitation for bids.
- (b) A pre-bid conference or a site visit may be mandatory, but only if the invitation for bids states that the conference/site visit is mandatory and provides the location, date and time of the conference/site visit and also states that failure to attend a mandatory conference/site visit shall result in the disqualification of any bidder that does not attend.
- (c) Attendance in person is required at a pre-bid conference unless otherwise stated or requested by the Procurement Official or designee.
- (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 will maintain an attendance log including the name of each attendee, the firm the attendee is representing, the attendee's contact information, and any documents distributed to the attendees; and the District may maintain minutes of the pre-bid conference/site visit.
- (g) The District may, as appropriate, publish as an addendum to the solicitation:
  - (i) The attendance log;
  - (ii) Minutes of the pre-bid conference and any documents distributed to the attendees at the pre-bid conference or site visit; or
  - (iii) Any oral modification made to any of the solicitation documents, which shall be reduced to writing.

### **§ 8803.04 Public Notice**

Public notice of a solicitation is to be given a reasonable time prior to the deadline for submission of a solicitation response, in accordance with 63G-6a-112 of the Act. The notice may include publication in a newspaper of general circulation, on the District's main website, or on a state website for posting public procurement notice. The notice should be given typically seven days before the deadline for submission of a solicitation response.

The District may reduce the seven-day period if the Procurement Official signs a written statement that states that a shorter time is needed, and it is determined that competition from multiple sources may be obtained within the shorter period of time.

### **§ 8803.05 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 closing time posted in the electronic system, if applicable. If a bidder is in the process of uploading a bid when the closing time arrives, the bid or modification of the bid will not be accepted.
- (c) When submitting a bid or modification to a bid by physical delivery (U.S. mail, courier service, hand-delivery, or other physical means) bidders are solely responsible for meeting the deadline. Delays caused by a delivery service or other physical means will not be considered as an acceptable reason for a bid or modification to a bid being late.
  - (i) All bids or modifications to bids received by physical delivery will be date and time stamped.
- (d) To the extent that an error on the part of the District or an employee of the District results in a bid or modification to a bid not being received by the established due date and time, the bid or modification to a bid will be accepted as being on time.

### **§ 8803.06 Opening and Recording of Bids**

In accordance with 63G-6a-604 of the Act, the District shall accept bids as provided in the invitation for bids and may not open a bid until after the deadline for submitting bids.

### **§ 8803.07 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 to correct this mistake established by the Procurement Official;
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. See 63G-6a-114 of the Act.

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

(d) Corrections or withdrawal of bids shall be conducted in accordance with Section 63G-6a-605 of the Act.

### **§ 8803.08 Errors Discovered After the Award of Contract**

(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.

### **§ 8803.09 Re-solicitation of a Bid**

(a) Re-solicitation of a bid may occur 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.

### **§ 8803.10 Bid Award**

Unless the District elects to cancel the procurement or re-solicit bids, contracts are to be awarded with reasonable promptness by written notice to the lowest responsive and responsible bidder whose bid meets the requirements and objective criteria described in the invitation for bids. Criteria not described in the invitation for bids may not be used to evaluate a bid. See 63G-6a-606 of the Act.

- (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.
- (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 or economic considerations preclude re-solicitation of work of a reduced scope, to negotiate an adjustment of the scope or bid price, including changes in the bid requirements, with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds.

### **§ 8803.11 Only One Bid Received**

- (a) If only one responsive and responsible bid is received in response to an invitation for bids, 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, or there is not adequate time for re-solicitation. Otherwise, the bid may be rejected and:
  - (i) A new invitation for bids solicited;
  - (ii) The procurement canceled; or
  - (iii) The procurement may be conducted as a sole source under Section 63G- 6a-802 of the Act.



### **§ 8803.12 Multiple or Alternate Bids**

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

### **§ 8803.13 Methods to Resolve Tie Bids**

In accordance with Section 63G-6a-608 of the Act, in the event of tie bids, the District shall resolve a tie bid in a fair manner, as determined in writing by the Procurement Official.

### **§ 8803.14 Notice of Award**

In accordance with 63G-6a-606 of the Act, the District shall publish the name and bid amount of the bidder to whom the contract is awarded; or cancel the invitation for bids without awarding a contract; and publish a notice of the cancellation that includes an explanation of the reasons for cancelling the invitation for bids.

### **§ 8804 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 8803 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.

### **§ 8805 Request for Proposals (RFP Process)**

Whenever the Procurement Official or other designated employee of the District determines that the use of competitive sealed bidding is either not practicable or not advantageous to the District, a contract may be entered into using competitive sealed proposals. A request for proposals ("RFP") shall be conducted in accordance with the requirements set forth in Sections 63G-6a-701 through 63G-6a-711 of the Act and as provided below. Requests for proposals shall be published in accordance with 63G-6a-112 (also see § 8803.04 above).

See section § 89600 for additional provisions for the selection of design professional services. In accordance with 63G-6a-1502, the District may procure professional services, other than design professional services, as provided in Section 89600 of this code.

#### **§ 8805.01 Content of the Request for Proposals**

- (a) In accordance with the requirements set forth under Section 63G-6a-703 of the Act, the District shall include the following in a request for proposal:
  - (i) A description of the procurement item the District seeks;

- (ii) Instructions for submitting a proposal, including the deadline for submitting a proposal;
  - (iii) The objective criteria, including, if applicable, cost, and subjective criteria that the District will use to evaluate proposals;
  - (iv) Information about the time and manner of opening proposals; and
  - (v) Terms and conditions that the procurement unit intends to include in a contract resulting from the RFP.
- (b) In addition, 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 cost.
- (c) 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.

**§ 8805.02 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.

### **§ 8805.03 Protected Records**

- (a) Requests for Proposals should contain instruction for claiming business confidentiality as follows: "In accordance with State Law, proposals are a public record and are subject to public review upon request. However, you may request any part of your proposal be a protected record and not available for public release by complying with Utah Code Section 63G-2a-309(1). To do this, you must provide the Owner with a written claim of business confidentiality and a concise statement of reasons supporting the claim of business confidentiality. All proposals will become and remain the property of the owner."
- (b) If an offeror submits a proposal that contains information claimed to be business confidential or protected information, the offeror must submit two separate proposals as follows:
  - (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.
- (c) Pricing may not be classified as business confidential and will be considered to be public information.
- (d) 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.

#### **§ 8805.04 Notification**

- (a) In accordance with Utah Code 63G-2-309(1)(b), a person who complies with Subsection 8805.03 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) If an appeal over the release of information is made, the procedures described in Utah Code 63G-2-309(2) will be followed.
- (c) A written statement, prepared by the evaluation committee, described in §8805.10 below shall be open to the public after award of the successful proposals; however, each proposal document shall only be available upon request once the contract has been awarded and signed by all parties in accordance with 63G-2-305(6).

#### **§ 8805.05 Pre-proposal Conferences/Site Visits**

- (a) Pre-proposal conferences/site visits may be conducted to explain the procurement requirements. If there is to be a pre-proposal conference or site visit, the time and place of the pre-proposal conference/site visit shall be stated in the RFP.
- (b) Pre-proposal conference/site visits may be mandatory, but only if the RFP states that the pre-proposal conference/site visit is mandatory and provides the location, date and time of the site visit and also states that failure to attend a mandatory pre-proposal conference/site visit shall result in the disqualification of any offeror that does not attend.
- (c) Attendance at a pre-proposal conference in person is required unless otherwise stated or requested by the Procurement Official or designee.
- (d) A site visit may generally only be attended in person.
- (e) Attendance and participation at all pre-proposal conferences and site visits must be by an authorized representative of the vendor submitting a proposal and as may be further specified in the RFP.

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

### **§ 8805.06 Addenda to Request for Proposals**

- (a) Addenda to a Request for Proposals may be made for the purpose of making changes to:
  - (i) The scope of work;
  - (ii) The schedule;
  - (iii) The qualification requirements
  - (iv) The criteria;
  - (v) The weighting; or
  - (vi) Other requirements of the RFP.
- (b) Addenda shall be published within a reasonable time prior to the deadline that proposals are due, to allow prospective offerors to consider the addenda in preparing proposals. Publication at least 2 or as otherwise stated 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. See 63G-6a-704.4 of the Act.

### **§ 8805.07 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.

### **§ 8805.08 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.

### **§ 8805.09 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. See 63G-6a-114 of the Act.

(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.

### **§ 8805.10 Evaluation Committee and Evaluation of Proposals**

(a) In accordance with 63G-6a-704 of the Act, the District shall accept proposals as provided in the RFP; may not open proposals until after the deadline for submitting proposals; and may not disclose the contents of a proposal to the public or to another offeror, except as provided in Subsections 8805.03 and .04 above.

(b) The evaluation of proposals shall be conducted in accordance with 63G-6a-707 of the Act. The District shall appoint an evaluation committee of at least three members to evaluate proposals received in response to a request for proposals. The evaluation committee shall evaluate proposals in accordance with the process described in the request for proposals.

(c) To determine which proposal provides the best value to the District, the evaluation committee shall evaluate each responsible offeror's responsive proposal that has not been disqualified from consideration under the provisions of this section, using the evaluation criteria described in the request for proposals.

(i) The District shall appoint evaluation committee members who have at least a general familiarity with or basic understanding of:

1. The technical requirements relating to the type of procurement item that is the subject of the procurement; or

2. The need that the procurement item is intended to address; and
  3. Ensure that the evaluation committee and each individual participating in the evaluation process:
    - a. Does not have a conflict of interest with any of the offerors;
    - b. Can fairly evaluate each proposal;
    - c. Does not contact or communicate with an offeror concerning the procurement outside the official evaluation committee process; and
    - d. Conducts or participates in the evaluation in a manner that ensures a fair and competitive process and avoids the appearance of impropriety.
- (ii) The District may authorize an evaluation committee to receive assistance from an expert or consultant to better understand a technical issue involved in the procurement.
- (iii) An evaluation committee member is prohibited from knowing or having access to information related to the cost of a proposal until after the evaluation committee submits its recommendation to the District based on the scores other than cost. A Procurement Official may waive the prohibition by signing a written statement indicating why waiving the prohibition is in the best interest of the District.
- (iv) An evaluation committee may not change its final recommended scores after the evaluation committee has submitted those scores to the District.
- (v) The deliberations and other proceedings of an evaluation committee may be held in private. See Utah Code Ann. Section 52-4-205 (1)(m).
- (vi) At the conclusion of the evaluation process, an evaluation committee shall prepare and submit to the District a written statement that:
1. Recommends a proposal for an award of contract, if the evaluation committee decides to recommend a proposal;
  2. Contains the score awarded to the recommended proposal based on the criteria stated in the request for proposals; and
  3. Explains how the recommended proposal provides the best value to the District.
- (vii) The District is not required to comply with (vi) above for a contract with a construction manager/general contractor if the contract is awarded based solely on:



1. The qualifications of the construction manager/general contractor; and
  2. The management fee to be paid to the construction manager/general contractor.
- (d) 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.
- (e) The District may replace any member on the evaluation committee or reconstitute the committee in any way the District deems appropriate to cure an impropriety. If the impropriety cannot be cured by replacing a committee member, then a new evaluation committee will be selected.
- (f) Nothing in this Policy shall preclude the Procurement Official from serving on an evaluation committee.

#### **§ 8805.11 Correction or Withdrawal of Proposal**

- (a) In the event an offeror submits a proposal that on its face appears to be impractical, unrealistic or otherwise in error, the Procurement Official or his designee may contact the offeror to either confirm the proposal, permit a correction of the proposal, or permit the withdrawal of the proposal, in accordance with Section 63G-6a-114 of the Act.
- (b) In accordance with Section 63G-6a-704 of the Act, an offeror who submits a proposal may not, after the deadline for submitting proposals, make a change to the proposal if the change is prejudicial to the interest of the District or fair competition.

#### **§ 8805.12 Discussions with a Person who Submits a Proposal**

- (a) In accordance with 63G-6a-704.6 of the Act, the District may have discussions, with an offeror to obtain a more complete understanding of whether the offeror is responsible or the offeror's proposal is responsive.
- (b) The District may reject a proposal following discussions under subsection (a) if the District determines that the offeror is not responsible, or the proposal is not responsive.

### **§ 8805.13 Best and Final Offers**

Best and final offers (BAFO) shall be conducted 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. BAFO may only be used in the RFP process, and may not be used with any other standard procurement process. An evaluation committee may request best and final offers only with the approval of the Procurement Official and if:
  - (i) No single proposal addresses all of the specifications;
  - (ii) All proposals are unclear or deficient in one or more respects;
  - (iii) All cost proposals exceed the identified budget or the District's available funding;
  - (iv) Two or more proposals receive an identical evaluation score that is the highest score.
- (b) The District shall follow the process outlined in Section 63G-6a-707.5 of the Act.

### **§ 8805.14 Only One Proposal Received**

- (a) If only one proposal is received in response to a request for proposals, the evaluation committee may conduct a review to determine if:
  - (i) The proposal meets the minimum requirements;
  - (ii) Pricing and terms are reasonable; and
  - (iii) The proposal is in the best interest of the District.
- (b) If the evaluation committee determines that the proposal meets the minimum requirements, pricing and terms are reasonable, and the proposal is in the best interest of the District, the District may make an award.
- (c) If an award is not made, the District may either cancel the procurement or resolicit for the purpose of obtaining additional proposals.
- (d) The evaluation committee and/or the Procurement Official shall prepare the written statement in accordance with Subsection 8805.10 above.

### **§8805.15 Evaluation Committee Members Required to Exercise Independent Judgment**

- (a) Evaluators are expected to exercise independent judgment in a manner that is not dependent on anyone else's opinion or desires.
- (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 influences from outside the evaluation committee, but also to 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 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.

### **§ 8805.16 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 8805.04 above;
  - (ii) The unsuccessful proposals, except for those portions that are not to be disclosed under Subsection 8805.04 above;
  - (iii) The written statement prepared by the evaluation committee in Subsection 8805.10 above.
- (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.

### **§ 8806 Annual Renewals of Purchase Contracts**

Unless the District has an approved contract with a longer term than one year or it is desirable to extend or continue purchases from the same source as allowed under Subsection 89101.01, 89101.02 or 89101.03, 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.

### **§ 8807 Conformity to Solicitation Requirements**

#### **§ 8807.01 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.

#### **§ 8807.02 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.

### **§ 8807.03 Deletion**

A bidder or offeror may be requested to delete objectionable conditions from a bid or offer, provided doing so is not prejudicial to other bidders or offerors, or the conditions do not go to the substance, as distinguished from the form, of the bid or proposal. A condition goes to the substance of a bid or offer where it affects price, quantity, quality, or delivery of the offered procurement item(s).

## **§ 8808 Unreasonable or Unbalanced Pricing**

### **§ 8808.01 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.

## **§ 8809 Rejection for Non-responsibility or Non-responsiveness**

### **§ 8809.01 Non-responsible 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 non-responsible. A responsible bidder or offeror is defined in Section 63G-6a-103 of the Act. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility of that bidder or offeror.

### **§ 8809.02 Nonresponsive Offer**

In accordance with Section 63G-6a-604(3) of the Act, the Procurement Official may not accept a bid or proposal that is not responsive. Responsiveness is defined in Section 63G-6a-103 of the Act.

### **§ 8809.03 Bid Security Failure**

When bid security is required and a bidder fails to furnish the security in accordance with the requirements of the invitation for bids, the bid shall be rejected.

### **§ 8809.04 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.

## **§ 8810 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.

## **§ 8900 CANCELLATION, REJECTION AND DEBARMENT**

### **§ 8901 General Provisions**

#### **§ 8901.01 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 and in accordance with 63G-6a-119, the reasons for cancellation shall be made in writing as part of the procurement file and shall be available for public inspection for a period of one year after the cancellation 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).

#### **§ 8901.02 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 or other reasons outlined within 63G-6a-120, 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.

#### **§ 8901.03 Documentation**

The reason(s) for cancellation or rejection shall be written and provided to the vendor who submitted the rejected solicitation response, and the written reasons will be included as part of the contract file and be available for public inspection.

### **§ 8902 Re-solicitation**

#### **§ 8902.01 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.

### **§ 8902.02 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).

### **§ 8903 Cancellation Before Award**

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

#### **§ 8903.01 Determination**

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

- (a) Inadequate or ambiguous specifications were cited in the solicitation;
- (b) The specifications in the solicitation have been or must be revised;
- (c) The procurement item(s) being solicited are no longer required;
- (d) The solicitation did not provide for consideration of all factors of cost to the District, such as cost of transportation, warranties, service and maintenance;
- (e) Bids or offers received indicate that the needs of the District might be satisfied by a less expensive procurement item differing from that in the solicitation;
- (f) Except as provided in Section 63G-6a-607 of the Act, all otherwise acceptable bids or offers received are at unreasonable prices, or only one bid or offer is received, and the Procurement 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; or
- (h) No responsive bid or offer has been received from a responsible bidder or offeror;



## **§ 8904 Alternative to Cancellation**

In the event administrative difficulties are encountered, before award but after the deadline for submissions, that may delay the award beyond the bidders' or offerors' acceptance periods, the bidders or offerors should be requested, before the expiration of their bids or offers, to extend in writing the acceptance period (with the consent of sureties, if any) in order to avoid the need for cancellation.

## **§ 8905 Continuation of Need**

If the solicitation has been cancelled for the reasons specified in Subsection 8903.01 f., g., or h. above, the Procurement Official has made the determination required under Subsection 8903, 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.

## **§ 89100 EXCEPTIONS – PROCUREMENT WITHOUT COMPETITION**

### **§ 89101 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 89101.01 through .06 below exists. In the event that a contract is awarded without competition for one of these reasons, a written determination of both the reason for purchasing or contracting without competition as well as the basis for the selection of the particular contractor and/or supplier will be recorded. With these written determinations, a record containing the contractor's or supplier's name, the amount and type of the contract, the total dollar value of the procurement item including, when applicable, the actual or estimated full life-cycle cost of maintenance and of the service agreement, the duration of the proposed sole source contract, documentation that there is no other competing source for the procurement item (unless the procurement is under 89101.01 b. or c. below), a description of the procurement item, and any other information desired by the Procurement Official will be maintained in the contract file. A Procurement Official who awards a contract under this section shall negotiate with the contractor to ensure that the terms of the contract, including price and delivery, are in the best interest of the District.

#### **§ 89101.01 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) Transitional costs are a significant consideration in selecting a procurement item; and the results of a cost-benefit analysis demonstrate that the transitional costs are

unreasonable or cost-prohibitive, and that the award of a contract without engaging in a standard procurement process is in the best interest of the District;

- (iii) The award of a contract is under circumstances, described in rules by the District, that make awarding the contract through a standard procurement process impractical and not in the best interest of the procurement unit;
  - (iv) 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; or
  - (v) The procurement item is needed for trial use or testing pursuant to Section 63G-6a-802.3 of the Act to determine whether the procurement item will benefit the District.
- (b) Except as provided in (i) below, sole source procurements over **\$50,000** shall be published, and less costly sole source procurements may be published, in accordance with Section 63G-6a-112 of the Act also see § 8803.04.
- (i) The requirement for publication of notice for a sole source procurement is waived:
    - 1. For public utility services;
    - 2. If 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; or
    - 3. For other circumstances as determined in writing by the Procurement Official.
- (c) A person may contest a sole source procurement prior to the closing of the public notice period set forth in Section 63G-6a-112 of the Act (see § 8803.04) by submitting the following information in writing to the Procurement Official:
- (i) The name of the contesting person; and
  - (ii) A detailed explanation of the challenge, including documentation showing that there are other competing sources for the procurement item.
- (d) Upon receipt of information contesting a sole source procurement, the Procurement Official shall conduct an investigation to determine the validity of the challenge and make a written determination either supporting or denying the challenge.

### **§ 89101.02 Continuation of Previous Purchases**

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.

### **§ 89101.03 Extension of Contract**

The District may extend an existing contract for up to 120 days in order to avoid a lapse in critical services and avoid negative impacts. See 63G-6a-802.7 of the Act.

### **§ 89101.04 No Response to Bid Invitation**

When the District does not receive a response to its announcement, request or invitation to bid.

### **§ 89101.05 Cooperative Contract**

When the District makes purchases pursuant to a Participating Addendum. 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.

### **§ 89101.06 Emergency Procurement**

Any procurement made when there is an emergency or unforeseen condition which the Board and/or Procurement Official has determined constitutes a threat to the public health, convenience, welfare or safety, or procurement, the lack of which would seriously impair District or departmental operations. When the Board or Procurement Official determines an emergency exists, the Procurement Official or his designee may execute or authorize others to execute emergency contracts for procurement. The Board shall review to ratify all acts of the Procurement Official or his designee taken pursuant to this emergency exception, and the Board, Procurement Official, or his designee shall use as much competition as the situation allows. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

### **§ 89101.07 Procurement from a Public Entity**

The District may acquire or purchase a good or service from another public entity in Utah without using a procurement method. The purchase shall require appropriate approvals for the expenditure of funds.

### **§ 89101.08 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 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.

## ***§ 89200 ADDITIONAL PROVISIONS FOR PROCUREMENT OF CONSTRUCTION***

### **§ 89201 State Law**

District construction projects are governed by Section 63G-6a-1302 of the Act and by this section 89200.

#### **§ 89201.01 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 section 8500, in which event otherwise applicable requirements of this Policy shall be superseded and replaced by the provisions of Title 11, Chapter 39.

## **§ 89202 Construction Cost Estimate**

The, Procurement Official or a designee, shall cause plans and specifications for construction projects, including the estimated cost of the improvement, to be prepared. The cost estimate shall be submitted to the Board before the District undertakes the project using its own work crew or an invitation to bid or to submit proposals is issued, or the Board will be provided an explanation of why plans and specifications and/or a cost estimate cannot be provided, as may be the case if a design-build contract is under consideration. If the estimated cost of the improvement is \$50,000 or less, the District may make the improvement using an independent contractor without calling for formal bids or proposals as provided in Subsection 8503.04.

## **§ 89203 Extra Work and Change Orders**

The Procurement Official is authorized to approve extra work or change orders in an amount not to exceed \$100,000 when justified by contract specifications and deemed to be in the best interest of the District. The Board shall approve change orders in excess of \$100,000. At the conclusion of the contract, a final written report will be presented to the Board.

## **§ 89204 Modification of Specifications**

The Procurement Official or his designee 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.

### **§ 89204.01 Permanent Modifications**

Whenever the deletion or modification of the District's construction specifications is intended to be permanent and to apply to all or a significant number of future developments within the boundaries of the District, the Procurement Official or his designee shall so notify the Board within a reasonable time.

### **§ 89204.02 Appeals**

At the 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 Procurement Official's decision regarding the modification of construction specifications to the Board.

### **§ 89204.03 Status of Decision Prior to Board Action**

Until the 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.

## **§ 89205 Construction Contract Management**

The method of construction contracting management utilized for any given project shall be determined by the Procurement Official or designee in consultation with the construction manager or chief engineer. Any lawful method of construction contracting management that is determined to be feasible may be utilized.

### **§ 89205.01 Recommendations of Engineer**

In determining which method of construction contracting management is to be used for a particular project, the recommendations of the chief engineer or construction manager, are to be given great weight. The method selected will be the method deemed to be most advantageous to the interests of the District.

### **§ 89205.02 Factors to Be Considered**

It is intended that the 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 Procurement Official, in consultation with the chief engineer or construction manager, 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) Single Prime (General) Contractor. The single prime contractor method is typified by one business, acting as a general contractor, contracting with the District to timely complete an entire construction project in accordance with drawings and specifications provided by the District. Generally, the drawings and specifications are prepared by an architectural or engineering firm under contract with the District.

Further, while the general contractor may take responsibility for successful completion of the project, much of the work may be performed by specialty contractors with which the prime contractor has entered into subcontracts.

- (ii) Multiple Price Contractors. Under the multiple prime contractor method, the District will contract directly with a number of general contractors or specialty contractors to complete portions of the project in accordance with the District's drawings and specifications. The District may have primary responsibility for the successful completion of the entire project, or the contracts may provide that one or more of the multiple prime contractors has this responsibility.
- (iii) Design-Build. In a design-build project, an entity, often a team of a general contractor and a designer, contract directly with the District to meet the District's requirements as described in a set of performance specifications and/or a program. Design responsibility and construction responsibility both rest with the design-build contractor. This method can include instances where the design-build contractor supplies the site as part of the package.
- (iv) Construction Manager Not at Risk. A construction manager is a person or firm experienced in construction who has the ability to evaluate and to implement drawings and specifications as they affect time, cost, and quality of construction and the ability to coordinate the construction of the project, including the administration of change orders as well as other responsibilities as described in the contract.
- (v) Construction Manager/General Contractor (Construction Manager at Risk). The District may contract with the construction manager early in a project to assist in the development of a cost-effective design. In a Construction Manager/General Contractor (CM/GC) method, the CM/GC becomes the general contractor and is at risk for all of the responsibilities of a general contractor for the project, including meeting the specifications, complying with applicable laws, rules and regulations, completing the project on time and not exceeding a specified maximum price.

### **§ 89205.03 Written Statement**

In making a decision concerning the method of construction contracting management to utilize for any given project, the Procurement Official or designee 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.

### **§ 89205.04 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).

**§ 89205.05 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 Section 63G-6a-103 of the Act, or an exception allowed under 63G-6a-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.



## **§ 89206 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.

### **§ 89206.01 Prohibited Contract Terms**

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

### **§ 89206.02 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.

## **§ 89207 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.

### **§ 89207.01 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.

## **§ 89300 INSPECTIONS**

### **§ 89301 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.

### **§ 89302 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.

### **§ 89303 Inspection of Supplies and Services**

#### **§ 89303.01 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.

## **§ 89304 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 or his designee. 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.

## **§ 89400 PRICE AND COST**

### **§ 89401 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.

#### **§ 89401.01 Exceptions**

Cost or pricing data exceptions:

- (a) Cost or pricing data need not be submitted when the terms of the contract state established market indices, or catalog prices or other benchmarks are used as the basis for contract price adjustments, or when prices are set by law or rule;
- (b) If a contractor submits a price adjustment that is higher than established market indices, catalog prices or other benchmarks established in the contract, the Procurement 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.

#### **§ 89401.02 Computation**

Adjustments in price pursuant to clauses promulgated under Subsection 89206. 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 section 89200, which are issued as allowed by Utah Code Ann. § 63G-6a-1206, and subject to other applicable provisions of the Act.

### **§ 89401.03 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.

### **§ 89401.04 Price Analysis**

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

### **§ 89401.05 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.

### **§ 89401.06 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.

### **§ 89401.07 Retention of Books and Records**

Contractors shall maintain all records related to the contract for at least five years after the final payment, unless a longer period is required by law.

### **§ 89401.08 Applicable Credits**

Applicable credits are receipts or price reductions which offset or reduce expenditures allocable to contracts as direct or indirect costs. Examples include purchase discounts, rebates, allowance, recoveries or indemnification for losses, sale of scrap and surplus equipment and materials, adjustments for overpayments or erroneous charges, and income from employee recreational or incidental services and food sales.

### **§ 89401.09 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.

#### **§ 89401.10 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.

### **§ 89500 MULTIPLE AWARD CONTRACTS – INDEFINITE QUANTITY CONTRACTS**

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

#### **§ 89501 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 individual order placed with one of the contractors pursuant to the procedures established in the solicitation and the contract. Contractors receiving a contract award are not guaranteed that procurement items will be purchased from their contracts. However, they will be given a fair opportunity to be considered for each order in each contract category.

##### **§ 89501.01 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 in the solicitation such as:
  - (i) Delivery;
  - (ii) Service;
  - (iii) Product availability; or
- (b) Compatibility with existing equipment or infrastructure.

### **§ 89501.02 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; and
- (c) Describes specific methodology or a formula that will be used to determine the number of contract awards.

### **§ 89501.03 Invitation for Bids**

Multiple award contracts in an invitation for bids shall be made 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, delivery, or product availability using the following methods:

- (a) Lowest total aggregate bid provided:
  - (i) The solicitation indicates that the lowest total aggregate bid will be used to determine a specified number of bidders, a break in prices specifically stated in the solicitation, such as any price within a specific percentage of the lowest responsive and responsible bid price, or other methodology described in the solicitation to award contracts;
- (b) Lowest bid by Category provided:
  - (i) The solicitation indicates that contracts will be awarded based on the lowest bid in a category;
- (c) Lowest bid by line item provided:
  - (i) The solicitation indicates that contracts will be awarded based on the lowest bid per line item.
- (d) Any combination of (a), (b) and (c) above, or
- (e) Any other specific objective methodology described in the solicitation that is approved by the Procurement Official.

#### **§ 89501.04 Request for Proposals**

The award of multiple contracts in a request for proposals shall be made in accordance with 63G-6a-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.

#### **§ 89501.05 Multiple Award Contracts for Unidentified Procurement Items**

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



### **§ 89501.06 Ordering from Multiple Award Contracts**

- (a) When buying procurement items under a multiple award contract that was awarded through an invitation for bids, the District shall obtain a minimum of two quotes for the procurement item(s) being purchased and place the order with the contractor with the lowest quoted price.
  - (i) The requirement to obtain two or more quotes is waived when there is only one bidder award for the particular procurement item or geographical area.
- (b) When buying procurement items under a multiple award contract that was awarded through an RFP, the District shall place orders based on the District's determination as to which contractor or procurement item provides the best value to the District, taking into consideration price and the other specific non-price criteria set forth in the RFP.
- (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.

### **§ 89501.07 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.

### **§ 89501.08 Intent to Use**

If a multiple award is anticipated prior to issuing a solicitation, the method of award shall be stated in the solicitation.

### **§ 89502 Contracts and Change Orders -- Contract Types**

The District may use contract types to the extent authorized under Section 63G-6a-1205 of the Act.

### **§ 89503 Prepayments**

Prepayments are subject to the restrictions contained in Section 63G-6a-1208 of the Act.

## **§ 89504 Leases of Personal Property**

### **§ 89504.01 Requirements**

Leases of personal property are subject to the following:

- (a) A lease (including a lease with a purchase option) may be entered into provided that the District complies with Section 63G-6a-1209 of the Act and:
  - (i) The lease is in the best interest of the District;
  - (ii) All conditions for renewal and costs of termination are set forth in the lease; and
  - (iii) The lease is not used to avoid a competitive procurement.

### **§ 89504.02 Completion Requirement**

Lease contracts will be conducted with as much competition as practicable under the circumstances.

## **§ 89505 Modification of Contract Terms**

Contract clauses may be as set forth in standard documents approved from time to time by the Board maintained at the office of the District. However, the 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 notice of any material variation may be included in the invitation for bids or requests for proposals.

## ***§ 89600 ADDITIONAL PROVISIONS FOR PROCUREMENT OF DESIGN PROFESSIONAL SERVICES***

### **§ 89601 Hiring a Professional Architect, Engineer or Surveyor**

The District may not legally be obligated to consider more than one architect, engineer or surveyor when procuring those professional services. However, should more than one such professional be considered for engagement, the Procurement Official or his designee and/or the Board shall consider, as a minimum, in the selection process those elements required by Utah Code Ann. § 17B-1-108:

- (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 professional architect, engineer or surveyor based on the above criteria rather than based solely on the lowest cost. Subject to the above, the provisions of 63G-6a-15 of the Procurement Code apply to the procurement of services within the scope of the practice of architecture as defined in Section 58-3a-Part 1- 102 or professional engineering as defined in Section 58-22-Part 1-102 of the Utah Code. In addition to design professional services, the District may also procure professional services in accordance with Section 89600. See Section 63G-6a-1502 of the Act.

#### **§ 89601.01 Architect-Engineer Evaluation Committee**

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-707 and -1503 of the Act, at least one of whom is well qualified in the profession of architecture or engineering.

#### **§ 89601.02 Request for Statements of Qualifications**

The District will issue a public notice in accordance with §8803.04 for a request for statements of qualifications to be used in ranking architects or engineers.

(a) 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.

- (b) Key personnel identified in a statement of qualifications may not be changed without the advance written approval of the Procurement Official.
- (c) Architects and engineers shall not include cost information in a response to a request for statements of qualifications

### **§ 89601.03 Evaluation of Statements of Qualifications**

- (a) The evaluation committee shall evaluate statements of qualifications in accordance with Section 63G-6a-1503.5 of the Act to rank (score) architects or engineers. An evaluation committee shall consist of at least three members appointed by the Procurement Official. The evaluation committee shall evaluate current statements of qualifications and performance data on file with the District, together with those that may be submitted by other firms in response to the announcement of a proposed contract; consider no less than three firms; and based upon criteria established and published by the District, select no less than three of the firms considered to be the most highly qualified to provide the services required and rank the firms accordingly.
- (b) The evaluation committee may enter discussions or conduct interviews with, or attend presentations by, the design professionals whose statements of qualifications are under consideration.
- (c) If fewer than three responsible design professionals submit statements of qualifications that are determined to be responsive, the Procurement Official of the District shall issue a written determination explaining why it is in the best interest of the procurement unit to continue the fee negotiation and the contracting process with less than three design professionals.
- (d) The deliberations and other proceedings of an evaluation committee may be held in private see Utah Code Ann. Section 52-4-205 (1)(m).

### **§ 89601.04 Negotiation and Award of Contract**

In accordance with Section 63G-6a-1505 of the Act, the Procurement Official or designee shall negotiate a contract with the most qualified firm for the required services at compensation determined to be fair and reasonable.

### **§ 89601.05 Failure to Negotiate Contract with the Highest Ranked Firm**

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

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

### **§ 89601.06 Notice of Award**

- (a) The District may award a contract to the highest ranked firm with which the fee negotiation was successful.

- (b) Notice of the award shall be made available to the public.

### **§ 89602 Consulting Contract Extensions**

To the extent allowed by law (see Section 63G-6a-1204 of the Act) contracts with consultants providing professional or technical services, such as engineering, accounting, legal and architectural services, may be extended by the Procurement Official.

### **§ 89700 BONDS**

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

### **§ 89701 Bid Security Requirements**

#### **§ 89701.01 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.

#### **§ 89701.02 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

#### **§ 89701.03 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 non-substantial. Failure to submit an acceptable bid security may be deemed non-substantial 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.

#### **§ 89701.04 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.

#### **§ 89702 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 next lowest responsive and responsible bidder or the next highest ranked offeror.

#### **§ 89703 Surety or Performance Bonds for Non-construction Procurement Items**

##### **§ 89703.01 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.

### **§ 89703.02 Limitation**

Surety or Performance Bonds should not be used to unreasonably eliminate competition or be of such unreasonable value as to eliminate competition.

### **§ 89704 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 next lowest responsive and responsible bidder or the next highest ranked offeror.

#### **§ 89704.01 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.

#### **§ 89704.02 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.

### **§ 89800 PROHIBITED ACTS/ETHICS**

#### **§ 89801 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 section 89800 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 Trustee must sign and file the sworn, written statement required by Utah Code Ann. § 67-16-6.

### **§ 89802 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)(d) (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 Trustee who is interested in a proposed contract with the District shall disclose that interest to the other Trustees, shall not participate in any Board discussion of the contract, and shall abstain from voting on the contract. An interested Trustee 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 General Manager and the Board in writing. Such employee may not participate in any discussion or evaluation of the proposed contract or of any competing bids or proposals. The Board may approve a contract in which a Trustee or employee has a known interest, provided the known interest has been properly disclosed, and the Trustee or employee has recused herself from any involvement in the procurement process. 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 Trustee or employee holds a direct interest shall not be invalid, and the Board member or employee shall not be subject to sanctions, if the Trustee or employee was not aware of the interest of the relative prior to the approval of the contract. The burden shall be on the Trustee or employee to establish this lack of knowledge, should an issue be raised concerning the contract in which the relative holds a direct interest.

### **§ 89803 Nepotism Prohibited**

Nothing contained in this Policy shall be construed to authorize a violation of Utah Code Ann. § 52-3-1, which generally prohibits the employment of relatives.

### **§ 89804 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 Trustee 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.

### **§ 89805 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.

### **§ 89806 Sales Taxes**

As a governmental entity, the District is not required to pay a sales tax on certain of its purchases. No employee or official shall use the District's immunity from sales tax collection to avoid the payment of sales tax on personal purchases, except as otherwise provided in Subsection 89808.01 below.

### **§ 89807 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 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.

### **§ 89808 Personal Purchases**

No District employee or official shall purchase goods or services for personal use and ownership using the District's name, any District account, or District funds without prior approval by the Board. The District shall be reimbursed, either directly or through payroll withholding, for the costs of all such goods and services that are purchased for individual use and ownership by a District employee or Trustee.

#### **§ 89808.01 No Personal Use or Ownership - Exceptions**

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.

### **§ 89808.02 Personal Purchases - Validity**

Nothing contained in this Policy shall prohibit or prevent either employees or officials from purchasing from vendors who also provide goods or services to the District provided that such private purchases are clearly denoted as such and are made in the name of the employee or official. Furthermore, nothing contained in this Policy shall prohibit employees or officials from receiving discount or membership cards from District vendors provided that such cards and memberships are in the name of the individual employee or official, all purchases are billed to and paid for directly by the employee or official, and such cards and memberships are made available to members of the public as a whole, or to a subgroup of the public, and are not based upon the employee's or official's position with the District.

### **§ 89809 Fraud Risk Assessment**

The District shall complete a Fraud Risk Assessment from the Office of the Utah State Auditor and will report the results to the Board of Trustees in accordance with requirements set within the assessment. As appropriate, the District shall create applicable hotlines, internal audit functions/charters, forms, written requirements, policies, and procedures to meet the recommended measures of the assessment.

### **§ 89850 *CONTROVERSIES AND PROTESTS***

#### **§ 89851 Procurement Code Provisions**

##### **§ 89851.01 Part 16:**

Controversies and protests shall be conducted in accordance with the requirements set forth in Sections 63G-6a-1601 through -1603 of the Act. This section 89850 provides additional requirements and procedures and will be used in conjunction with the Procurement Code. The Procurement Official shall be the "Protest Officer".

##### **§ 89851.02 Part 19:**

Part 19 of the Procurement Code, Sections 63G-6a-1901 through -1911 of the Act, contain provisions regarding:

- (a) Limitations on challenges of:
  - (i) A procurement;
  - (ii) A procurement process;
  - (iii) The award of a contract relating to a procurement;
  - (iv) A debarment; or

- (v) A suspension; and
- (b) The effect of a timely protest or appeal;
- (c) The costs to or against a protester;
- (d) The effect of prior determinations by employees, agents, or other persons appointed by the District;
- (e) The effect of a violation found after award of a contract;
- (f) The effect of a violation found prior to the award of a contract;
- (g) Interest rates; and
- (h) A listing of determinations that are final and conclusive unless they are arbitrary and capricious or clearly erroneous.

## **§ 89852 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.

### **§ 89852.01 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.

### **§ 89852.02 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.

### **§ 89852.03 Resolution**

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.

### **§ 89853 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”).

### **§ 89854 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.

#### **§ 89854.01 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 section 89850 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.

#### **§ 89854.02 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.

### **§ 89854.03 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 section 89850.

### **§ 89854.04 Late Motion**

If a Motion to Intervene is not timely filed, the Motion shall be denied by the Protest Officer.

### **§ 89855 Delay in Award of Contract**

In the event of a timely protest under Subsection 89851 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, in consultation with appropriate District personnel, makes a written determination that the award of the contract without delay is necessary to protect substantial interests of the District.

### **§ 89856 Proceedings to Debar/Suspend Potential Contractors**

#### **§ 89856.01 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.

#### **§ 89856.02 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.

### **§ 89857 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.

## **§ 89858 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.

## **§ 89859 Timing and Finality of Decision**

### **§ 89859.01 Adverse Decision Presumed After 30 Days**

As provided in Section 63G-6a-1603(9) of the Act, if a final written decision regarding a protest is not issued within 30 calendar days after the day on which a written request for a final decision is filed with the Protest Officer, or within such longer period as may be agreed upon by the parties, the protestor, prospective vendor, or vendor may proceed as if an adverse decision had been received.

### **§ 89859.02 Finality**

Except as otherwise specifically provided in this section 89850, a decision of the Procurement Official shall be effective until stayed or reversed on appeal.

### **§ 89859.03 Written Decision**

Once available, a copy of the decision shall be immediately mailed or otherwise furnished to the protestor, prospective contractor, or contractor and any parties that have been allowed to intervene in the proceeding. The decision shall be final and conclusive unless the protestor, prospective contractor, or contractor (a “vendor”) timely files and appeal to an appeals panel established by the Procurement Policy Board in accordance with Sections 63G-6a-1701 to -1705 of the Act within the applicable 7 day statute of limitations period specified in Section 63G-6a-1702 of the Act.

## **§ 89860 Violation of Law**

If, before an award of a contract, it is finally determined administratively or upon administrative or judicial review that a solicitation or proposed award of a contract is in violation of law, the solicitation or proposed award shall be canceled or revised to comply with applicable law, unless different relief is mandated.

## **§ 89861 Options After Adverse Determination**

If, after an award of a contract, it is finally determined administratively or upon administrative or judicial review that a solicitation or award of a contract is in violation of law, provided that the recipient of the award has not acted fraudulently or in bad faith, unless different relief is ordered:

- (a) the contract may be ratified and affirmed by the District if it is determined by the Board that doing so is in the best interest of the District; or
- (b) the contract may be terminated, and the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract prior to termination, plus a reasonable profit.

**§ 89862 Fraudulent Conduct by Contractor**

If, after an award of a contract, it is determined administratively or upon administrative or judicial review that a solicitation or award of a contract is in violation of law and if the recipient of the award has acted 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.

**§ 89863 Appeal to the Board**

Nothing provided in this section 89850 shall limit the ability and authority of the Board to provide for a two-step appeal process at the District level provided that the entire proceeding is completed within the time limits stated in this section 89850 and in Part 16 of the Procurement Code.

## **CHAPTER 9 – DISTRICT PROPERTY**

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### ***§ 9100 ACQUISITION OF REAL PROPERTY***

#### **§ 9101 Acquisition of Real Property**

The General Manager is authorized to execute options and purchase contracts for the acquisition of real property, including rights-of-way and easements and other interests in real property, which in his judgment are required for District purposes, when the purchase price does not exceed \$200,000. The General Manager is also authorized to pay incidental expenses connected with the acquisition of real property including, but not limited to, escrow fees, charges for reconveyance, title insurance premiums and copies of documents referred to in title reports and other title records.

#### **§ 9102 Appraisals**

All property including rights-of-way and easements and other interests in real property to be acquired which has a listed purchase price in excess of \$200,000 shall be appraised. One appraisal shall be sufficient unless the General Manager reasonably believes that the appraised value of the property including rights-of-way and easements and other interests in real property is certain to exceed \$200,000, in which case a second appraisal may be obtained for comparison. The purchase of real property over \$200,000 is to be authorized by the Board.

#### **§ 9103 Acceptance of Deeds or Grants and Recordation of Notices of Public Easements**

The General Manager is authorized to accept deeds or grants conveying any interest in or easement upon real estate to the District for public purposes, and the District hereby consents to the recordation thereof by the General Manager, provided such deed or grant is in form approved by legal counsel.

#### **§ 9104 License Agreements; Entry Permits**

When obtaining an entry permit or temporary easement from a property owner, the General Manager is authorized to agree, on behalf of the District, to assume the risk of any loss to the District which might arise out of the exercise of the rights granted under the permit, and to indemnify the property owner from any liability to third parties arising out of the District's use of the property. The General Manager is authorized to execute license agreements on behalf of the District when such license agreements are in the general form approved by the Board.



## ***§ 9200 MANAGEMENT AND USE OF REAL PROPERTY***

### **§ 9201 Consent to Subdivision**

The General Manager is authorized to consent on behalf of the District to the subdivision of property owned by a subdivider, subject to an easement owned by the District, and consent to the recordation of the subdivision map, provided that the certification expressing such consent shall be in a form approved by the District's legal counsel and shall reserve to the District its easement in the property so subdivided.

### **§ 9202 Leases of District Property**

- (a) The General Manager may lease property of the District for purposes not inconsistent with the needs of the District provided that each such lease, other than a lease to a public entity or a public utility, is subject to cancellation upon an order of either the Board or the General Manager upon no more than one year's written notice to the lessee.
- (b) The General Manager shall cause a record to be kept and maintained of all leases of District property.

### **§ 9203 Use of District Headquarters Building**

The meeting rooms in the District Headquarters buildings will, upon a reservation basis, be made available to water-oriented groups or other governmental entities under the following conditions. Charges are made for the purpose of offsetting additional costs incurred by the District in making the facilities available. Charges may be waived at the discretion of the General Manager.

- (a) Based on availability, the facilities may be made available during weekdays between the hours of 8 am and 4 pm at no charge to tax-supported groups with headquarters and operations within the boundaries of the District.
- (b) Based on availability, the facilities may be made available to other water-oriented groups or government entities during weekdays between the hours of 8 am and 4 pm for a charge of up to \$10 per hour.
- (c) The facilities may be made available to water-oriented or government groups in the evenings for a charge of up to \$40.00 per hour. The hours the building may be made available are Monday through Friday from 4 pm to 10 pm.

## **§ 9204 MULTIPLE USE OF DISTRICT PROPERTY**

### **§ 9204.01 General**

The District in the normal course of its activities acquires various interests in lands, including, but not limited to fee ownership, easements and/or rights-of-way. As a matter of general District policy, these lands should be made available for multiple use.

### **§ 9204.02 Investigation by General Manager**

Upon receipt of an application by a third-party for use of District property, the General Manager and staff shall investigate and evaluate the request based upon the following:

(a) Is the proposed use public or private in nature?

Multiple use of District lands will generally be restricted to use by other public agencies. Private uses of District lands will normally require full compensation for the private use, but where there is a need for an easement to cross the District's property with utilities, as distinguished from ongoing activity on the District's land, the Board may grant an easement for nominal consideration.

(b) Does the proposed use promote the health, comfort, safety, and welfare of the people of the District and the purposes for which the District was created or interfere with the operation and/or maintenance of the District's facilities?

No multiple use will be allowed that conflicts with the District's statutory duties and/or authority. The District's primary purpose is to develop and supply water to its inhabitants. The District has no authority to engage in either private or governmental functions which are not authorized by the Act. The construction, operation, and maintenance of parks or other types of recreational facilities are not authorized under the Act, but the Board may authorize these types of use by third-party, public agencies on District lands.

(c) Does the proposed use jeopardize public water supplies or water quality or detract from compliance with State and Federal safe drinking water standards?

(d) Is the proposed use compatible with the environment and the surrounding uses of the area?

The District has a policy of maintaining its properties in a manner that is compatible with the surrounding areas, subject to District constraints and restrictions under the legal authority governing the District. The District may, in the event of permitted joint use, expend District funds to implement this policy. Any expense beyond this in preparing, operating and maintaining the property in multiple use should be paid by the agency which will be responsible for the supervision, operation, maintenance, and control of such use.

(e) Does the proposed use expose the District to third-party risks?

Where agreements for such third-party use are made, they should provide for adequate protection and other safety precautions to assure that the District will not become involved in damage claims because of personal injury or damage to property through improper supervision, operation, control or maintenance.

### **§ 9204.03 Recommendation to Board**

Based upon his investigation and evaluation, the General Manager shall make a recommendation to the Board regarding the requested use of District property.

### **§ 9204.04 Conditions of Approval of Multiple Use**

After receiving and reviewing the General Manager's recommendation, the Board shall grant or deny the request. Upon approval of the request the Board shall affix conditions to the grant from the following:

- (a) **Costs Incident to Multiple Use.** The District generally will not expend District funds to accommodate any third-party use but will require the individual or agency making the request to pay all of the out-of-pocket costs for installing and operating facilities on District property.
- (b) **Interference with District Facilities.** If the proposed use interferes with District facilities, and interference can be avoided, but only at a cost, the cost should be borne by the agency requesting multiple use.
- (c) **Termination of use upon abandonment.** If the proposed use is granted and later abandoned, the right to the use shall terminate.
- (d) **Compensation to District.** If the Board determines that the property is suitable for the proposed multiple use, the Board may make the property available for the proposed use without compensation. If the use is a private use, reasonable rental will be charged for such use.
- (e) **All facilities constructed on District property shall be compatible in appearance with existing facilities on the property and in the neighborhood.** Such facilities shall be maintained in a safe and good state of repair. The Board shall require landscaping at least equal in standard to existing landscaping on the property and as legally required by other governmental agencies.
- (f) **Separation of Facilities.** If the use requested is for the exclusive use of the requesting agency, the District will generally require fencing to separate the District's activities from the third-party activities, so as to reduce possibilities of interference with the other's activities by either party and to reduce the risk of third-party liability.

(g) Insurance and Hold Harmless Agreement. For each use granted, the Board will require the requesting party to enter into a save-harmless agreement to indemnify and protect the District against third-party claims arising out of or because of said third-party's use of District property. The General Manager or his designee shall also determine whether or not the party giving the save-harmless agreement is capable of responding in damages to the contemplated risks created by its use of District property. Generally, any third party without the authority to levy ad valorem taxes will be required to provide insurance. This is to assure the District that the save harmless agreement can be enforced.

(h) Relocation Expenses. The District shall reserve the right to require the third-party to relocate its or the District's facilities at the third-party's expense where relocation is necessary to accommodate the District's own need for the property.

## ***§ 9300 DISPOSAL OF REAL PROPERTY***

### **§ 9301 Preliminary Requirements**

When the General Manager determines that real property with a value above \$200,000 is surplus, the General Manager shall notify the Board of that determination. Upon Board approval, the General Manager will take the necessary steps to surplus the property in accordance with Section 9300. The General Manager has authority to dispose of real property with a value under \$200,000. At the General Manager's discretion, the General Manager may cause the real property to be appraised by one or more appraisers.

### **§ 9302 Authority for General Manager to Sell or Lease Surplus Real Property**

After the appraisal, if obtained, the property shall be offered for sale or lease at the fair market value as determined by the General Manager after review of any or all appraisals of the property. The General Manager may lease it, or sell it either by public auction, by using the services of real estate brokers, a professional auctioneer, or other qualified individual authorized by the General Manager.

### **§ 9303 Acceptable Bidders on Disposal or Lease of District Property**

District Trustees and employees, their spouses and children may not purchase, or lease property offered for sale or lease by the District or represent in any manner a prospective lessee or purchaser of such property.

### **§ 9304 Disposal of Unnecessary Improvements**

The General Manager is authorized, in the manner the General Manager deems to be in the best interest of the District, to dispose of any improvements that must be removed to make land acquired for District operations suitable for the District use.

## **§ 9305 Sale of Real Property**

### **§ 9305.01 General**

Sale of real property shall be consistent with Section 9302 above.

### **§ 9305.02 Procedure**

Whenever the General Manager determines that the sale shall be by sealed bids, all bids shall be filed in the office of the General Manager, at or before the time specified in the Notice of Sale, shall be on forms approved by the District's legal counsel, and shall be accompanied by a cash deposit, cashier's check, or check certified by a responsible bank in an amount of not less than the percentage indicated in Section 9307 of the amount specified in the Notice of Sale as the minimum bid, as a guarantee that the person making the bid will purchase the property upon the terms and conditions specified in the Notice of Sale. The General Manager shall, at the time and place specified in the Notice of Sale, open the bids. Thereafter, the property shall be ordered sold to the highest responsible sealed bidder.

### **§ 9305.03 Notice of Sale**

The General Manager shall cause a Notice of Sale to be posted on the property in at least one conspicuous place. It shall specify the minimum bid which will be accepted for the property, which shall not be less than 90 percent of the lowest appraisal and shall state the terms of the sale which shall be in conformity with Section 9308. The General Manager shall cause one or more advertisements of the sale to be placed in a newspaper, or newspapers, so as to give reasonable notice of the sale.

## **§ 9306 Exclusive Listing**

The General Manager may with the approval of the Board give an exclusive listing to an individual licensed broker; provided, however, that the property shall not be sold for less than the lowest appraisal without the approval of the Board. In such case the General Manager is authorized to pay a commission, upon consummation of the sale, not to exceed the prevailing rate in the area in which the property is located.

## **§ 9307 Required Deposit**

No bid or offer made pursuant to Section 9305 above shall be considered unless the bidder or offeror shall at the time the bid or offer is made, deposit with the person designated by the General Manager the percentage indicated below of the specified amount in cash, cashier's check or check certified by a responsible bank as a guarantee that the bidder or offeror will purchase the property for the bid or offered price.

Specified Amount	Deposit
To \$500	Full amount of bid or offer

\$501 to \$10,000	\$500 + 10% of minimum bid or offer
\$10,001 to \$50,000	\$1500 + 5% over \$10,000
\$50,001 to \$100,000	\$3,000 + 3% over \$50,000
\$100,001 to \$1,000,000	\$4,500 + 2% over \$100,000
\$1,000,001 and above	\$10,000 + 1% over \$100,000

The District shall refund the amount so deposited if the District rejects the bid or offer for which the deposit is made.

**§ 9308 Terms**

Any sale shall be for cash or on the following minimum terms:

(a) For sale of properties up to and including \$200,000, any sale shall be for cash or per terms agreed upon between the purchaser and the General Manager.

(b) For sale of properties exceeding \$200,000, any sale shall be for cash or per terms agreed upon between the purchaser and the Board.

**§ 9309 Policy of Title Insurance**

The General Manager may furnish the successful bidder or offeror with a policy of title insurance, if possible, and open an escrow to complete the sale, paying the usual seller’s charges in connection therewith. If it subsequently develops that the title company is unwilling to issue a policy insuring title to the bidder or offeror in the manner indicated by the General Manager prior to the sale, the General Manager shall not be required to furnish such a policy and the bidder may cancel the sale. If the sale is cancelled the money previously deposited by the bidder or offeror shall be refunded promptly and there shall be no further obligation on the part of either the bidder, the District or the General Manager in connection with the sale. If under such circumstance the bidder or offeror elects not to cancel the transaction, the General Manager shall furnish such title insurance as the title company will then issue and shall be released from liability on any representation relating to title made and not covered by the title insurance policy.

**§ 9310 Zoning**

Where property was appraised on the basis of a different zoning on the property than the existing zoning, the sale may be made contingent upon the bidder or offeror’s obtaining a rezoning of the property within a reasonable time to be determined by the General Manager.

**§ 9311 Execution and Delivery of Deed**

The General Manager shall apply the deposit made by the successful bidder, or offeror, on the purchase price or down payment if the sale is on terms, and upon completion of the sale, directly or through an escrow, the General Manager is authorized to execute and deliver on behalf of the District a grant deed conveying the property to such bidder or offeror. In the case of a sale for cash (1) without an escrow, the successful bidder or offeror must pay the balance

of the purchase price to the General Manager within thirty days after the auction or acceptance of the offeror; or (2) with an escrow, upon the closing thereof; provided, however, that the General Manager may give the successful bidder or offeror extensions of time in which to make the payment.

### **§ 9312 Forfeiture of Deposits**

Any deposit made by a successful bidder or offeror shall be retained by the District as liquidated damages if the bidder or offeror shall fail to complete the purchase in accordance with the terms and conditions of the Notice of Sale or offer. If there is such failure, a licensed real estate broker, otherwise entitled to a commission under the provisions of Section 9306 shall be paid as a commission, an amount not to exceed one half of the deposit so retained after deducting title and escrow expenses, if any; but in no event shall it exceed the commission which the broker would have received in the absence of such failure. If the successful bidder or offeror does not complete the sale as required under Sections 9305-9311, the property may be sold to the next highest bidder or offeror who wishes to buy.

### **§ 9313 Exceptions to Public Sale Requirements**

The requirements of Sections 9305-9312 do not apply in the case of:

- (a) a sale of real property or interest therein to the United States, the State, or a county, city, school district, flood control, or other special district within the State; any such sale shall be for the fair market value as determined by the General Manager after review of any of all appraisals of the property;
- (b) a sale of real property having an estimated value of \$200,000 or less;
- (c) a sale to an adjoining property owner when the General Manager determines that the particular parcel is probably incapable of being developed independently.

### **§ 9314 Statement Regarding Encumbering of Real Property**

The General Manger shall incorporate in a letter of recommendation involving the disposal or the encumbering of real property or rights of the District a statement declaring that the property or rights will not be required by the District nor adversely affect its operations.

### ***§ 9400 DISPOSAL OF SURPLUS PERSONAL PROPERTY***

See Procurement policy document Section 8307 Surplus Property and Salvage, under separate cover, for specifics on disposing of surplus personal property.

## ***§ 9500 MULTIPLE USE OF PERSONAL PROPERTY***

### **§ 9501 General**

The General Manager is authorized to enter into agreements with other public agencies for the joint or multiple use of any equipment or other personal property when it appears that there may be cost savings for all entities and no detrimental effect to the District.

### **§ 9502 Authorized Personal Use of District Property**

For purposes of this section, “public property” means real or personal property that is owned, held, or managed (i) by the District; or, (ii) is transferred by the District to an independent contractor for the purpose of providing a program or service for, or on behalf of, the District.

(a) An employee or Trustee of the District is authorized to use public property, for a personal matter, if:

(i) This policy is then in effect;

(ii) the employee or Trustee is authorized to use or possess the public property to fulfill the employee’s duties;

(iii) the primary purpose of the employee or Trustee’s use or possession of the public property is to fulfill the employee’s duties; and,

(iv) the employee or Trustee uses and possesses the public property in a lawful manner and in accordance with this policy; or

(b) An employee or Trustee of the District is authorized for incidental use of public property, for a personal matter, if:

(i) the value provided to the District by the employee or Trustee’s use or possession of the public property outweighs the personal benefit received by the employee from the incidental use of the public property for a personal matter; and,

(ii) the incidental use of the public property for a personal matter is not prohibited by law or by the District.

(iii) The incidental use of public property does not create a cost to the District.



## CHAPTER 10 – CLAIMS AND LITIGATION

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### *§ 10100 GENERAL*

#### **§ 10101 Authority to Litigate, Compromise, and Settle Claims By and Against the District**

##### **§ 10101.01 Prosecution or Defense of Claims**

The General Manager, in consultation with the Executive Committee, is authorized to institute, prosecute, or defend any action, claim, appeal, or other legal or equitable proceeding, including an alternative dispute resolution proceeding, to enforce or preserve any right or defense of the District where the amount in controversy does not exceed \$100,000. Board approval is required for the institution, prosecution, or defense of any claim or proceeding on behalf of the District where the amount in controversy is greater than \$100,000.

##### **§ 10101.02 Settlement of Claims**

The General Manager, after consultation with the District's legal counsel, is authorized to resolve, settle or compromise any claim, dispute, action, or proceeding where the amount in controversy does not exceed \$100,000. Board approval is required for any settlement or compromise involving an amount in controversy greater than \$100,000.

# CHAPTER 11 – RECORDS ACCESS AND MANAGEMENT

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## **§ 11101 General Purpose**

The District adopts this chapter to establish guidelines for open governmental 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.

## **§ 11102 District Policy**

The District recognizes the enactment of the Government Records Access and Management Act, UCA § 63G-2-101 et seq. (hereinafter referred to as “GRAMA”), and its application to District records. The purpose of this chapter is to conform to GRAMA, which provides that “each political subdivision may adopt an ordinance or a policy applicable throughout its jurisdiction relating to information practices including classification, designation, access, denials, segregation, appeals, management, retention, and amendment of records.” This chapter is intended to provide modifications to the general provisions of GRAMA, where allowed, to best meet the public needs, operation, management capabilities, and resources of the District.

## **§ 11103 Compliance with State Law.**

The District recognizes the applicability of GRAMA to the District and adopts GRAMA herein as part of the Code, with the exceptions of certain sections of GRAMA that do not apply to the District because separate District policies have been adopted in compliance with § 63G-2-701 of GRAMA. These policies are described in the remainder of this chapter.

The District also recognizes the applicability of Title 63A, Chapter 12 – Public Records Management Act and adopts the following Sections by reference as part of the Code.

§ 63A-12-103 Duties of governmental entities (except as 63G-2-701 is applicable)

§ 63A-12-105 Records are property of the state – Disposition – Penalties for intentional mutilation or destruction

§ 63A-12-106 Certified and microphotographed copies

§ 63A-12-107 Right to replevin

The District recognizes UCA § 63-30-10.6 (attorneys - fees for records request) and its applicability to political subdivisions.

## **§ 11104 Procedures for Records Request.**

Requests for District records shall be made to the District’s Records Officer at the District headquarters’ office located at 1426 East 750 North, Suite 400, Orem, Utah 84097. **All**

requests shall be made on the District's approved "Public Request for Records" form which includes the requester's name, mailing address, daytime telephone number, and a description of the record requested. All time frames provided under this chapter shall commence from the date the request is received by the Records Officer.

The District may respond to a request for a record by approving the request and providing the record, denying the request, or by making such other appropriate response in accordance with § 63G-2-204 of GRAMA and this chapter.

In most circumstances, and except for extraordinary circumstances as set out in § 63G-2-204 (5) of GRAMA, the District shall respond to a written request for a public record within ten (10) business days after receipt of a request.

### **§ 11105 Fees**

Applicable fees for processing a records request under this chapter shall generally be set at actual cost or as otherwise established by policies adopted under this chapter. The District shall charge the following fees for requests relating to GRAMA:

- (a) There shall be no charge to a requester for staff time to review a record to determine whether it is subject to disclosure.
- (b) There shall be no charge to a requester for viewing a record at the District's office except for the charge described in (c) below.
- (c) The requester may be charged for staff time to search, retrieve, compile, format, manipulate, package, summarize, or tailor the record into an organization or media to meet the request, and other direct administrative costs.
  - (i) There will be no charge for the first 15 minutes of staff time.
  - (ii) The charge may not exceed the hourly rate of the lowest paid employee who, in the discretion of the custodian of records, has the necessary skill and training to perform the request.
- (d) The requester will be charged the actual incremental cost of providing a record that is a result of computer output in accordance with § 63G-2-203(2) (iii) of GRAMA.
- (e) The requester may be charged the following additional fees:
  - (i) Paper copies (up to 11"x17") - 25¢ per page
  - (ii) Disks (CDs or DVDs) - \$5 per disk
  - (iii) Flash Drive - \$5 per drive
  - (iv) Postage - actual cost

- (v) Other forms – actual cost
- (f) Fees may be waived by the Records Officer if it is determined that the terms of § 63G-2-203(4) of GRAMA have been met; or, the fees are considered minimal.
- (g) The District may require payment of all past fees prior to processing a new request.
- (h) The District may require payment in advance if fees for a request are expected to exceed \$50 or if the requester has had past fees due on previous requests.

### **§ 11106 Appeal Process**

Any person aggrieved (the “appellant”) by the District’s classification, designation, or access decisions may appeal the determination to the District’s General Manager (Chief Administrative Officer) within thirty (30) days after the notice of denial is sent, or if the request is considered denied under § 63G-2-204(8) of GRAMA.

The request for appeal shall be mailed to the District’s Chief Administrative Officer c/o the District’s Records Manager at 1426 East 750 North, Suite 400, Orem, Utah 84097 The appeal shall contain the appellant’s name, mailing address, daytime telephone number, and shall state the basis of the appeal and the relief sought. The request for appeal must be received within thirty (30) days after receiving an adverse decision.

If the appeal involves a record that is the subject of a business confidentiality claim under § 63G-2-309 of GRAMA, the Chief Administrative Officer, through the District’s Records Manager, shall comply with § 63G-2-401(4) of GRAMA.

The Chief Administrative Officer shall make a decision on the appeal within ten (10) business days after receipt of the notice of appeal; or, twelve (12) business days after the notice of appeal is sent to a person with a business confidentiality claim. If the appellant is an interested party but not the requester of the record, and is the only appellant, the Chief Administrative Officer’s decision on the appeal shall be made within thirty (30) days after receiving notice of an appeal.

The District shall send notification of the Chief Administrative Officer’s decision to all participants. The notice shall include a statement that any party to the appeal has the right to make an additional appeal on the decision to the state records committee; or, by filing a petition for judicial review with the district court, no later than 30 days after the date of issuance of the decision being appealed.

Appealing to the state records committee does not waive the right to seek judicial review of the decision of the records committee.

The parties participating in the proceeding may, by agreement, extend the time periods specified in this chapter.

### **§ 11107 Reasonable Accommodation**

Reasonable accommodations regarding access to governmental records shall be provided to persons with disabilities in accordance with the Americans with Disability Act upon request.

### **§ 11108 Records Officer**

The District's Records Manager shall be appointed as the Records Officer to oversee and coordinate records access, management, and archives activities of the District.

### **§ 11109 Records Maintenance**

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 District Records Officer shall be responsible for monitoring the application and use of technical processes in the creation, duplication, and disposal of District records. They shall monitor compliance with required standards of quality, permanence, and admissibility pertaining to the creation, use, and maintenance 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 those legally disposable obsolete District records. This prohibition does not include the providing of copies of District records otherwise produced for release or distribution under this chapter.

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 or supervisors, or to the District Records Officer.

### **§ 11110 Records Retention and Disposition.**

Retention periods shall be established for all District Records. Retention periods shall serve both the public and District interests by assuring that records are accessible and administrative, legal, fiscal, and historical requirements have been met. Retention periods must reflect any federal, state, or local laws, ordinances, regulations, or other requirements that govern the management of the records.

The Retention Schedule is a "live" document; and, as such, will change as records are added, removed, or retention periods are requested to change. Any change, addition, or removal of records and/or their retention periods shall be submitted by the District's Records Officer to the Management Team for their review and approval.

The Retention Schedule shall be reviewed periodically by the District's Records Officer. Additionally, the Management Team is authorized to review and recommend revisions to the Retention Schedule.

In compliance with § 63G-2-701 of GRAMA, the District's Records Officer will submit reports to the State archives regarding changes to the Retention Schedule after action has been taken by the Management Team.

Chapter 11 amended 11/2020, pending approval, Spring 2021

## CHAPTER 12 – MISCELLANEOUS MATTERS

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### **§ 12100 WATER RIGHTS**

#### **§ 12101 Protesting Water Rights Applications and Changes**

The protection of water rights for the construction, operation, and maintenance of the Central Utah Project and other District water rights is essential to the District. The procedure to be followed on water right applications filed by the District or other applications that may affect present and future units of the Central Utah Project and other District water programs is as follows:

- (a) The District will fulfill its responsibility under Article 5(b) of the 1965 Repayment Contract (14-06-400-4286) which provides:

If requested by the Department of the Interior to do so, the District will file and diligently prosecute to certificate applications for water rights under Utah law as may be needed for Central Utah Project purposes, and upon request will assign such rights to the United States. The District will also protect the Central Utah Project water rights and in case a dispute arises as to the character, extent, priority or validity of the right of the United States or the District to use or permit use of Central Utah Project water, the District, unless the United States itself elects to sue, to enforce or defend said right, shall promptly bring and diligently prosecute or defend judicial proceedings for the determination of such dispute and shall take all other measures necessary toward the defense and protection of the Central Utah Project water supply.

- (b) The District will file a formal protest to water rights applications with the Utah Division of Water Rights on all applications, which if perfected, would be in material conflict with Central Utah Project or District water rights or would adversely affect the construction and utilization of Central Utah project or District works. The decision to protest an application will be made by the General Manager or his designee after consultation with the District's legal counsel. The Chairman of the Legal and Legislative Committee will be notified of the significant protests.
- (c) Applications to appropriate not to exceed .015 cfs for the domestic requirements of a one-family unit will be reviewed and if it is determined to be the only means available to supply the family with a domestic supply, no protest will be filed.

## **CHAPTER 13 - PURPOSE AND EFFECT OF ADOPTION OF ADMINISTRATIVE CODE**

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### ***§ 13100 GENERAL***

#### **§ 13101 Purpose of Administrative Code**

The adoption of this Administrative Code is to codify operative provisions of existing ordinances, bylaws, resolutions, actions recorded in minutes, policy bulletins, and other matters heretofore adopted by the Board to the extent such provisions have continuing effect.

#### **§ 13102 Changes in Wording**

Any change in wording from the wording found in any ordinance, bylaw, resolution, minute order, policy bulletin, or other matter has been made knowingly and was made with the purpose of changing the intent, meaning or purpose of the preexisting document.

#### **§ 13103 Consideration of Prior Board Action**

The adoption of this Administrative Code repeals all preexisting ordinances, policy bulletins, resolutions, bylaws, actions recorded in minute orders, and other matters.

#### **§ 13104 Effect of Repeal of Ordinance or Code Provision**

The repeal of a provision of this Code shall not revive any ordinance or code in force before or at the time the Code provision repealed took effect.

#### **§ 13105 Severability of Parts of Code**

It is hereby declared to be the intention of the Board that the sections, paragraphs, sentences, clauses, and phrases of this Code are severable; and if any phrase, clause, sentence, paragraph, or section of this Code shall be declared unconstitutional or otherwise invalid by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Code.

#### **§ 13106 Effects of Section Numbers and Headings**

Chapter, section, and subsection numbers and headings are not a part of and do not in any manner affect the scope, meaning, or intent of the provisions of this Code. Footnotes at the end of section and subsection text are not part of and do not in any manner affect the scope of meaning or intent of the provisions of the Code.



### **§ 13107 Amendments**

Amendments to the Code may be made at any meeting of the Board provided notice of the proposed amendment shall have been given in the notice of the meeting. Whenever a reference is made to any portion of the Code, the reference applies to all amendments hereafter made.

### **§ 13108 Gender and Number**

As used in this Code, the masculine gender includes the feminine and neuter, and the singular number includes the plural and the plural the singular, unless the context clearly indicates to the contrary.