

Agenda
High Valley Transit District
Thursday, March 11, 2021, 1 PM

NOTICE is hereby given that the Board of Trustees will meet electronically,
via Zoom, on Thursday, March 11, 2021

(All times listed are general in nature, and are subject to change by the
Board)

Consistent with provisions of the Utah Open and Public Meetings Act, Utah Code Ann. §52-4-207(4), the High Valley Transit District Board of Trustees Chair has issued written determinations supporting the Board of Trustees' decision to convene electronic meetings of the Board without a physical anchor location. Due to the health and safety risks related to the ongoing COVID-19 pandemic and considering public health orders limiting in-person gatherings, members of the public should not attend Board meetings in person. However, members of the public are invited and encouraged to view and participate in the Board's electronic meetings as described below.

Public comment may also be submitted until 12 PM on Thursday, March 11, 2021 via email at TDadmin@summitcounty.org.

To participate in the webinar:

<https://summitcountyut.zoom.us/j/91041274529>

Or, to listen by phone, dial 1-301-715-8592; **Webinar ID: 910 4127 4529**

This meeting may be recorded.

- 1) Pledge of Allegiance
- 2) Public Comment – all comments will be limited to three minutes per person

Work Session

- 3) Review Draft Service Plan (Cathal O’Gorman, VIA)
- 4) Discussion of roles and responsibilities of the Board
- 5) Discussion of Summit County staff roles and services to the Transit District/ILA (continued)
- 6) Draft Certifications and Assurances (continued)
- 7) Draft Policies and Procedures (continued)

- 8) Discussion of Ex-Officio Board membership
- 9) Board comments
- 10) Staff comments

Members of the Board, presenters, and members of the public may attend and fully participate by electronic means, using Zoom (phone or video).

Non-Discrimination Notice The High Valley Transit District's policy is that no person, regardless of race, color, or national origin shall be excluded from participation in, be denied the benefits of, or be subject to any discrimination under any program, activity, or services under Section 601 of Title VI of the Civil Rights Act, as amended. To view a copy of our Title VI Policy and Complaint Procedure, please contact us at (435) 336-3113.

If you require this or any information in an alternative format, please contact us at (435) 336-3113.

Snyderville Basin Public transit district proposed service changes.



PHASE 1: Summer 2021 service changes.

What changes are proposed?

Routes 6 Lime and 7 Pink:

- Combine these routes into one high-frequency route from Jeremy Ranch to Deer Valley
- Target frequency of every 15 minutes or less, all year round (funding dependent)

On-Demand Transit or Microtransit:

- Launch a new on-demand transit service across the orange shaded zone
- If you live in the orange zone, a Summit County van will come pick you up and take you to a nearby transit hub or your final destination
- All trips will be shared and may require a short walk (except for those with disabilities)
- You can book a trip using a smartphone or call the dispatcher

Kimball Junction Circulator:

- Extended to serve Bitner Road
- Operates every 15-minutes or less

8 Brown / Trailside Loop:

- Passengers travelling from Bitner Road will use the new Kimball Junction Circulator
- On-demand transit will serve Trailside,

including adding dozens of additional virtual stops in Trailside and surrounding areas

11 Black (Kamas Commuter):

- Additional stops in Francis and Hideout
- Additional daily trips (funding dependent)

All routes and paratransit:

- New, streamlined technology platform to plan and book trips

What is not changing?

- All other bus routes*

PHASE 2: Future network additions.

What changes are being considered?

Heber City route:

- Launch a new route to Heber City

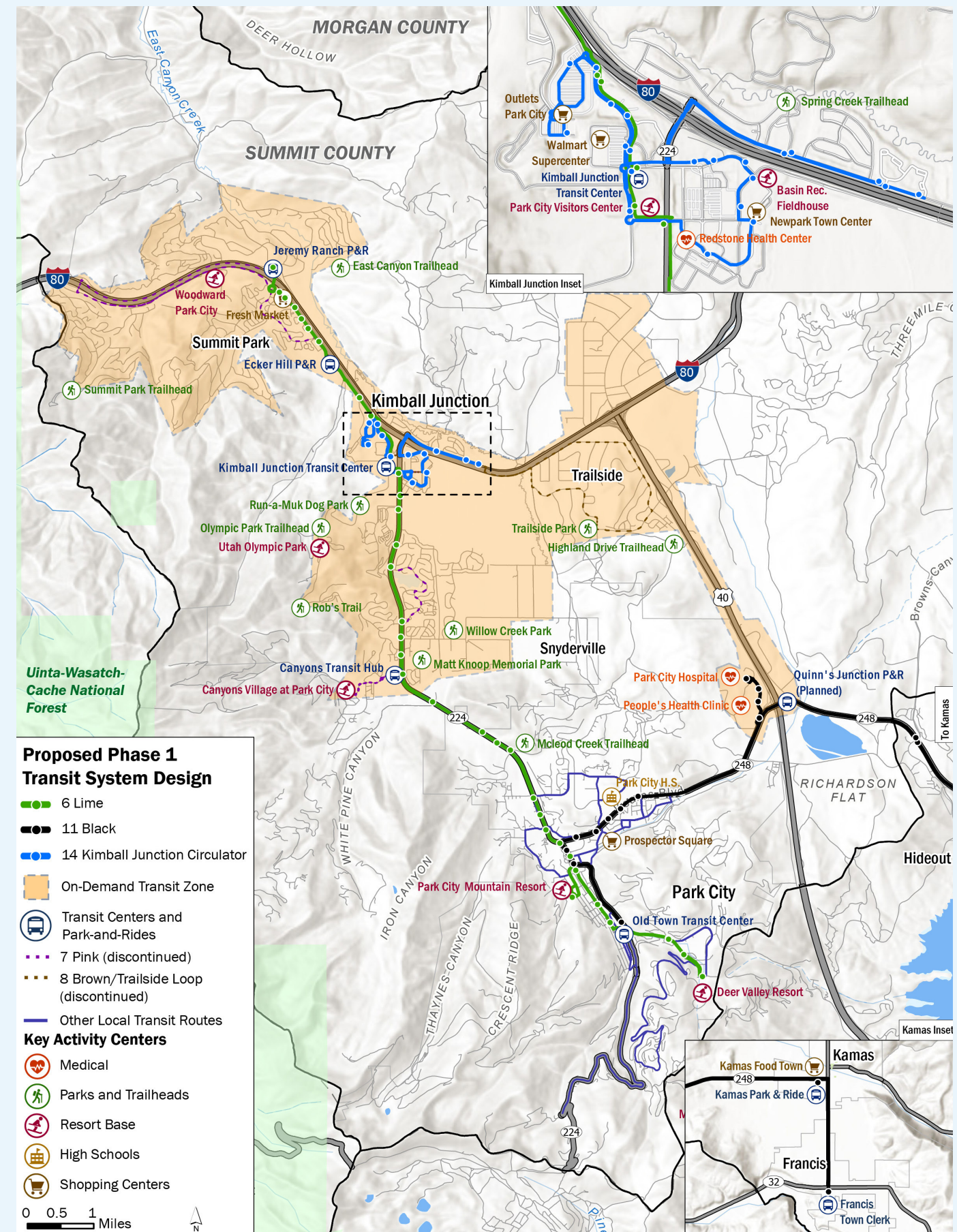
Coalville shuttle:

- Launch a pre-booked shuttle to Coalville and increase service levels as demand grows

What is not changing?

All other bus routes

* Park City Transit manages all other bus routes in Summit County and may also adjust service in the future



INTERLOCAL COOPERATION AGREEMENT FOR TRANSIT SYSTEM SERVICES

This Inter-local Cooperation Agreement (“*Agreement*”) is entered into this ____ day of _____, 2021 (the “*Effective Date*”), by and among **HIGH VALLEY TRANSIT DISTRICT**, a political subdivision of the State of Utah (hereinafter, “*District*”), and **SUMMIT COUNTY**, a political subdivision of the State of Utah (hereinafter, “*County*”). Each is individually referred to as a “*Party*” and collectively as the “*Parties*.”

RECITALS

WHEREAS, the County formed the District, a small public transit district, to provide regional public transit services to the County’s residents, workforce, and visitors, which is funded by the following sales and use taxes: (a) the county option sales and use tax to fund a system for public transit, Utah Code §59-12-2213, (b) the county-wide option sales and use tax for highways and public transit, Utah Code §59-12-2219, wherein a 0.10% sales and use tax was imposed and distributed to the District, and (c) the county-wide option sales and use tax for a system for public transit, Utah Code §59-12-2220 (together the “*County Public Transit Taxes*”), and the county-wide additional mass transit sales and use tax, Utah Code §59-12-2214 (the “*AMT*”); and,

WHEREAS, it is the County’s desire that regional transit services be made available throughout the County; and,

WHEREAS, the District is a regional transit district empowered to provide the regional transit services which the County desires; and,

WHEREAS, the Parties hereto are willing to enter into this Agreement wherein the County agrees to annex into the District the remainder of the unincorporated Summit County and the District agrees to provide a regional system of public transit to the County’s residents, workforce, and visitors as hereinafter specified; and,

WHEREAS, the Parties are authorized by the *Utah Interlocal Cooperation Act*, as set forth in Title 11, Chapter 13, Section 202(1)(d), *Utah Code Annotated (UCA) 1953, as amended*, to enter into this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the recitals, mutual covenants and agreements herein set forth, the mutual benefits to the Parties to be derived, and for other valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties agree as follows:

1. Annexation.

1.1 County agrees to adopt a resolution from its County Council petitioning the District for annexation of all remaining unincorporated property within the County into the District (the “*Annexation Resolution*”), in form and substance as set forth in **Exhibit A** herein. The County shall comply with Utah Code §17B-1-403 or its successor law. The County shall file the Annexation Resolution and an administrative fee with the District. The administrative fee shall cover the costs associated with any public noticing, public hearing, or election required as part of the annexation process.

1.2 District agrees to process the Annexation Resolution and approve the annexation (the “*Annexation*”) so long as (a) an insufficient number of written protests are received by the District following the annexation public hearing, or (b) an election of registered voters within the County approves of the annexation, and the conditions precedent to Closing (defined hereafter) have been satisfied.

1.3 The Parties agree that they will act in good faith in completing the annexation process.

2. Sales and Use Taxes; Canyons Transit Fees; Kimball Area Transportation SSD Assessments.

2.1 County Public Transit Taxes. County agrees to remit to the District, on the schedules approved by the Utah State Tax Commission (the “*Tax Commission*”), all sales and use taxes collected pursuant to the County Public Transit Taxes.

2.2 Canyons Transit Fees. The Canyons Transit Service Agreement between Summit County, the Canyons Resort Village Association, Inc., and VR CPC Holdings, Inc., dated _____, 2021 (the “*Canyons Transit Agreement*”) provides that the resort operators pay a fee for enhanced transit services to the Canyons Resort as part of its Development Agreement with the County. The fees associated with the Canyons Transit Agreement will be remitted to the District and the Canyons Transit Agreement shall be assigned to the District by the County in accordance with Section 3.2.

2.3 Kimball Area Transportation SSD Assessments. Pursuant to Summit County Code, Title 2, Chapter 31, the County operates the Kimball Area Transportation SSD for the purpose of providing enhanced transit services to businesses within the Kimball Junction Towncenter. Assessments from the Kimball Area Transportation SSD shall be remitted to the District to provide for the enhanced transit services to businesses within

the Kimball Junction Towncenter.

3. **Transfer of County Owned Transit Assets.** County shall transfer, and the District shall accept, acquire, and take assignment and delivery of, all County's right, title and interest, in and to all assets, properties, goodwill and rights of every nature, kind and description, whether tangible or intangible, real, personal or mixed, accrued or contingent, which are related to, used or held for use by the County in connection with the operation of transit within the unincorporated Summit County, as the same shall exist on the Closing Date. The assets to be transferred by the County and accepted by the District hereunder (collectively, the "*Transferred Assets*"), as more particularly set forth in this section, and the transfer thereof by the County and acceptance thereof by the District shall be an express condition precedent to Closing.

3.1 Real Property.

3.1.1 At Closing, County shall convey to the District by Special Warranty Deed marketable title in Summit County Tax Identification Parcel No. KAMC-1, located at 231 South 175 West, Kamas, Utah 84036 (the "*Kamas Business Commons Park & Ride Transit Center*"), in form and substance as set forth in **Exhibit B** hereto.

3.1.2 At Closing, County shall convey to the District by Special Warranty Deed marketable title in Summit County Tax Identification Parcel No. PCTC-6-X, located adjacent to the Sheldon D. Richins County Facility at Kimball Junction with an address of 6490 N. Landmark Dr., Park City, Utah 84098 (the "*County Transit Hub*"), in form and substance as set forth in **Exhibit C** hereto.

3.1.3 At Closing, the County shall dedicate, transfer, assign and convey to the District all existing interests in real property, which are owned by the County, including easements and rights-of-way, which are necessary for the operation of the public transit system. An itemized inventory of the existing real property interests, easements and rights-of-way, including bus shelters, to be assigned and conveyed hereunder are identified and shown on **Exhibit D** attached hereto.

3.1.4 All instruments assigning and/or granting the easements to the District pursuant to this section shall be in form and substance as set forth in **Exhibit E** hereto. All assignments shall be free and clear of all liens, encumbrances and claims whatsoever, and all grants of easement shall have a perpetual term.

3.2. Assignment of Contracts, Reports, Records and Intangibles.

3.2.1 Contracts.

3.2.1.1 The County agrees to assign to the District that certain contract entitled Bus Service Agreement between the Utah Transit Authority ("*UTA*"), Park City Municipal Corporation, and Summit County, dated August 24, 2011, whereby those parties agreed to participate jointly in operating transit service in and around Salt

Lake County and Summit County, and the same having been amended by that certain Addendum No. 1, Service and Alignment Change 2017, dated _____, 2017 (together, the “*SLC-SC Transit Agreement*”), in form and substance as set forth in **Exhibit F** hereto.

3.2.1.2 The County agrees to assign to the District the Canyons Transit Agreement, in form and substance as set forth in **Exhibit G** hereto.

3.2.1.3 The County agrees to assign to the District that certain contract entitled Service Provider/Professional Services Agreement, Kimball Circulator, LLC, dated June 1, 2017, and its First Amendment, dated September 19, 2019 (the “*Kimball Circulator Agreement*”), in form and substance as set forth in **Exhibit H** hereto.

3.2.2 County represents that there are no other service contracts, to which the County is a party, which are necessary to be assigned to the District in order for the District to operate and maintain a system of public transit within the County. All intangibles, reports and records related to the ownership and operation of Park City Transit, which are in the County’s possession, as identified in **Exhibit I** hereto, shall be assigned by the County to the District. Copies of all transit maps, maintenance and inspection records, and operation manuals which are maintained by and in the possession of the County shall be provided by the County to the District at or prior to Closing.

4. **Closing.** The closing of the transfer of the assets referenced herein (the “*Closing*”), will take place on a date and at a time and place mutually agreeable to the Parties subsequent to the Annexation, but in no event later than June 30, 2021.

4.1 **County Closing Deliverables.** At the Closing, County shall deliver to the District:

4.1.1 Special Warranty Deed, in the form attached as Exhibit B, duly executed by the County conveying the Kamas Business Commons Park & Ride Transit Center identified in and as required pursuant to Section 3.1.1 herein.

4.1.2 Special Warranty Deed, in the form attached as Exhibit C, duly executed by the County conveying the County Transit Hub identified in and as required pursuant to Section 3.1.2 herein.

4.1.3 Assignments and/or Grants of Easement, in the form attached as Exhibit E, duly executed by the County assigning and/or granting, as the case may be, to the District the easements and rights-of-way identified in Exhibit D hereto, as required pursuant to Section 3.1.4 herein.

4.1.4 All documents required to be delivered by the County to the District pursuant to Section 3.2 herein as identified in Exhibits F, G, H, and I hereto.

4.2 **District’s Closing Deliverables.** At Closing, the District shall deliver to the County such other customary instruments, filings or documents, in form and substance

satisfactory to the County, as may reasonably be requested by the County or as may be otherwise necessary or desirable to evidence and effect the of the transfer, conveyance and delivery of Transferred Assets to the District and to put the District in actual possession or control of the Transferred Assets.

5. **Representations and Warranties of the Parties.** As an inducement to the Parties to enter into this Agreement, the Parties hereby represent and warrant as follows:

5.1 Representations and warranties of the County. County hereby represents and warrants as follows as of the date of this Agreement and remade as of the Closing:

5.1.1 Authority of County. County has full power and authority to enter into this Agreement, to carry out its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery by County of this Agreement, the performance by County of its obligations hereunder and the consummation by County of the transactions contemplated hereby have been duly authorized by all requisite legal action. This Agreement has been, and upon its execution will have been, duly executed and delivered by County; and, assuming due execution and delivery by both Parties hereto, this Agreement constitutes, and upon its execution will constitute, a legal, valid and binding obligation of County enforceable against County in accordance with its terms, except as may be affected by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting creditors' rights generally or by rules of law governing specific performance, injunctive relief or other equitable principles (regardless of whether such principles are considered in a proceeding at law or in equity).

5.1.2 No Conflicts; Consents. The execution, delivery and performance by County of this Agreement, and the consummation of the transactions contemplated hereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the organizational documents of County; (b) conflict with or result in a violation or breach of any provision of any law, regulation or order applicable to County; and (c) result in any breach of, constitute a default (or an event that, with or without notice or lapse of time or both, would become a default) under any agreement or other instrument, or result in the creation of any encumbrance on any of the Transferred Assets pursuant to any note, bond, mortgage, indenture, agreement, lease, license, permit, franchise, instrument, obligation or other contract to which County is a party or by which County or the Transferred Assets may be bound or affected.

5.1.3 No Liabilities. To County's knowledge, County has no liabilities of any nature arising out of, the operation of Park City Transit, whether accrued, absolute, contingent or otherwise, whether known or unknown.

5.1.4 Good and Marketable Title to be Conveyed. County owns good and marketable title to all of the Transferred Assets, free and clear of any encumbrance, title imperfection or restriction of any kind whatsoever (whether accrued, absolute, contingent, or otherwise). The delivery to the District of all assignments, grants of easement and assignment of easements at Closing will transfer to the District good and

marketable title to all of the Transferred Assets, free and clear of any encumbrance. County makes no representation or warranty regarding the condition or suitability of the Transferred Assets and the District accepts the Transferred Assets in their as-is condition.

5.1.5 No Pending Actions. There are no actions pending or, to County's knowledge, threatened in connection with the Transferred Assets or County's ownership or operation thereof, nor is there any basis for any such action, that seek to prevent, hinder, modify, delay or challenge the transactions contemplated by this Agreement. There are no actions by County pending, or which County has commenced preparations to initiate, against any other person in connection with the Transferred Assets. There are no outstanding and unsatisfied, or to County's knowledge, threatened, orders, writs, judgments, injunctions, penalties or awards against, relating to or affecting the Transferred Assets, County's ownership or operation thereof or the transactions contemplated by this Agreement.

5.2 Representations and Warranties of the District. The District hereby represents as follows:

5.2.1 Powers of the District. The District has full power and authority to enter into this Agreement, to carry out its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery by the District of this Agreement, the performance by the District of its obligations hereunder and the consummation by the District of the transactions contemplated hereby have been duly authorized by requisite action of its governing board. This Agreement has been, and upon its execution will have been, duly executed and delivered by the District; and, assuming due execution and delivery by both Parties hereto, this Agreement constitutes, and upon its execution will constitute, a legal, valid and binding obligation of the District enforceable against the District in accordance with its terms, except as may be affected by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting creditors' rights generally or by rules of law governing specific performance, injunctive relief or other equitable principles (regardless of whether such principles are considered in a proceeding at law or in equity).

5.2.2 No Conflicts; Consents. The execution, delivery and performance by the District of this Agreement, and the consummation of the transactions contemplated hereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the organizational documents of the District; (b) conflict with or result in a violation or breach of any provision of any law, regulation or order applicable to the District; and (c) result in any breach of, constitute a default (or an event that, with or without notice or lapse of time or both, would become a default) under any agreement or other instrument to which the District is a party or by which the District may be bound or affected.

5.2.3 There are no actions pending or, to the District's knowledge, threatened that seek to prevent, hinder, modify, delay or challenge the transactions contemplated by this Agreement.

5.3 Survival. All representations of County and the District in this Agreement shall survive the Closing and shall remain in full force and effect, until the expiration of the statute of limitations following the date all performance thereunder was due to be performed.

6. **Liabilities and Indemnification.**

6.1 Indemnity by County. County will indemnify, reimburse, defend and hold the District and its officers, directors, trustees, employees, consultants and agents from and against and in respect of any and all demands, claims, actions, causes of action, judgments, assessments, taxes, fines, losses, damages, liabilities, interest, penalties, costs, and expenses, including, without limitation, reasonable legal fees, other professional fees and any disbursements incurred in connection therewith, (collectively “Losses”), resulting from, arising out of, relating to, or incurred by reason of: (a) any breach of any representation, warranty, covenant, or agreement of County contained in this Agreement or any agreement, instrument, or document executed and delivered by County pursuant hereto; (b) any action taken by any taxing authority in relation to the classification and taxation of the Transferred Assets for tax purposes as a result of this Agreement; and (c) the operation of Park City Transit prior to the Closing.

6.2 Indemnity by the District. The District will indemnify, reimburse, defend, and hold harmless County and its parent entity, shareholders, officers and directors, employees, consultants and agents from and against and in respect of any and all Losses suffered, incurred or sustained by any of them or to which any of them becomes subject, resulting from, arising out of or relating to: (a) any breach of any representation, warranty, covenant, or agreement of the District contained in this Agreement or other instrument or document executed and delivered by the District pursuant hereto or thereto; and (b) subsequent to Closing, any assumed liability.

7. **Waiver of Jury Trial**. To the fullest extent permitted by law, each of the Parties hereto expressly and knowingly waives any right it may have to a trial by jury in respect to any litigation directly or indirectly arising out of, under or in connection with this Agreement, the transactions contemplated hereby, or the actions of such party in the negotiation, administration, performance and enforcement hereof. Each Party further waives any right to consolidate any action in which a jury trial cannot be or has not been waived. This provision shall survive any termination of this Agreement.

8. **Governmental Immunity Act**. Because both Parties are governmental entities under the *Utah Governmental Immunity Act of Utah*, Utah Code §63G-7-101, *et. seq., as amended*, each Party is responsible and liable for any wrongful acts or negligence committed by its own officers, employees, or agents and neither Party waives any defense available to it under the *Utah Governmental Immunity Act of Utah*.

9. **Survivability**. With the exception of Sections 3 and 4, which merge with the Closing, all other provisions of this Agreement shall remain in full force and effect for

the term of this Agreement.

10. **Relief of Obligation.** This Agreement does not in any way relieve either Party of any obligation or responsibility imposed upon it by law (Utah Code §11-13-208).

11. **Term.** This Agreement shall be in effect for a period of fifty (50) years from the Effective Date (Utah Code §11-13-216) unless otherwise terminated by the District and the County by mutual written agreement.

12. **Eminent Domain.** The County agrees to exercise on behalf of the District its powers of eminent domain in accordance with Utah Code §17B-2a-820 or successor law. The District is responsible for all costs and expenses associated with the eminent domain proceeding, including legal fees, appraiser fees, fair market value compensation, etc. The District shall provide written notice to the County of its desire to have the County exercise its powers of eminent domain. The notice shall identify the property to be condemned, the rationale of the District, and the timing of the condemnation. The District and the County together shall agree upon a condemnation strategy, including the hiring of outside legal counsel. Once the property is condemned, the County shall transfer the title to the property in fee simple to the District.

13. **Special Conditions, Considerations and Circumstances.** As a minimum level of service within the unincorporated county, the District shall operate the Kamas Service (10 Black), Lime Line, and SLC-SC Transit.

14. **County Services**

14.1 **Legal Services.** The Summit County Attorney (the “*County Attorney*”) shall serve as the District’s General Counsel.

14.1.1 The County Attorney shall provide legal services, including, but not limited to negotiating, drafting and reviewing legal documents, regulations and policies; providing advice in labor and employment matters; and handling District litigation.

14.1.2 The County Attorney shall allocate to the District forty (40) hours per month of legal services.

14.1.3 As personnel and resources, as well as time, permits, the County Attorney may provide additional legal services in excess of the forty (40) hours per month upon the specific request of the District’s General Manager or his/her designee.

14.1.4 Legal services shall be provided by attorneys who (a) are licensed to practice law within the State of Utah, and (b) are sworn civil deputies of the Summit County Attorney. Attorneys from the County shall at all times be deemed employees of the County and shall not be deemed employees of the District (Utah Code §11-13-222).

14.1.5 The District's Board of Trustees and General Manger may, upon the approval of the County Attorney, employ outside counsel to assist the County Attorney or to represent the District in a lawsuit or other action. While the District General Manger may control and direct the prosecution, defense and settlement of all lawsuits, the County Attorney shall determine the means by which such occurs.

14.2 Human Resource Services.

14.2.1 The County, through the County Manager, shall provide certain professional human resource services oversight to the District.

14.2.2 The County Manager shall allocate to the District ten (10) hours per month of human resource services.

14.2.3 All personnel actions of the District, including, but not limited to promotions, hiring, and discipline, shall be processed under the professional oversight of the Summit County Human Resource Director.

14.2.4 The Summit County Human Resource Director and his staff shall at all times be deemed employees of the County and shall not be deemed employees of the District (Utah Code §11-13-222).

14.3 Treasurer Services. The Summit County Treasurer (the "*County Treasurer*") shall serve as the District's Treasurer.

14.3.1 The County Treasurer shall be the custodian of all money, bonds, or other securities of the District.

14.3.2 The County Treasurer shall determine the cash requirements of the District and provide for the deposit and investment of all money by following the procedures and requirements of Utah Code Title 51, Chapter 7, State Money Management Act.

14.3.3 The County Treasurer shall receive all public funds and money payable to the District within three business days after collection, including all taxes, licenses, fines and intergovernmental revenue.

14.3.4 The County Treasurer shall keep an accurate detailed account of all money received under Section 14.3.3 in the manner directed by resolution of the Board of Trustees.

14.3.5 The County Treasurer shall collect all special taxes and assessments as provided by law and ordinance.

14.3.6 The County Treasurer shall allocate to the District ten (10) hours per month of treasurer services.

14.3.7 The County Treasurer and her staff shall at all times be deemed employees of the County and shall not be deemed employees of the District (Utah Code §11-13-222).

14.3.8 The County Treasurer shall provide those duties set forth in Utah Code §17B-1-633.

14.4 Comptroller Services. The Summit County Financial Officer (the “*County Financial Officer*”) shall serve as the District’s Comptroller.

14.4.1 The Comptroller 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.

14.4.2 The Comptroller shall authorize the payment of all claims against the District (accounts payable).

14.4.3 The Comptroller shall account for all funds received by the District (accounts receivable).

14.4.4 The Comptroller shall administer payroll.

14.4.5 The Comptroller shall, at least quarterly, provide the board with a list of all authority expenditures.

14.4.6 The Comptroller shall comply with the uniform accounting, budgeting and reporting procedures prescribed in the Uniform Accounting Manual for Local Districts.

14.4.7 The Comptroller shall comply with Utah Code §17B-2a-812.

14.4.8 The Comptroller shall not sign any single signature check.

14.4.9. The County Manager shall allocate to the District twenty (20) hours per month of comptroller services.

14.4.10 County Financial Officer and his staff shall at all times be deemed employees of the County and shall not be deemed employees of the District (Utah Code §11-13-222).

14.5 Administrative Services. The Summit County Regional Transportation Planning Director (the “*Transportation Director*”), Caroline Rodriguez, shall serve as the District’s interim General Manager. The Transportation Director’s staff shall serve as the

interim administrative staff of the District. The Transportation Director and her staff shall each allocate thirty-five (35) hours per week of administrative services.

14.5.1 The Transportation Director shall perform all duties of the General Manager until such time that a permanent General Manager is selected by the District's Board of Trustees.

14.5.2 The Transportation Director's staff shall perform all duties delegated to it by the Transportation Director until such time that the permanent General Manager hires a permanent administrative staff.

14.6 Information Technology Services. The Summit County Information Technology Director (the "*IT Director*") and his staff, shall serve as the Information Technology department of the District.

14.7 Equipment. The County shall, as part of the services to be provided under this Section 14, provide to the District the necessary equipment for County personnel providing the governmental services which are the subject of this section, including necessary vehicles and other facilities as are needed in the performance of the services contemplated by this section.

14.8 Consideration. The District shall pay the County for the governmental services which are the subject of this Section 14 a yearly fee of _____ Dollars (\$ _____ .00) for the term of five (5) years. This amount is based on a rate representing the average of the County's current salary rates for the various employees, administrative overhead, and an equipment fee. The annual fee shall be payable on or before January 31st during each year of the effective term of this section. The foregoing rates shall be increased every December based upon the cost increases as determined in advance by mutual agreement of the District and the County. A letter will be mailed to the District with the new agreed upon COLA rates every subsequent year.

14.9 Liabilities and Indemnification. This Section 14.8 applies solely to the governmental services which are the subject of this Section 14.

14.9.1 All privileges and immunities from liability which are ordinarily available to District employees shall apply to the County employees while performing governmental services under this Section 14.

14.9.2 County agrees and promises to indemnify and hold District, its officers, agents, officials and employees, and volunteers harmless and release them for and from any liability, costs or expenses arising from any action, causes of action, claims for relief, demands, damages, expenses, costs, fees or compensation, whether or not said actions, causes of action, claims for relief, demands, damages, costs, fees, expenses, and/or compensation are known or unknown, are in law or equity, and without limitation, all claims of relief which can be set forth through a complaint or otherwise that may arise

out of the acts or omissions, negligent or otherwise, of the County and/or its officers, agents, officials, members, employees or volunteers in the performance of this Section 14.

14.9.3 District agrees and promises to indemnify and hold County, its officers, agents, officials and employees, and volunteers harmless and release them for and from any liability, costs or expenses arising from any action, causes of action, claims for relief, demands, damages, expenses, costs, fees or compensation, whether or not said actions, causes of action, claims for relief, demands, damages, costs, fees, expenses, and/or compensation are known or unknown, are in law or equity, and without limitation, all claims of relief which can be set forth through a complaint or otherwise that may arise out of the acts or omissions, negligent or otherwise, of the District and/or its officers, agents, officials, members, employees or volunteers in the performance of this Section 14.

15. Miscellaneous Provisions.

15.1 No Assignment. Neither Party may assign its interest in this Agreement without the written consent of the other Party.

15.2 No Third-Party Beneficiaries. This Agreement shall not confer any rights or remedies upon any person or entity other than the Parties and their respective successors-in-interest.

15.3 Inducement. The making and execution of this Agreement has not been induced by any representation, statement, warranty or agreement other than those herein expressed.

15.4 No Recourse. This Agreement shall not create or be deemed to create or permit any personal liability or obligation on the part of any direct or indirect officer, employee, or representative of the County.

15.5 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

15.6 Business Relationship. This Agreement does not acknowledge the existence of or establish a partnership, joint venture, or any other form of business relationship between the Parties other than as expressly set forth herein, and this Agreement is limited solely to the purposes and interests expressed herein.

15.7 Severability. If any term or provision of this Agreement shall, to any extent, be determined by a court of competent jurisdiction to be void, voidable, or unenforceable, such void, voidable or unenforceable term or provision shall not affect the enforceability of any other term or provision of this Agreement; and the Parties agree to attempt in good faith to reform such void or unenforceable provision to the extent necessary to render such provision enforceable and to carry out its original intent.

15.8 Entire Agreement. This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof, and no statements, promises, or inducements made by any Party or agents of any Party that are not contained in this Agreement shall be binding or valid. Alterations, extensions, supplements or modifications to the terms of this Agreement shall be agreed to in writing by the Parties, incorporated as amendments to this Agreement, and made a part hereof. To the extent of any conflict between the provisions of this Agreement and the provisions of any later agreements, the later agreements shall be controlling.

15.9 Construction. As used herein, all words in any gender shall be deemed to include the masculine, feminine or neuter, all singular words shall include the plural, and all plural words shall include the singular, as the context may require.

15.10 Amendment. This Agreement cannot be altered or amended except pursuant to an instrument in writing executed by the Parties.

15.11 Force Majeure. Performance by any Party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrections, strikes, lock-outs, floods, earthquakes, fires, casualties, acts of God, epidemics, quarantine, restrictions, inability (when the responsible Party is faultless) to secure necessary labor, materials, tools, acts or failure to act of any public or governmental agency or entity, or by any other reason not the fault of the Party delayed in performing work or doing acts required under the terms of this Agreement, and in such event, the performance of such work or the doing of such act shall be excused for the period of the delay and the period of performance for any such work or the doing of any such act shall be extended for a period equivalent to the period of such delay.

15.12 Further Action. The Parties hereby agree to execute and deliver such additional documents and to take such further action as may become necessary or desirable to fully carry out the provisions and intent of this Agreement.

15.13 Expenses of Enforcement. In any proceeding to enforce, interpret, rescind or terminate this Agreement or in pursuing any remedy provided hereunder or by applicable law, the prevailing Party shall be entitled to recover from the other Party all costs and expenses, including a reasonable attorney's fee, whether such proceeding or remedy is pursued by filing suit or otherwise, and regardless of whether such costs, fees and/or expenses are incurred in connection with any bankruptcy proceeding. For purposes of hereof, the term "*prevailing Party*" shall include, without limitation, a Party who agrees to dismiss an action or proceeding upon the other's payment of the sums allegedly due or performance of the covenants allegedly breached, or who obtains substantially the relief sought. The provisions set forth in this paragraph shall survive the merger of these provisions into any judgment.

15.14 Notice. Any notice required or desired to be given pursuant to this Agreement or otherwise relating to this Agreement shall be in writing, addressed to the

Party at the address listed below, and shall be deemed effective: (i) upon personal delivery, or (ii) three business days following deposit in the United States Mail, postage prepaid, certified mail, return receipt requested.

To: **High Valley Transit District**
ATTN: Chair, Board of Trustees
60 N. Main Street
P.O. Box 128
Coalville, Utah 84017

Telephone:

To: **Summit County**
ATTN: County Manager
60 N. Main Street
P.O. Box 128
Coalville, Utah 84017

Telephone: (435) 336-3110

Either Party hereto may change its address for the purpose of receiving notices as herein provided by serving written notice given in the manner aforesaid.

15.15. Applicable Law; Jurisdiction and Venue. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Utah. The Parties hereby consent to the jurisdiction and venue of the state courts located in Summit County, Utah.

15.16. Counterparts. This Agreement may be executed in counterparts and delivered by electronic transmission.

16. **Interlocal Cooperation Act Requirements.**

In satisfaction of the requirements of the *Utah Interlocal Cooperation Act*, the Parties agree as follows:

16.1 This Agreement shall be conditioned upon the approval and execution of this Agreement by the Parties pursuant to and in accordance with the provisions of the *Utah Interlocal Cooperation Act*, as set forth in Utah Code Title 11, Chapter 13, including the adoption of resolutions of approval, but only if such resolutions of the legislative bodies of the Parties are required by the *Utah Interlocal Cooperation Act*.

16.2 In accordance with the provisions of Utah Code §11-13-202.5(3), this Agreement shall be submitted to the attorney authorized to represent each Party for review as to proper form and compliance with applicable law before this Agreement may take affect.

16.3 A duly executed copy of this Agreement shall be filed with the keeper of records of each Party, pursuant to §11-13-209 of the *Utah Interlocal Cooperation Act*.

16.4 No separate legal entity is created by the terms of this Agreement. To the extent that this Agreement requires administration other than as set forth herein, it shall be administered by the chief executive officer of each Party.

16.5 No real or personal property shall be acquired jointly by the Parties as a result of this Agreement unless this Agreement has been amended to authorize such acquisition. To the extent that a Party acquires, holds, or disposes of any real or personal property for use in the joint or cooperative undertaking contemplated by this Agreement, such Party shall do so in the same manner that it deals with other property of such Party.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the dates indicated by the signatures of the respective Parties.

Signed this ____ day of _____, 2021.

SUMMIT COUNTY

Glenn Wright, Chair
Summit County Council

ATTEST:

County Clerk

Reviewed and found to be in proper form and compliance with applicable law:

County Attorney

Signed this ____ day of _____, 2021.

HIGH VALLEY TRANSIT DISTRICT

Kim Carson, Chair
Board of Trustees

Reviewed and found to be in proper form and compliance with applicable law:

David L. Thomas
Chief Civil Deputy

EXHIBT A

Annexation Resolution

**RESOLUTION INITIATING PROCEEDINGS
RELATED TO THE ANNEXATION OF CERTAIN REAL
PROPERTY INTO THE BOUNDARIES OF THE
HIGH VALLEY TRANSIT DISTRICT
(Unincorporated County Annexation)**

WHEREAS, as set forth in the Utah Limited Purpose Local Government Entities – Local Districts, Title 17B, Chapter 1, et seq. Utah Code, 1953, *as amended* (the “Local District Act”), with all statutory references herein being to the Local District Act unless otherwise stated, the County Council of Summit County, Utah (the “County Council”), having created the High Valley Transit District (the “District”), as set forth in Summit County Code Title 2, Chapter 7, for the purpose of providing “a system of regional public transit by means of regular, continuing, shared-ride, and surface transportation services that are open to the general public”, with a Board of Trustees (the “Board”), who serves as the governing body of the District, and pursuant to the Local District Act has sole authority to annex property into the legal boundaries of the District; and

WHEREAS, pursuant to Utah Code §17B-1-402, the Board is authorized to annex area into the District by applying the provisions of Part 4 of the Local District Act, as the procedures governing the annexation; and

WHEREAS, Utah Code §§17B-1-403 and 404 provide that the process to annex an area into the District may be initiated by a resolution adopted by the “legislative body of each county whose unincorporated areas includes and each municipality whose boundaries include any of the area proposed to be annexed” into the District; and,

WHEREAS, Summit County (the “County”) has participated in a system of public transit for the benefit of its residents, workforce and visitors through the District and Park City Transit; and,

WHEREAS, the District and County have entered into an Interlocal Cooperation Agreement for Transit System Services, dated _____, 2021, which sets forth the terms and conditions upon which, among other things, (i) how County owned transit assets can be transferred to the District and assimilated into the District’s regional system of public transit; (ii) how the District may be financed through the imposition of appropriate sales taxes; and (iii) any special conditions, considerations and circumstances pertaining to the County and how transit services can be provided by the District to the residents, workforce, and visitors of the County, subject to the annexation of said area into the legal boundaries of the District; and

WHEREAS, the annexation of the remaining unincorporated areas of the County into the District is consistent with and furthers the District's mission and purpose of being a regional public transit system; and

WHEREAS, the County Council finds that under current circumstances, it is in the best interests of the public health, convenience and necessity of the citizens of the County to join the remaining portions of the unincorporated County into a regional transit authority through annexation and discontinue Park County Transit in order to more fully provide transit services to its residents, workforce and visitors, and, therefore, initiates the legal proceedings required to consider and approve the annexation in accordance with the requirements of Utah Code, Title 17B, Chapter 1, Part 4 of the Local District Act, including, without limitation, the notice, public hearing, protest and election procedures provided for therein.

NOW, THEREFORE, be it hereby resolved by the Summit County Council as follows:

SECTION 1. INCORPORATION OF RECITALS. The Recitals hereinabove set forth are incorporated into this Resolution and made a part hereof as though fully set forth herein.

SECTION 2. DECLARATION AND STATEMENT OF INTENT. The County Council hereby declares that the public health, convenience and necessity require the annexation of the remaining portions of the unincorporated County, as defined herein (the "Annexation Area"), into the legal boundaries of the High Valley Transit District and states its intent to annex said Annexation Area into the District subject to compliance with all procedural requirements of the Local District Act. The Annexation Area is to be annexed for the purpose of enabling the District to provide regional public transit service to the residents, workforce, and visitors of the County.

SECTION 3. INITIATION OF ANNEXATION PROCEEDINGS. Pursuant to and in conformance with the powers set forth in Utah Code §17B-1-403 and §17B-1-404, the County Council by this Resolution initiates the proceedings necessary for the annexation of the Annexation Area, as more particularly described in the form of the Notice of Annexation set forth in Section 5 herein, and as depicted on and attached hereto as EXHIBIT "A", which exhibit is incorporated herein by this reference.

SECTION 4. PUBLIC HEARING. The County Council hereby calls for a public hearing to held on the proposed annexation in conformance with the provisions of Utah Code §17B-1-409 and §17B-1-410. The public hearing held shall be set by the Board in conformance with the Local District Act.

SECTION 5. NOTICE OF THE PUBLIC HEARING.

(1) In conformance with the provisions of Utah Code §17B-1-410, the Secretary of the Board shall give written notice of the public hearing. The notice shall be given, in conformance with all applicable requirements of Utah Code §17B-1-409, (i) by mailing of said notice to each registered voter residing within the area proposed to be annexed, as determined by the voter registration list maintained by the county clerk as of a date selected by the Board for a public hearing which is at least twenty (20) but not more than sixty (60) days before the public hearing, and (ii) by posting of said notice in four (4) conspicuous locations within the area to be annexed, not fewer than ten (10) days nor more than thirty (30) days before the date of the public hearing.

(2) The Notice of Annexation shall be in substantially the following form:

THE FORM OF NOTICE APPEARS ON THE FOLLOWING PAGE

NOTICE OF ANNEXATION

NOTICE IS HEREBY GIVEN, pursuant to and in conformance with the provisions of Utah Code §§17B-1-409 and 410, that the Board of Trustees of the High Valley Transit District (the “Board”), under authority of Utah Code §17B-1-402, has initiated proceedings to annex the following real property, consisting generally of those real properties situated within the jurisdictional boundaries of unincorporated Summit County that have not previously been annexed into the High Valley Transit District (the “Annexation Area”), into the boundaries of the High Valley Transit District (the “District”). All statutory references herein are to Utah Code 1953, as amended.

The proposed Annexation Area is more particularly described in EXHIBIT “A” hereto.

In conformance with the provisions of Utah Code §17B-1-409 and §17B-1-410, the Board has called for a public hearing to held on the proposed annexation. The public hearing shall be held on the ____ day of _____, 2021, at the hour of 6:00 p.m., in the Summit County Council Chambers in the Summit County Courthouse, located at 60 N. Main Street, Coalville, Utah (Anchor Location). At the public hearing, the Board shall give full consideration to each written protest that has been filed, and hear and consider each interested person desiring to be heard concerning the proposed annexation. The Board may continue the public hearing to another date and time as it deems necessary.

The purpose of the proposed annexation is to facilitate regional public transit services being provided by the District to residents, workforce, and visitors of Summit County. Upon annexation, property taxes may be levied annually upon all taxable property within the proposed Annexation Area, sales taxes shall be imposed upon the sale of goods and services purchased within the proposed Annexation Area, and fees and charges may be imposed to pay for public transit services proposed to be provided by the Authority.

Any interested person may, pursuant to and in conformance with the provisions of Utah Code §17B-1-412, protest the proposed annexation by submitting a written protest to the Board no later than thirty (30) after the public hearing. The protest shall explain why the person is protesting the annexation.

END OF NOTICE

SECTION 6. APPROVAL OF THE ANNEXATION. If adequate protests are not timely filed, and otherwise in conformance with the provisions of Utah Code §17B-1-412 and §17B-1-414, the Board may adopt a resolution approving the annexation of the Annexation Area into the legal boundaries of the District. In conformance with the provisions of Utah Code §17B-1-412, the Board may not adopt a resolution approving the annexation if adequate protests are filed, absent an election of the registered voters of the Annexation Area.

SECTION 7. EFFECTIVE DATE. This Resolution shall take effect immediately upon its approval and adoption by the County Council.

APPROVED AND ADOPTED this ____ day of _____, 2021.

COUNTY COUNCIL
SUMMIT COUNTY, UTAH

ATTEST:

County Clerk

Chair

APPROVED AS TO FORM:

County Attorney

VOTING OF COUNTY COUNCIL:

Councilmember	_____	_____
Councilmember	_____	_____
Councilmember	_____	_____
Councilmember	_____	_____
Councilmember	_____	_____

EXHIBIT “A”
ANNEXATION AREA MAP

EXHIBIT B

Kamas Business Commons Park & Ride Transit Center

AFTER RECORDED, PLEASE RETURN TO:

David L. Thomas
Chief Civil Deputy
Summit County Attorney
P.O. Box 128
60 N. Main
Coalville, Utah 84017

Tax Identification No. KAMC-1

SPECIAL WARRANTY DEED

FOR GOOD AND VALUABLE CONSIDERATION, Summit County, a political subdivision of the State of Utah (the “**Grantor**”) having a mailing address at 60 N. Main Street, P.O. Box 128, Coalville, Utah 84017, hereby CONVEYS AND WARRANTS, against those claiming by, through and under the Grantor and not otherwise, to High Valley Transit District, a body corporate and politic of the State of Utah, (the “**Grantee**”) having a mailing address at 60 N. Main Street, P.O. Box 128, Coalville, Utah 84017, the Grantor’s right, title and interest in and to that certain tract of land located in Summit County, State of Utah, as described in **Exhibit “A”** attached hereto (the “**Subject Property**”).

SUBJECT TO all restrictions, reservations and other conditions of record as may be disclosed by a record examination of title.

TO HAVE AND TO HOLD the Subject Property, together with all tenements, hereditaments, and appurtenances thereunto belonging, unto the Grantee, and its successors and assigns, forever. The Grantor does hereby covenant to and with the Grantee that the Grantee is owner in fee simple of the Subject Property and that the Grantor will warrant and defend the same from all lawful claims whatsoever arising by, through and under the Grantor and not otherwise.

The undersigned further hereby acknowledges and affirms to the below named Notary Public that the undersigned appeared before such Notary Public and either executed this Deed before such Notary Public or acknowledged to such Notary Public that the undersigned executed this Deed for the purposes stated in it.

DATED as of the ____ day of _____, 2021.

Summit County

By: _____
Print Name: Thomas C. Fisher
Title: County Manager

STATE OF UTAH)
)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by Thomas C. Fisher, the Summit County Manager in and on behalf of Summit County.

NOTARY PUBLIC
Residing at: _____

My Commission Expires:

EXHIBIT A

Real Property situated in Summit County, State of Utah described as follows:

KAMC-1, located at 231 South 175 West, Kamas, Utah 84036

EXHIBIT C

County Transit Hub

AFTER RECORDED, PLEASE RETURN TO:

David L. Thomas
Chief Civil Deputy
Summit County Attorney
P.O. Box 128
60 N. Main
Coalville, Utah 84017

Tax Identification No. PCTC-6-X

SPECIAL WARRANTY DEED

FOR GOOD AND VALUABLE CONSIDERATION, Summit County, a political subdivision of the State of Utah (the “**Grantor**”) having a mailing address at 60 N. Main Street, P.O. Box 128, Coalville, Utah 84017, hereby CONVEYS AND WARRANTS, against those claiming by, through and under the Grantor and not otherwise, to High Valley Transit District, a body corporate and politic of the State of Utah, (the “**Grantee**”) having a mailing address at 60 N. Main Street, P.O. Box 128, Coalville, Utah 84017, the Grantor’s right, title and interest in and to that certain tract of land located in Summit County, State of Utah, as described in **Exhibit “A”** attached hereto (the “**Subject Property**”).

SUBJECT TO all restrictions, reservations and other conditions of record as may be disclosed by a record examination of title.

TO HAVE AND TO HOLD the Subject Property, together with all tenements, hereditaments, and appurtenances thereunto belonging, unto the Grantee, and its successors and assigns, forever. The Grantor does hereby covenant to and with the Grantee that the Grantee is owner in fee simple of the Subject Property and that the Grantor will warrant and defend the same from all lawful claims whatsoever arising by, through and under the Grantor and not otherwise.

The undersigned further hereby acknowledges and affirms to the below named Notary Public that the undersigned appeared before such Notary Public and either executed this Deed before such Notary Public or acknowledged to such Notary Public that the undersigned executed this Deed for the purposes stated in it.

DATED as of the ____ day of _____, 2021.

Summit County

By: _____
Print Name: Thomas C. Fisher
Title: County Manager

STATE OF UTAH)
)
)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by Thomas C. Fisher, the Summit County Manager in and on behalf of Summit County.

NOTARY PUBLIC
Residing at: _____

My Commission Expires:

EXHIBIT A

Real Property situated in Summit County, State of Utah described as follows:

PCTC-6-X, located at 6490 N. Landmark Dr., Park City, Utah 84098

EXHIBIT D

Inventory of Real Property Interests

EXHIBIT E

Assignment of Real Property Interests

Recording Requested By:

David L. Thomas
Chief Civil Deputy
Summit County Attorney
Summit County Courthouse
60 N. Main Street
Coalville, Utah 84017

Above Space for Recorder's Use Only

ASSIGNMENT OF EASEMENTS

IN CONSIDERATION of the sum of Ten Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, **Summit County**, a political subdivision of the State of Utah ("*Assignor*"), hereby CONVEYS, ASSIGNS and QUIT CLAIMS to **High Valley Transit District**, a body politic and corporate of the State of Utah, and its successors-in-interest and assigns ("*Assignee*"), all right, title and interest which Assignor owns or otherwise claims in and to the following easements of record in Summit County, State of Utah, to wit:

1. [Example: Grant of Easement, dated December 31, 1988, recorded in Summit County, State of Utah on January 6, 1989, under Entry No. 302944. Township 1 South, Range 3 East, Section 35; Township 1 South, Range 3 East, East ½ of Section 34; Township 1 South, Range 3 East, West ½ of the Southwest ¼ of Section 36]

2. [Example: Easement Agreement, recorded in Summit County, State of Utah on January 25, 2007, under Entry No. 00803013. Parcel PP-102-C-2, PP-102-B-3, PP-B-3-A, PP-102-D-3-E, PP-102-M]

3. [All rights and interests of Assignor in and to the use of all public utility easements, and public utility corridors in which the water system assets of Assignor may be situated]

By acceptance of this Assignment, Assignee hereby acknowledges and agrees that it shall take its rights and interests in and to the easements assigned hereunder "AS IS, WHERE IS" and without warranty of any kind, either express or implied.

The individual executing this Agreement on behalf of Grantor hereby warrants that he has the requisite authority to execute this Agreement on behalf of Assignor and that Assignor has agreed to be and is bound hereby.

WITNESS the hand of Assignor this ____ day of _____,

2021.

SUMMIT COUNTY

Thomas C. Fisher
County Manager

STATE OF UTAH)

: ss.

County of Summit)

On this ____ day of _____, 2021, personally appeared before me Thomas C. Fisher, signer of the above instrument, who duly acknowledged to me that he executed the same for and in behalf Summit County, and that said Summit County duly executed the same.

NOTARY PUBLIC

Residing at: _____

My Commission Expires:

Recording Requested By:

David L. Thomas
Chief Civil Deputy
Summit County Attorney
Summit County Courthouse
60 N. Main Street
Coalville, Utah 84017

Above Space for Recorder's Use Only

GRANT OF EASEMENT

Summit County, a political subdivision of the State of Utah ("*Grantor*"), hereby GRANTS AND CONVEYS to **High Valley Transit District**, a body corporate and politic of the State of Utah, and its successors-in-interest and assigns ("*Grantee*"), for the sum of Ten Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, a non-exclusive perpetual easement and right-of-way, and temporary construction easement, together with the right of access thereto including ingress and egress (the "*Easement*"), to be utilized by Grantee for the purpose of constructing, installing, owning, operating, inspecting, maintaining, repairing, altering, replacing, and protecting transit facilities (the "*Transit Facilities*"). The Easement shall be situated over, under, across and through the following real property of Grantor (the "*Easement Property*"), located in Summit County, State of Utah, more particularly described as follows:

SEE EXHIBIT "A"

attached hereto and incorporated herein by reference.

This Easement is granted subject to the following rights, covenants and restrictions:

1. Temporary Construction Easement. During the period that the Transit Facilities authorized hereunder are under construction, the Grantee shall have the right to utilize such portion of Grantor's property situated along and adjacent to the Easement Property as described herein as shall be reasonably necessary in connection with the initial construction and installation of the Transit Facilities. Grantee's construction and operational activities related to its use of the Easement Property as provided herein shall be performed in compliance with all applicable requirements of governmental entities having jurisdiction.

2. Access to Easement Property. It is understood and agreed that the Easement set forth herein gives, grants and conveys to Grantee, and the general public, the right of access, including ingress and egress, to and upon the Easement Property for the purposes set forth herein.

3. Reasonable Ground Restoration. Within a reasonable time following completion of construction of any improvements associated with the Transit Facilities within the Easement Property, subject to suitable weather and/or soil conditions, and excepting the Transit Facilities, Grantee, at its expense, shall reasonably restore the surface of the Easement Property or any other

property of Grantor disturbed by Grantee during construction, as near as practicable to its pre-construction condition.

4. Grantor's Continued Use of the Property. Grantor reserves the right to use and enjoy the Easement Property subject to this Easement and Grantee's rights hereunder, and so long as Grantor shall not construct any permanent buildings or other structures or improvements, or plant any trees or shrubs whose roots would contact Grantee's Transit Facilities, or otherwise do any thing or take any action which would unreasonably obstruct or interfere in any way with the Grantee's rights to the use of the Easement Property and Grantee's rights of access thereto as herein set forth.

5. Right to Remove Obstructions. Grantor expressly acknowledges and agrees that Grantee shall have the unilateral right, without notice or compensation to the Grantor, to physically remove any structure or other obstruction, and to cut and keep clear all trees, brush, native growth or foliage, which are now or may hereafter be situated within the Easement Property that may, in the Grantee's sole opinion, endanger, hinder or conflict with its rights hereunder. Grantee shall have no liability for any damage to any improvements made by Grantor to the extent such damage arises out of or in connection with Grantee's use of the Easement Property consistent with its rights hereunder.

6. No Representations or Warranties. Grantee is acquiring the Easement as is, where is, with all faults and defects, and GRANTOR MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ALL WARRANTIES OF FITNESS FOR A PARTICULAR PUPOSE OR OTHERWISE, ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED AND EXCLUDED. Grantor makes no representations or warranties regarding the environmental condition of the Easement Property or the Easement.

7. Covenant Running with the Land. The Easement and related rights granted hereunder create an equitable servitude on the Easement Property and constitute a covenant running with the land which shall be binding upon Grantor and the Grantee and their respective legal representatives, successors-in-interest and assigns.

8. Amendment. This Easement, and all rights, covenants and restrictions set forth herein may not be terminated, extended, modified or amended without the consent of Grantor and Grantee, and any such termination, extension, modification or amendment shall be effective only upon recordation in the official records of Summit County, Utah, of a written document effecting the same, duly executed and acknowledged by Grantor and Grantee.

9. Warranty of Authority. The individual executing this Agreement on behalf of Grantor hereby warrants that he has the requisite authority to execute this Agreement on behalf of the Grantor and that the Grantor has agreed to be and is bound hereby.

10. Acknowledgement of Agreement by Grantee. By accepting delivery of and recordation of this Grant of Easement, Grantee acknowledges and agrees with the terms and provisions hereof.

WITNESS the hand of Grantor this ____ day of _____, 2021.

Summit County

By: _____
Name: Thomas C. Fisher
Its: County Manager

STATE OF UTAH)
) ss.
County of Summit)

On this ____ day of _____, 2021, personally appeared before me Thomas C. Fisher, signer of the above instrument, who duly acknowledged to me that he executed the same for and in behalf Summit County, and that said Summit County duly executed the same.

NOTARY PUBLIC

Residing at: _____

My Commission Expires:

EXHIBIT “A”
Legal Description of Easement Property

Exhibit F

Assignment of SLC-SC Transit Agreement

ASSIGNMENT AGREEMENT
Between
HIGH VALLEY TRANSIT DISTRICT
And
SUMMIT COUNTY

THIS ASSIGNMENT AGREEMENT ("*Agreement*") is made and entered into this __ day of _____, 2021, between SUMMIT COUNTY, a political subdivision of the State of Utah (the "*County*") and HIGH VALLEY TRANSIT DISTRICT, a body corporate and politic of the State of Utah (the "*District*"). The County and District are collectively referred to herein as the "*Parties*."

WITNESSETH:

WHEREAS, the County has entered into a Bus Service Agreement between the Utah Transit Authority ("*UTA*"), Park City Municipal Corporation, and the County, dated August 24, 2011, whereby those parties agreed to participate jointly in operating transit service in and around Salt Lake County and Summit County, and the same having been amended by that certain Addendum No. 1, Service and Alignment Change 2017, dated _____, 2017 (together, the "*SLC-SC Transit Agreement*"); and,

WHEREAS, the purpose of this agreement is for the County to assign and the Authority to assume such SLC-SC Transit Agreement;

NOW, THEREFORE, the Parties mutually agree as follows:

For value received, Summit County does hereby assign, transfer, and set over to the High Valley Transit District all rights, title, interest, duties, and obligations in and to that certain SLC-SC Transit Agreement, subject to all terms and conditions thereof, a copy of which is attached thereto as Exhibit A and made part hereof, and the District hereby accepts and assumes the foregoing instrument, subject to all the terms and conditions thereof.

IN WITNESS WHEREOF, the Parties caused this Agreement to be executed as by law.

SUMMIT COUNTY

By: _____
Thomas C. Fisher
County Manager

HIGH VALLEY TRANSIT DISTRICT

By: _____
Kim Carson, Chair
Board of Trustees

EXHIBIT A

SLC – SC Transit Agreement

EXHIBIT G

Assignment of Canyons Transit Agreement

ASSIGNMENT AGREEMENT
Between
HIGH VALLEY TRANSIT DISTRICT
And
SUMMIT COUNTY

THIS ASSIGNMENT AGREEMENT ("*Agreement*") is made and entered into this ___ day of _____, 2020, between SUMMIT COUNTY, a political subdivision of the State of Utah (the "*County*") and HIGH VALLEY TRANSIT DISTRICT, a body corporate and politic of the State of Utah (the "*District*"). The County and District are collectively referred to herein as the "*Parties*."

WITNESSETH:

WHEREAS, the County entered into that certain Canyons Transit Service Agreement between Summit County, the Canyons Resort Village Association, Inc., and VR CPC Holdings, Inc., dated _____, 2021 (the "*Canyons Transit Agreement*"); and,

WHEREAS, the purpose of this agreement is for the County to assign and the District to assume such Canyons Transit Agreement;

NOW, THEREFORE, the Parties mutually agree as follows:

For value received, Summit County does hereby assign, transfer, and set over to the High Valley Public Transit District all rights, title, interest, duties, and obligations in and to that certain Canyons Transit Agreement, subject to all terms and conditions thereof, a copy of which is attached thereto as Exhibit A and made part hereof, and the District hereby accepts and assumes the foregoing instrument, subject to all the terms and conditions thereof.

IN WITNESS WHEREOF, the Parties caused this Agreement to be executed as by law.

SUMMIT COUNTY

By: _____
Thomas C. Fisher
County Manager

HIGH VALLEY TRANSIT DISTRICT

By: _____
Kim Carson, Chair
Board of Trustees

EXHIBIT A

Canyons Transit Agreement

EXHIBIT H

Assignment of Kimball Circulator Agreement

ASSIGNMENT AGREEMENT
Between
HIGH VALLEY TRANSIT DISTRICT
And
SUMMIT COUNTY

THIS ASSIGNMENT AGREEMENT ("*Agreement*") is made and entered into this ___ day of _____, 2020, between SUMMIT COUNTY, a political subdivision of the State of Utah (the "*County*") and HIGH VALLEY TRANSIT DISTRICT, a body corporate and politic of the State of Utah (the "*District*"). The County and District are collectively referred to herein as the "*Parties*."

WITNESSETH:

WHEREAS, the County entered into that certain Service Provider/Professional Services Agreement, Kimball Circulator, LLC, dated June 1, 2017, and its First Amendment, dated September 19, 2019 (the "*Kimball Circulator Agreement*"); and,

WHEREAS, the purpose of this agreement is for the County to assign and the District to assume such Kimball Circulator Agreement;

NOW, THEREFORE, the Parties mutually agree as follows:

For value received, Summit County does hereby assign, transfer, and set over to the High Valley Transit District all rights, title, interest, duties, and obligations in and to that certain Kimball Circulator Agreement, subject to all terms and conditions thereof, a copy of which is attached thereto as Exhibit A and made part hereof, and the District hereby accepts and assumes the foregoing instrument, subject to all the terms and conditions thereof.

IN WITNESS WHEREOF, the Parties caused this Agreement to be executed as by law.

SUMMIT COUNTY

By: _____
Thomas C. Fisher
County Manager

HIGH VALLEY TRANSIT DISTRICT

By: _____
Kim Carson, Chair
Board of Trustees

EXHIBIT A

Kimball Circulator Agreement

EXHIBIT I

Assignments of Contracts

Not every provision of every certification will apply to every applicant or award. If a provision of a certification does not apply to the applicant or its award, FTA will not enforce that provision. Refer to FTA's accompanying Instructions document for more information.

Text in italics is guidance to the public. It does not have the force and effect of law, and is not meant to bind the public in any way. It is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

CATEGORY 1. CERTIFICATIONS AND ASSURANCES REQUIRED OF EVERY APPLICANT.

All applicants must make the certifications in this category.

1.1. Standard Assurances.

The certifications in this subcategory appear as part of the applicant's registration or annual registration renewal in the System for Award Management (SAM.gov) and on the Office of Management and Budget's standard form 424B "Assurances—Non-Construction Programs". This certification has been modified in places to include analogous certifications required by U.S. DOT statutes or regulations.

As the duly authorized representative of the applicant, you certify that the applicant:

- (a) Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.
- (b) Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
- (c) Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
- (d) Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
- (e) Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR 900, Subpart F).

- (f) Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to:
- (1) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin, as effectuated by U.S. DOT regulation 49 CFR Part 21;
 - (2) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex, as effectuated by U.S. DOT regulation 49 CFR Part 25;
 - (3) Section 5332 of the Federal Transit Law (49 U.S.C. § 5332), which prohibits any person being excluded from participating in, denied a benefit of, or discriminated against under, a project, program, or activity receiving financial assistance from FTA because of race, color, religion, national origin, sex, disability, or age.
 - (4) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps, as effectuated by U.S. DOT regulation 49 CFR Part 27;
 - (5) The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age;
 - (6) The Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse;
 - (7) The comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
 - (8) Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;
 - (9) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental, or financing of housing;
 - (10) Any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and,
 - (11) the requirements of any other nondiscrimination statute(s) which may apply to the application.
- (g) Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (“Uniform Act”) (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases. The requirements of the Uniform Act are effectuated by U.S. DOT regulation 49 CFR Part 24.

- (h) Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
- (i) Will comply, as applicable, with the provisions of the Davis–Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.
- (j) Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
- (k) Will comply with environmental standards which may be prescribed pursuant to the following:
 - (1) Institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514;
 - (2) Notification of violating facilities pursuant to EO 11738;
 - (3) Protection of wetlands pursuant to EO 11990;
 - (4) Evaluation of flood hazards in floodplains in accordance with EO 11988;
 - (5) Assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.);
 - (6) Conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§ 7401 et seq.);
 - (7) Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and
 - (8) Protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93–205).
- (l) Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
- (m) Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§ 469a-1 et seq.).
- (n) Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
- (o) Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§ 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded

animals held for research, teaching, or other activities supported by this award of assistance.

- (p) Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
- (q) Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and 2 CFR Part 200, Subpart F, “Audit Requirements”, as adopted and implemented by U.S. DOT at 2 CFR Part 1201.
- (r) Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing the program under which it is applying for assistance.
- (s) Will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. § 7104) which prohibits grant award recipients or a sub-recipient from:
 - (1) Engaging in severe forms of trafficking in persons during the period of time that the award is in effect;
 - (2) Procuring a commercial sex act during the period of time that the award is in effect; or
 - (3) Using forced labor in the performance of the award or subawards under the award.

1.2. Standard Assurances: Additional Assurances for Construction Projects.

This certification appears on the Office of Management and Budget’s standard form 424D “Assurances—Construction Programs” and applies specifically to federally assisted projects for construction. This certification has been modified in places to include analogous certifications required by U.S. DOT statutes or regulations.

As the duly authorized representative of the applicant, you certify that the applicant:

- (a) Will not dispose of, modify the use of, or change the terms of the real property title or other interest in the site and facilities without permission and instructions from the awarding agency; will record the Federal awarding agency directives; and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project.
- (b) Will comply with the requirements of the assistance awarding agency with regard to the drafting, review, and approval of construction plans and specifications.
- (c) Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work confirms with the approved plans and specifications, and will furnish progressive reports and such other information as may be required by the assistance awarding agency or State.

1.3. Procurement.

The Uniform Administrative Requirements, 2 CFR § 200.324, allow a recipient to self-certify that its procurement system complies with Federal requirements, in lieu of submitting to certain pre-procurement reviews.

The applicant certifies that its procurement system complies with:

- (a) U.S. DOT regulations, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” 2 CFR Part 1201, which incorporates by reference U.S. OMB regulatory guidance, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” 2 CFR Part 200, particularly 2 CFR §§ 200.317–200.326 “Procurement Standards;
- (b) Federal laws, regulations, and requirements applicable to FTA procurements; and
- (c) The latest edition of FTA Circular 4220.1 and other applicable Federal guidance.

1.4. Suspension and Debarment.

Pursuant to Executive Order 12549, as implemented at 2 CFR Parts 180 and 1200, prior to entering into a covered transaction with an applicant, FTA must determine whether the applicant is excluded from participating in covered non-procurement transactions. For this purpose, FTA is authorized to collect a certification from each applicant regarding the applicant’s exclusion status. 2 CFR § 180.300. Additionally, each applicant must disclose any information required by 2 CFR § 180.335 about the applicant and the applicant’s principals prior to entering into an award agreement with FTA. This certification serves both purposes.

The applicant certifies, to the best of its knowledge and belief, that the applicant and each of its principals:

- (a) Is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily or involuntarily excluded from covered transactions by any Federal department or agency;
- (b) Has not, within the preceding three years, been convicted of or had a civil judgment rendered against him or her for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction; violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or commission of any other offense indicating a lack of business integrity or business honesty;

- (c) Is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any offense described in paragraph (b) of this certification;
- (d) Has not, within the preceding three years, had one or more public transactions (Federal, State, or local) terminated for cause or default.

1.5. Coronavirus Response and Relief Supplemental Appropriations Act, 2021, and CARES Act Funding.

The applicant certifies that, to the maximum extent possible, and consistent with the Consolidated Appropriations Act, 2021 (Public Law 116–260):

- (a) Funds made available under title IV of division M of the Consolidated Appropriations Act, 2021 (Public Law 116–260), and in title XII of division B of the CARES Act (Public Law 116–136; 134 Stat. 599) shall be directed to payroll and operations of public transit (including payroll and expenses of private providers of public transportation); or
- (b) The applicant certifies that the applicant has not furloughed any employees.

CATEGORY 2. PUBLIC TRANSPORTATION AGENCY SAFETY PLANS

This certification is required of each applicant under the Urbanized Area Formula Grants Program (49 U.S.C. § 5307), each rail operator that is subject to FTA’s state safety oversight programs, and each State that is required to draft and certify a public transportation agency safety plan on behalf of a small public transportation provider pursuant to 49 CFR § 673.11(d). This certification is required by 49 CFR § 673.13.

This certification does not apply to any applicant that receives financial assistance from FTA exclusively under the Formula Grants for the Enhanced Mobility of Seniors Program (49 U.S.C. § 5310), the Formula Grants for Rural Areas Program (49 U.S.C. § 5311), or combination of these two programs.

If the applicant is an operator, the applicant certifies that it has established a public transportation agency safety plan meeting the requirements of 49 CFR Part 673.

If the applicant is a State, the applicant certifies that:

- (a) It has drafted a public transportation agency safety plan for each small public transportation provider within the State, unless the small public transportation provider provided notification to the State that it was opting-out of the State-drafted plan and drafting its own public transportation agency safety plan; and
- (b) Each small public transportation provider within the state has a public transportation agency safety plan that has been approved by the provider’s Accountable Executive

(as that term is defined at 49 CFR § 673.5) and Board of Directors or Equivalent Authority (as that term is defined at 49 CFR § 673.5).

CATEGORY 3. TAX LIABILITY AND FELONY CONVICTIONS.

If the applicant is a business association (regardless of for-profit, not for-profit, or tax exempt status), it must make this certification. Federal appropriations acts since at least 2014 have prohibited FTA from using funds to enter into an agreement with any corporation that has unpaid Federal tax liabilities or recent felony convictions without first considering the corporation for debarment. E.g., Consolidated Appropriations Act, 2021, Pub. L. 116-260, div. E, title VII, §§ 744–745. U.S. DOT Order 4200.6 defines a “corporation” as “any private corporation, partnership, trust, joint-stock company, sole proprietorship, or other business association”, and applies the restriction to all tiers of subawards. As prescribed by U.S. DOT Order 4200.6, FTA requires each business association applicant to certify as to its tax and felony status.

If the applicant is a private corporation, partnership, trust, joint-stock company, sole proprietorship, or other business association, the applicant certifies that:

- (a) It has no unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and
- (b) It has not been convicted of a felony criminal violation under any Federal law within the preceding 24 months.

CATEGORY 4. LOBBYING.

If the applicant will apply for a grant or cooperative agreement exceeding \$100,000, or a loan, line of credit, loan guarantee, or loan insurance exceeding \$150,000, it must make the following certification and, if applicable, make a disclosure regarding the applicant’s lobbying activities. This certification is required by 49 CFR § 20.110 and app. A to that part.

This certification does not apply to an applicant that is an Indian Tribe, Indian organization, or an Indian tribal organization exempt from the requirements of 49 CFR Part 20.

4.1. Certification for Contracts, Grants, Loans, and Cooperative Agreements.

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or

an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

4.2. Statement for Loan Guarantees and Loan Insurance.

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

CATEGORY 5. PRIVATE SECTOR PROTECTIONS.

If the applicant will apply for funds that it will use to acquire or operate public transportation facilities or equipment, the applicant must make the following certification regarding protections for the private sector.

5.1. Charter Service Agreement.

To enforce the provisions of 49 U.S.C. § 5323(d), FTA's charter service regulation requires each applicant seeking assistance from FTA for the purpose of acquiring or operating any public transportation equipment or facilities to make the following Charter Service Agreement. 49 CFR § 604.4.

The applicant agrees that it, and each of its subrecipients, and third party contractors at any level who use FTA-funded vehicles, may provide charter service using equipment or facilities acquired with Federal assistance authorized under the Federal Transit Laws only in compliance with the regulations set out in 49 CFR Part 604, the terms and conditions of which are incorporated herein by reference.

5.2. School Bus Agreement.

To enforce the provisions of 49 U.S.C. § 5323(f), FTA's school bus regulation requires each applicant seeking assistance from FTA for the purpose of acquiring or operating any public transportation equipment or facilities to make the following agreement regarding the provision of school bus services. 49 CFR § 605.15.

- (a) If the applicant is not authorized by the FTA Administrator under 49 CFR § 605.11 to engage in school bus operations, the applicant agrees and certifies as follows:
 - (1) The applicant and any operator of project equipment agrees that it will not engage in school bus operations in competition with private school bus operators.
 - (2) The applicant agrees that it will not engage in any practice which constitutes a means of avoiding the requirements of this agreement, part 605 of the Federal Mass Transit Regulations, or section 164(b) of the Federal-Aid Highway Act of 1973 (49 U.S.C. 1602a(b)).
- (b) If the applicant is authorized or obtains authorization from the FTA Administrator to engage in school bus operations under 49 CFR § 605.11, the applicant agrees as follows:
 - (1) The applicant agrees that neither it nor any operator of project equipment will engage in school bus operations in competition with private school bus operators except as provided herein.
 - (2) The applicant, or any operator of project equipment, agrees to promptly notify the FTA Administrator of any changes in its operations which might jeopardize the continuation of an exemption under § 605.11.
 - (3) The applicant agrees that it will not engage in any practice which constitutes a means of avoiding the requirements of this agreement, part 605 of the Federal Transit Administration regulations or section 164(b) of the Federal-Aid Highway Act of 1973 (49 U.S.C. 1602a(b)).
 - (4) The applicant agrees that the project facilities and equipment shall be used for the provision of mass transportation services within its urban area and that any other

use of project facilities and equipment will be incidental to and shall not interfere with the use of such facilities and equipment in mass transportation service to the public.

CATEGORY 6. TRANSIT ASSET MANAGEMENT PLAN.

If the applicant owns, operates, or manages capital assets used to provide public transportation, the following certification is required by 49 U.S.C. § 5326(a).

The applicant certifies that it is in compliance with 49 CFR Part 625.

CATEGORY 7. ROLLING STOCK BUY AMERICA REVIEWS AND BUS TESTING.

7.1. Rolling Stock Buy America Reviews.

If the applicant will apply for an award to acquire rolling stock for use in revenue service, it must make this certification. This certification is required by 49 CFR § 663.7.

The applicant certifies that it will conduct or cause to be conducted the pre-award and post-delivery audits prescribed by 49 CFR Part 663 and will maintain on file the certifications required by Subparts B, C, and D of 49 CFR Part 663.

7.2. Bus Testing.

If the applicant will apply for funds for the purchase or lease of any new bus model, or any bus model with a major change in configuration or components, the applicant must make this certification. This certification is required by 49 CFR § 665.7.

The applicant certifies that the bus was tested at the Bus Testing Facility and that the bus received a passing test score as required by 49 CFR Part 665. The applicant has received or will receive the appropriate full Bus Testing Report and any applicable partial testing reports before final acceptance of the first vehicle.

CATEGORY 8. URBANIZED AREA FORMULA GRANTS PROGRAM.

If the applicant will apply for an award under the Urbanized Area Formula Grants Program (49 U.S.C. § 5307), or any other program or award that is subject to the requirements of 49 U.S.C. § 5307, including the Formula Grants for the Enhanced Mobility of Seniors Program (49 U.S.C. § 5310); “flex funds” from infrastructure programs administered by the Federal Highways Administration (see 49 U.S.C. § 5334(i)); projects that will receive an award authorized by the Transportation Infrastructure Finance and Innovation Act (“TIFIA”) (23 U.S.C. §§ 601–609) or State Infrastructure Bank Program (23 U.S.C. § 610) (see 49 U.S.C. § 5323(o)); formula awards or competitive awards to urbanized areas under the Grants for

Buses and Bus Facilities Program (49 U.S.C. § 5339(a) and (b)); or low or no emission awards to any area under the Grants for Buses and Bus Facilities Program (49 U.S.C. § 5339(c)), the applicant must make the following certification. This certification is required by 49 U.S.C. § 5307(c)(1).

The applicant certifies that it:

- (a) Has or will have the legal, financial, and technical capacity to carry out the program of projects (developed pursuant 49 U.S.C. § 5307(b)), including safety and security aspects of the program;
- (b) Has or will have satisfactory continuing control over the use of equipment and facilities;
- (c) Will maintain equipment and facilities in accordance with the applicant's transit asset management plan;
- (d) Will ensure that, during non-peak hours for transportation using or involving a facility or equipment of a project financed under this section, a fare that is not more than 50 percent of the peak hour fare will be charged for any—
 - (1) Senior;
 - (2) Individual who, because of illness, injury, age, congenital malfunction, or any other incapacity or temporary or permanent disability (including an individual who is a wheelchair user or has semi-ambulatory capability), cannot use a public transportation service or a public transportation facility effectively without special facilities, planning, or design; and
 - (3) Individual presenting a Medicare card issued to that individual under title II or XVIII of the Social Security Act (42 U.S.C. §§ 401 et seq., and 1395 et seq.);
- (e) In carrying out a procurement under 49 U.S.C. § 5307, will comply with 49 U.S.C. §§ 5323 (general provisions) and 5325 (contract requirements);
- (f) Has complied with 49 U.S.C. § 5307(b) (program of projects requirements);
- (g) Has available and will provide the required amounts as provided by 49 U.S.C. § 5307(d) (cost sharing);
- (h) Will comply with 49 U.S.C. §§ 5303 (metropolitan transportation planning) and 5304 (statewide and nonmetropolitan transportation planning);
- (i) Has a locally developed process to solicit and consider public comment before raising a fare or carrying out a major reduction of transportation;
- (j) Either—
 - (1) Will expend for each fiscal year for public transportation security projects, including increased lighting in or adjacent to a public transportation system (including bus stops, subway stations, parking lots, and garages), increased camera surveillance of an area in or adjacent to that system, providing an emergency telephone line to contact law enforcement or security personnel in an area in or adjacent to that system, and any other project intended to increase the security and safety of an existing or planned public transportation system, at least

- 1 percent of the amount the recipient receives for each fiscal year under 49 U.S.C. § 5336; or
- (2) Has decided that the expenditure for security projects is not necessary;
- (k) In the case of an applicant for an urbanized area with a population of not fewer than 200,000 individuals, as determined by the Bureau of the Census, will submit an annual report listing projects carried out in the preceding fiscal year under 49 U.S.C. § 5307 for associated transit improvements as defined in 49 U.S.C. § 5302; and
- (l) Will comply with 49 U.S.C. § 5329(d) (public transportation agency safety plan).

CATEGORY 9. FORMULA GRANTS FOR RURAL AREAS.

If the applicant will apply for funds made available to it under the Formula Grants for Rural Areas Program (49 U.S.C. § 5311), it must make this certification. Paragraph (a) of this certification helps FTA make the determinations required by 49 U.S.C. § 5310(b)(2)(C). Paragraph (b) of this certification is required by 49 U.S.C. § 5311(f)(2). Paragraph (c) of this certification, which applies to funds apportioned for the Appalachian Development Public Transportation Assistance Program, is necessary to enforce the conditions of 49 U.S.C. § 5311(c)(2)(D).

- (a) The applicant certifies that its State program for public transportation service projects, including agreements with private providers for public transportation service—
 - (1) Provides a fair distribution of amounts in the State, including Indian reservations; and
 - (2) Provides the maximum feasible coordination of public transportation service assisted under 49 U.S.C. § 5311 with transportation service assisted by other Federal sources; and
- (b) If the applicant will in any fiscal year expend less than 15% of the total amount made available to it under 49 U.S.C. § 5311 to carry out a program to develop and support intercity bus transportation, the applicant certifies that it has consulted with affected intercity bus service providers, and the intercity bus service needs of the State are being met adequately.
- (c) If the applicant will use for a highway project amounts that cannot be used for operating expenses authorized under 49 U.S.C. § 5311(c)(2) (Appalachian Development Public Transportation Assistance Program), the applicant certifies that—
 - (1) It has approved the use in writing only after providing appropriate notice and an opportunity for comment and appeal to affected public transportation providers; and
 - (2) It has determined that otherwise eligible local transit needs are being addressed.

**CATEGORY 10. FIXED GUIDEWAY CAPITAL INVESTMENT GRANTS AND THE
EXPEDITED PROJECT DELIVERY FOR CAPITAL INVESTMENT GRANTS
PILOT PROGRAM.**

If the applicant will apply for an award under any subsection of the Fixed Guideway Capital Investment Program (49 U.S.C. § 5309), including an award made pursuant to the FAST Act's Expedited Project Delivery for Capital Investment Grants Pilot Program (Pub. L. 114-94, div. A, title III, § 3005(b)), the applicant must make the following certification. This certification is required by 49 U.S.C. § 5309(c)(2) and Pub. L. 114-94, div. A, title III, § 3005(b)(3)(B).

The applicant certifies that it:

- (a) Has or will have the legal, financial, and technical capacity to carry out its Award, including the safety and security aspects of that Award,
- (b) Has or will have satisfactory continuing control over the use of equipment and facilities acquired or improved under its Award.
- (c) Will maintain equipment and facilities acquired or improved under its Award in accordance with its transit asset management plan; and
- (d) Will comply with 49 U.S.C. §§ 5303 (metropolitan transportation planning) and 5304 (statewide and nonmetropolitan transportation planning).

**CATEGORY 11. GRANTS FOR BUSES AND BUS FACILITIES AND LOW OR NO
EMISSION VEHICLE DEPLOYMENT GRANT PROGRAMS.**

If the applicant is in an urbanized area and will apply for an award under subsection (a) (formula grants) or subsection (b) (competitive grants) of the Grants for Buses and Bus Facilities Program (49 U.S.C. § 5339), the applicant must make the certification in Category 8 for Urbanized Area Formula Grants (49 U.S.C. § 5307). This certification is required by 49 U.S.C. § 5339(a)(3) and (b)(6), respectively.

If the applicant is in a rural area and will apply for an award under subsection (a) (formula grants) or subsection (b) (competitive grants) of the Grants for Buses and Bus Facilities Program (49 U.S.C. § 5339), the applicant must make the certification in Category 9 for Formula Grants for Rural Areas (49 U.S.C. § 5311). This certification is required by 49 U.S.C. § 5339(a)(3) and (b)(6), respectively.

If the applicant, regardless of whether it is in an urbanized or rural area, will apply for an award under subsection (c) (low or no emission vehicle grants) of the Grants for Buses and Bus Facilities Program (49 U.S.C. § 5339), the applicant must make the certification in Category 8 for Urbanized Area Formula Grants (49 U.S.C. § 5307). This certification is required by 49 U.S.C. § 5339(c)(3).

Making this certification will incorporate by reference the applicable certifications in Category 8 or Category 9.

CATEGORY 12. ENHANCED MOBILITY OF SENIORS AND INDIVIDUALS WITH DISABILITIES PROGRAMS.

If the applicant will apply for an award under the Formula Grants for the Enhanced Mobility of Seniors and Individuals with Disabilities Program (49 U.S.C. § 5310), it must make the certification in Category 8 for Urbanized Area Formula Grants (49 U.S.C. § 5307). This certification is required by 49 U.S.C. § 5310(e)(1). Making this certification will incorporate by reference the certification in Category 8, except that FTA has determined that (d), (f), (i), (j), and (k) of Category 8 do not apply to awards made under 49 U.S.C. § 5310 and will not be enforced.

In addition to the certification in Category 8, the applicant must make the following certification that is specific to the Formula Grants for the Enhanced Mobility of Seniors and Individuals with Disabilities Program. This certification is required by 49 U.S.C. § 5310(e)(2).

The applicant certifies that:

- (a) The projects selected by the applicant are included in a locally developed, coordinated public transit-human services transportation plan;
- (b) The plan described in clause (a) was developed and approved through a process that included participation by seniors, individuals with disabilities, representatives of public, private, and nonprofit transportation and human services providers, and other members of the public;
- (c) To the maximum extent feasible, the services funded under 49 U.S.C. § 5310 will be coordinated with transportation services assisted by other Federal departments and agencies, including any transportation activities carried out by a recipient of a grant from the Department of Health and Human Services; and
- (d) If the applicant will allocate funds received under 49 U.S.C. § 5310 to subrecipients, it will do so on a fair and equitable basis.

CATEGORY 13. STATE OF GOOD REPAIR GRANTS.

If the applicant will apply for an award under FTA's State of Good Repair Grants Program (49 U.S.C. § 5337), it must make the following certification. Because FTA generally does not review the transit asset management plans of public transportation providers, this certification is necessary to enforce the provisions of 49 U.S.C. § 5337(a)(4).

The applicant certifies that the projects it will carry out using assistance authorized by the State of Good Repair Grants Program, 49 U.S.C. § 5337, are aligned with the applicant's most recent

transit asset management plan and are identified in the investment and prioritization section of such plan, consistent with the requirements of 49 CFR Part 625.

CATEGORY 14. INFRASTRUCTURE FINANCE PROGRAMS.

If the applicant will apply for an award for a project that will include assistance under the Transportation Infrastructure Finance and Innovation Act (“TIFIA”) Program (23 U.S.C. §§ 601–609) or the State Infrastructure Banks (“SIB”) Program (23 U.S.C. § 610), it must make the certifications in Category 8 for the Urbanized Area Formula Grants Program, Category 10 for the Fixed Guideway Capital Investment Grants program, and Category 13 for the State of Good Repair Grants program. These certifications are required by 49 U.S.C. § 5323(o).

Making this certification will incorporate the certifications in Categories 8, 10, and 13 by reference.

CATEGORY 15. ALCOHOL AND CONTROLLED SUBSTANCES TESTING.

If the applicant will apply for an award under FTA’s Urbanized Area Formula Grants Program (49 U.S.C. § 5307), Fixed Guideway Capital Investment Program (49 U.S.C. § 5309), Formula Grants for Rural Areas Program (49 U.S.C. § 5311), or Grants for Buses and Bus Facilities Program (49 U.S.C. § 5339) programs, the applicant must make the following certification. The applicant must make this certification on its own behalf and on behalf of its subrecipients and contractors. This certification is required by 49 CFR § 655.83.

The applicant certifies that it, its subrecipients, and its contractors are compliant with FTA’s regulation for the Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations, 49 CFR Part 655.

CATEGORY 16. RAIL SAFETY TRAINING AND OVERSIGHT.

If the applicant is a State with at least one rail fixed guideway system, or is a State Safety Oversight Agency, or operates a rail fixed guideway system, it must make the following certification. The elements of this certification are required by 49 CFR §§ 659.43, 672.31, and 674.39.

The applicant certifies that the rail fixed guideway public transportation system and the State Safety Oversight Agency for the State are:

- (a) Compliant with the requirements of 49 CFR Part 659, “Rail Fixed Guideway Systems; State Safety Oversight”;
- (b) Compliant with the requirements of 49 CFR Part 672, “Public Transportation Safety Certification Training Program”; and
- (c) Compliant with the requirements of 49 CFR Part 674, “State Safety Oversight”.

CATEGORY 17. DEMAND RESPONSIVE SERVICE.

If the applicant operates demand responsive service and will apply for an award to purchase a non-rail vehicle that is not accessible within the meaning of 49 CFR Part 37, it must make the following certification. This certification is required by 49 CFR § 37.77.

The applicant certifies that the service it provides to individuals with disabilities is equivalent to that provided to other persons. A demand responsive system, when viewed in its entirety, is deemed to provide equivalent service if the service available to individuals with disabilities, including individuals who use wheelchairs, is provided in the most integrated setting appropriate to the needs of the individual and is equivalent to the service provided other individuals with respect to the following service characteristics:

- (a) Response time;
- (b) Fares;
- (c) Geographic area of service;
- (d) Hours and days of service;
- (e) Restrictions or priorities based on trip purpose;
- (f) Availability of information and reservation capability; and
- (g) Any constraints on capacity or service availability.

CATEGORY 18. INTEREST AND FINANCING COSTS.

If the applicant will pay for interest or other financing costs of a project using assistance awarded under the Urbanized Area Formula Grants Program (49 U.S.C. § 5307), the Fixed Guideway Capital Investment Grants Program (49 U.S.C. § 5309), or any program that must comply with the requirements of 49 U.S.C. § 5307, including the Formula Grants for the Enhanced Mobility of Seniors Program (49 U.S.C. § 5310), “flex funds” from infrastructure programs administered by the Federal Highways Administration (see 49 U.S.C. § 5334(i)), or awards to urbanized areas under the Grants for Buses and Bus Facilities Program (49 U.S.C. § 5339), the applicant must make the following certification. This certification is required by 49 U.S.C. §§ 5307(e)(3) and 5309(k)(2)(D).

The applicant certifies that:

- (a) Its application includes the cost of interest earned and payable on bonds issued by the applicant only to the extent proceeds of the bonds were or will be expended in carrying out the project identified in its application; and
- (b) The applicant has shown or will show reasonable diligence in seeking the most favorable financing terms available to the project at the time of borrowing.

CATEGORY 19. CONSTRUCTION HIRING PREFERENCES.

If the applicant will ask FTA to approve the use of geographic, economic, or any other hiring preference not otherwise authorized by law on any contract or construction project to be assisted with an award from FTA, it must make the following certification. This certification is required by the Consolidated Appropriations Act, 2021, Pub. L. 116-260, div. L, title I, § 199(b).

The applicant certifies the following:

- (a) That except with respect to apprentices or trainees, a pool of readily available but unemployed individuals possessing the knowledge, skill, and ability to perform the work that the contract requires resides in the jurisdiction;
- (b) That the grant recipient will include appropriate provisions in its bid document ensuring that the contractor does not displace any of its existing employees in order to satisfy such hiring preference; and
- (c) That any increase in the cost of labor, training, or delays resulting from the use of such hiring preference does not delay or displace any transportation project in the applicable Statewide Transportation Improvement Program or Transportation Improvement Program.

CATEGORY 20. CYBERSECURITY CERTIFICATION FOR RAIL ROLLING STOCK AND OPERATIONS.

If the applicant operates a rail fixed guideway public transportation system, it must make this certification. This certification is required by 49 U.S.C. § 5323(v), a new subsection added by the National Defense Authorization Act for Fiscal Year 2020, Pub. L. 116-92, § 7613 (Dec. 20, 2019). For information about standards or practices that may apply to a rail fixed guideway public transportation system, visit <https://www.nist.gov/cyberframework> and <https://www.cisa.gov/>.

The applicant certifies that it has established a process to develop, maintain, and execute a written plan for identifying and reducing cybersecurity risks that complies with the requirements of 49 U.S.C. § 5323(v)(2).

CATEGORY 21. PUBLIC TRANSPORTATION ON INDIAN RESERVATIONS FORMULA AND DISCRETIONARY PROGRAM (TRIBAL TRANSIT PROGRAMS).

Before FTA may provide Federal assistance for an Award financed under either the Public Transportation on Indian Reservations Formula or Discretionary Program authorized under 49 U.S.C. § 5311(c)(1), as amended by the FAST Act, (Tribal Transit Programs), the applicant must select the Certifications in Category 21, except as FTA determines otherwise in writing.

Tribal Transit Program applicants may certify to this Category and Category 1 (Certifications and Assurances Required of Every Applicant) and need not make any other certification, to meet Tribal Transit Program certification requirements. If an applicant will apply for any program in addition to the Tribal Transit Program, additional certifications may be required.

FTA has established terms and conditions for Tribal Transit Program grants financed with Federal assistance appropriated or made available under 49 U.S.C. § 5311(c)(1). The applicant certifies that:

- (a) It has or will have the legal, financial, and technical capacity to carry out its Award, including the safety and security aspects of that Award.
- (b) It has or will have satisfactory continuing control over the use of its equipment and facilities acquired or improved under its Award.
- (c) It will maintain its equipment and facilities acquired or improved under its Award, in accordance with its transit asset management plan and consistent with FTA regulations, “Transit Asset Management,” 49 CFR Part 625. Its Award will achieve maximum feasible coordination with transportation service financed by other federal sources.
- (d) With respect to its procurement system:
 - (1) It will have a procurement system that complies with U.S. DOT regulations, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” 2 CFR Part 1201, which incorporates by reference U.S. OMB regulatory guidance, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” 2 CFR Part 200, for Awards made on or after December 26, 2014,
 - (2) It will have a procurement system that complies with U.S. DOT regulations, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,” 49 CFR Part 18, specifically former 49 CFR § 18.36, for Awards made before December 26, 2014, or
 - (3) It will inform FTA promptly if its procurement system does not comply with either of those U.S. DOT regulations.
- (e) It will comply with the Certifications, Assurances, and Agreements in:
 - (1) Category 05.1 and 05.2 (Charter Service Agreement and School Bus Agreement),
 - (2) Category 06 (Transit Asset Management Plan),
 - (3) Category 07.1 and 07.2 (Rolling Stock Buy America Reviews and Bus Testing),
 - (4) Category 09 (Formula Grants for Rural Areas),
 - (5) Category 15 (Alcohol and Controlled Substances Testing), and
 - (6) Category 17 (Demand Responsive Service).

**FEDERAL FISCAL YEAR 2021 CERTIFICATIONS AND ASSURANCES FOR FTA
ASSISTANCE PROGRAMS**

(Signature pages alternate to providing Certifications and Assurances in TrAMS.)

Name of Applicant: _____

The Applicant certifies to **the applicable provisions** of categories 01–21.

Category	Certification
01	Certifications and Assurances Required of Every Applicant
02	Public Transportation Agency Safety Plans
03	Tax Liability and Felony Convictions
04	Lobbying
05	Private Sector Protections
06	Transit Asset Management Plan
07	Rolling Stock Buy America Reviews and Bus Testing
08	Urbanized Area Formula Grants Program
09	Formula Grants for Rural Areas
10	Fixed Guideway Capital Investment Grants and the Expedited Project Delivery for Capital Investment Grants Pilot Program
11	Grants for Buses and Bus Facilities and Low or No Emission Vehicle Deployment Grant Programs

- 12 Enhanced Mobility of Seniors and Individuals with Disabilities Programs
- 13 State of Good Repair Grants
- 14 Infrastructure Finance Programs
- 15 Alcohol and Controlled Substances Testing
- 16 Rail Safety Training and Oversight
- 17 Demand Responsive Service
- 18 Interest and Financing Costs
- 19 Construction Hiring Preferences
- 20 Cybersecurity Certification for Rail Rolling Stock and Operations
- 21 Tribal Transit Programs

FEDERAL FISCAL YEAR 2021 FTA CERTIFICATIONS AND ASSURANCES SIGNATURE

PAGE

(Required of all Applicants for federal assistance to be awarded by FTA in FY 2021)

AFFIRMATION OF APPLICANT

Name of the Applicant: _____

BY SIGNING BELOW, on behalf of the Applicant, I declare that it has duly authorized me to make these Certifications and Assurances and bind its compliance. Thus, it agrees to comply with all federal laws, regulations, and requirements, follow applicable federal guidance, and comply with the Certifications and Assurances as indicated on the foregoing page applicable to each application its Authorized Representative makes to the Federal Transit Administration (FTA) in federal fiscal year 2021, irrespective of whether the individual that acted on his or her Applicant's behalf continues to represent it.

FTA intends that the Certifications and Assurances the Applicant selects on the other side of this document should apply to each Award for which it now seeks, or may later seek federal assistance to be awarded during federal fiscal year 2021.

The Applicant affirms the truthfulness and accuracy of the Certifications and Assurances it has selected in the statements submitted with this document and any other submission made to FTA, and acknowledges that the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 *et seq.*, and implementing U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR part 31, apply to any certification, assurance or submission made to

FTA. The criminal provisions of 18 U.S.C. § 1001 apply to any certification, assurance, or submission made in connection with a federal public transportation program authorized by 49 U.S.C. chapter 53 or any other statute

In signing this document, I declare under penalties of perjury that the foregoing Certifications and Assurances, and any other statements made by me on behalf of the Applicant are true and accurate.

Signature _____ Date: _____

Name _____ Authorized Representative of Applicant

AFFIRMATION OF APPLICANT'S ATTORNEY

For (Name of Applicant): _____

As the undersigned Attorney for the above-named Applicant, I hereby affirm to the Applicant that it has authority under state, local, or tribal government law, as applicable, to make and comply with the Certifications and Assurances as indicated on the foregoing pages. I further affirm that, in my opinion, the Certifications and Assurances have been legally made and constitute legal and binding obligations on it.

I further affirm that, to the best of my knowledge, there is no legislation or litigation pending or imminent that might adversely affect the validity of these Certifications and Assurances, or of the performance of its FTA assisted Award.

Signature _____ Date: _____

Name _____ Attorney for Applicant

Each Applicant for federal assistance to be awarded by FTA must provide an Affirmation of Applicant's Attorney pertaining to the Applicant's legal capacity. The Applicant may enter its electronic signature in lieu of the Attorney's signature within TrAMS, provided the Applicant has on file and uploaded to TrAMS this hard-copy Affirmation, signed by the attorney and dated this federal fiscal year.

HIGH VALLEY TRANSIT DISTRICT

Administrative Policies and Procedures

Adopted March ____, 2021

Prepared By
The Administrative Staff of High Valley
Transit District

High Valley Transit District

ADMINISTRATIVE POLICIES AND PROCEDURES

TABLE OF CONTENTS

SECTION 1.0	Definitions & Acronyms.....	2
SECTION 2.0	Powers of the District.....	5
SECTION 3.0	Guiding Fiscal Policies.....	10
SECTION 4.0	Budgeting Guidelines.....	14
SECTION 5.0	Accounting & Internal Controls.....	16
SECTION 6.0	Investments.....	20
SECTION 7.0	Credit Card Policy.....	21
SECTION 8.0	Vehicle Policy.....	23
SECTION 9.0	Meetings.....	28
SECTION 10.0	Risk Management.....	33
SECTION 11.0	Conduct & Ethics.....	36
SECTION 12.0	Public Records Policy.....	39
SECTION 13.0	Technology Policy.....	40
SECTION 14.0	Procurement Policy.....	43
SECTION 15.0	Personnel Policy.....	106
SECTION 16.0	Annexations.....	193
SECTION 17.0	State & Federal Grants.....	194

HIGH VALLEY TRANSIT DISTRICT

Administrative Policies

SECTION 1.0 DEFINITIONS & ACRONYMS

- 1.1 BOARD:** The High Valley Transit District Board of Trustees, which are organized, governed and appointed consistent with Summit County Code Title 2, Chapter 7.
- 1.2 BOARD ACTION:** An official vote or action of the voting members of the Board where a quorum is present.
- 1.3 BOND:** A written obligation to repay borrowed money, whether denominated a bond, note, warrant, certificate of indebtedness, or otherwise; and a lease agreement, installment purchase agreement, or other agreement that:
- a. includes an obligation by the district to pay money; and
 - b. the District's Board, in its discretion, treats as a bond for purposes of Utah Code Title 11, Chapter 14, Local Government Bonding Act, or Utah Code Title 11, Chapter 27, Utah Refunding Bond Act
- 1.4 CASH OPERATING EXPENSES:** The budgeted total operating expenses less depreciation.
- 1.5 COMPTROLLER:** The member of senior management as set forth in Summit County Ordinance No. 917.
- 1.6 COUNTY:** Summit County, Utah.
- 1.7 COUNTY COUNCIL:** The legislative body of Summit County.
- 1.8 DEPARTMENT DIRECTOR:** The senior management positions reporting directly to the General Manager, including:
- a. General Counsel
 - b. Treasurer
 - c. Comptroller
- 1.9 DISTRICT:** The High Valley Transit District.
- 1.10 DISTRICT MANAGEMENT:** The General Manager and Department Directors.
- 1.11 FACILITY OR FACILITIES:** Any structure, building, system, land, water right, water, or other real or personal property required to provide a service that the District is authorized to provide, including any related or appurtenant easement or right-of-way, improvement, utility, landscaping, sidewalk, road, curb, gutter, equipment, or furnishing.
- 1.12 GENERAL MANAGER:** The chief executive officer of the District who is appointed by the Board.
- 1.13 GENERAL COUNSEL:** The member of senior management as set forth in Summit County Ordinance No. 917.
- 1.14 OFFICERS:** The chair, vice-chair and secretary of the District.

1.15 PUBLIC TRANSIT: Regular, continuing, shared-ride, surface transportation services that are open to the general public or open to a segment of the general public defined by age, disability, or low income.

a. "Public transit" does not include transportation services provided by:

- (i) chartered bus;
- (ii) sightseeing bus;
- (iii) taxi;
- (iv) school bus service;
- (v) courtesy shuttle service for patrons of one or more specific establishments; or
- (vi) intra-terminal or intra-facility shuttle services.

1.16 SERVICE MILES: Revenue service (miles, hours and trips) or the time when a vehicle is available to the general public and there is an expectation of carrying passengers. These passengers either: (a) directly pay fares; (b) are subsidized by public policy; or (c) provide payment through some contractual arrangement. Vehicles operated in fare free service are considered in revenue service. Revenue service includes layover/recovery time but excludes deadhead, vehicle maintenance and testing, school bus service and charter service.

1.17 TRANSIT FACILITY: A transit vehicle, transit station, depot, passenger loading or unloading zone, parking lot, or other facility:

- a. leased by or operated by or on behalf of the District; and
- b. related to the public transit services provided by the District, including:

- (i) railway or other right-of-way;
- (ii) railway line; and
- (iii) a reasonable area immediately adjacent to a designated stop on a route traveled by a transit vehicle.

1.18 TRANSIT VEHICLE: A passenger bus, coach, railcar, van, or other vehicle operated as public transportation by the District.

1.19 TREASURER: The member of senior management as set forth in Summit County Ordinance No. 917.

1.20 UNIT: A unit of **regularly scheduled passenger routes**, as measured in **Service Miles**, proposed to be served by the District in each municipality or unincorporated area within any county in the following calendar year.

1.21 ACRONYMS:

ADA	Americans with Disabilities Act
AOG	Association of Governments
CAP	Cost Allocation Plan
CDL	Commercial Driver's License
CFR	Code of Federal Regulations
DBE	Disadvantaged Business Enterprise
EEO	Equal Employment Opportunity
FAST ACT	Fixing America's Surface Transportation Act
FFATA	Federal Funding Accountability and Transparency FFY Federal Fiscal Year

FHWA	Federal Highway Administration
FMCSA	Federal Motor Carrier Safety Administration
FMCSR	Federal Motor Carrier Safety Regulations
FMVSS	Federal Motor Vehicle Safety Standards
FTA	Federal Transit Administration
FY	Fiscal Year
GIS	Geographic Information System
GPS	Global Positioning System
ITS	Intelligent Transportation System
JARC	Job Access Reverse Commute
LEP	Limited English Proficiency
LOI	Letter of Intent
MAP-21	Moving Ahead for Progress in the 21st Century
MAG	Mountainlands Association of Governments
MPO	Metropolitan Planning Organization
NTD	National Transit Database
OMB	Office of Management and Budget
PCA	Personal Care Assistant
POP	Program of Projects
PTT	Public Transit Team (UDOT)
RFP	Request for Proposals
RPO	Rural Planning Organization
RTAP	Rural Transit Assistance Program
SAFETEA-LU	Safe, Accountable, Flexible, Efficient Transportation Equity Act – A Legacy for Users
SMP	State Management Plan
SMR	State Management Review
STIP	Statewide Transportation Improvement Program
TIP	Transportation Improvement Plan
TrAMS	Transit Award Management System
TASP	Transit Agency Safety Plan
UDOT	Utah Department of Transportation
ULB	Useful Life Benchmark
USC	United States Code
USDOT	U.S. Department of Transportation
UTA	Utah Transit Authority

SECTION 2.0 POWERS OF THE DISTRICT

- 2.1 The District is a body corporate and politic with perpetual succession; a quasi-municipal corporation; and a political subdivision of the state, created in 2004 and organized pursuant to Summit County Code Title 2, Chapter 7, *as amended* by Summit County Ordinance No. 917.
- 2.2 The District may sue and be sued.
- 2.3 Generally, the District may by Board Action:
 - 2.3.1 Acquire, by any lawful means, or lease any real property, personal property, or a groundwater right necessary or convenient to the full exercise of the District's powers.
 - 2.3.2 Acquire, by any lawful means, any interest in real property, personal property, or a groundwater right necessary or convenient to the full exercise of the District's powers.
 - 2.3.3 Transfer an interest in or dispose of any property or interest consistent with state law.
 - 2.3.4 Acquire or construct works, facilities, and improvements necessary or convenient to the full exercise of the District's powers, and operate, control, maintain, and use those works, facilities, and improvements.
 - 2.3.5 Borrow money and incur indebtedness for any lawful District purpose.
 - 2.3.6 Issue bonds, including refunding bonds:
 - a. for any lawful District purpose; and
 - b. as provided in and subject to Utah law.
 - 2.3.7 Levy and collect property taxes:
 - a. for any lawful District purpose or expenditure, including to cover a deficit resulting from tax delinquencies in a preceding year; and
 - b. as provided in and subject to Utah law.
 - 2.3.8 As provided in Utah Code, Title 78B, Chapter 6, Part 5, Eminent Domain, acquire by eminent domain property necessary to the exercise of the District's powers.
 - 2.3.9 Invest money as provided in Utah Code, Title 51, Chapter 7, State Money Management Act.
 - 2.3.10 If applicable, charge and collect a fee to pay for the cost of connecting a customer's property to District facilities in order for the District to provide service to the property.
 - 2.3.11 Enter into a contract that the Board considers necessary, convenient, or desirable to carry out the District's purposes, including a contract:
 - a. with the United States or any department or agency of the United States;
 - b. to indemnify and save harmless; or

- c. to do any act to exercise District powers.
- 2.3.12 Purchase supplies, equipment, and materials.
- 2.3.13 Encumber district property upon terms and conditions that the Board considers appropriate.
- 2.3.14 Exercise other powers and perform other functions that are provided by law.
- 2.3.15 Construct and maintain works and establish and maintain facilities, including works or facilities:
 - a. across or along any public street or highway if the District:
 - i) promptly restores the street or highway, as much as practicable, to its former state of usefulness; and
 - (ii) does not use the street or highway in a manner that completely or unnecessarily impairs the usefulness of it;
 - b. in, upon, or over any vacant public lands that are or become the property of the state, including school and institutional trust lands, as defined in Utah Code §53C-1-103, if the director of the School and Institutional Trust Lands Administration consents; or
 - c. across any stream of water or watercourse, subject to Utah Code §73-3-29.
- 2.3.16 Perform any act or exercise any power reasonably necessary for the efficient operation of the District in carrying out its purposes.
- 2.3.17 Upon the terms and for the consideration, whether monetary or nonmonetary consideration or no consideration, that the Board considers to be in the best interests of the District and the public, agree:
 - a. with another political subdivision of the state; or
 - b. with a public or private owner of property on which the District has a right-of-way or adjacent to which the District owns fee title to property; and
 - c. to allow the use of property:
 - (i) owned by the District; or
 - (ii) on which the District has a right-of-way.
- 2.3.18 If the District receives, as determined by the Board, adequate monetary or nonmonetary consideration in return it may:
 - a. provide services or nonmonetary assistance to a nonprofit entity;
 - b. waive fees required to be paid by a nonprofit entity; or
 - c. provide monetary assistance to a nonprofit entity, whether from the District's own funds or from funds the District receives from the state or any other source.

- 2.3.19 Impose fees or other charges for commodities, services, or facilities provided by the District, to pay some or all of the District's costs of providing the commodities, services, and facilities, including the costs of:
- a. maintaining and operating the District;
 - b. acquiring, purchasing, constructing, improving, or enlarging District facilities;
 - c. issuing bonds and paying debt service on District bonds; and
 - d. providing a reserve established by the Board.
- 2.3.20 Take any other action the Board considers appropriate and adopt regulations to assure the collection of all fees and charges that the District imposes.
- 2.3.21 Acquire, lease, or construct and operate electrical generation, transmission, and distribution facilities, if:
- a. the purpose of the facilities is to harness energy that results inherently from the district's operation of a project or facilities that the District is authorized to operate or from the District providing a service that the district is authorized to provide;
 - b. the generation of electricity from the facilities is incidental to the primary operations of the District; and
 - c. operation of the facilities will not hinder or interfere with the primary operations of the District.
- 2.3.22 Use electricity generated by the facilities; or (subject to Utah law) sell electricity generated by the facilities to an electric utility or municipality with an existing system for distributing electricity.
- 2.3.23 Make and pass ordinances, resolutions, and orders that are:
- a. not repugnant to the United States Constitution, the Utah Constitution, or the provisions of this part; and
 - b. necessary for:
 - (i) the government and management of the affairs of the District;
 - (ii) the execution of District powers; and
 - (iii) carrying into effect the provisions of Utah laws.
- 2.3.24 Provide by resolution, under terms and conditions the Board considers fit, for the payment of demands against the District without prior specific approval by the Board, if the payment is:
- a. for a purpose for which the expenditure has been previously approved by the Board;
 - b. in an amount no greater than the amount authorized; and
 - c. approved by the General Manager or other officer or deputy as the Board prescribes.

- 2.3.25 Hold public hearings and subpoena witnesses; and appoint district officers to conduct a hearing and require the Officers to make findings and conclusions and report them to the Board.
- 2.3.26 Appoint a custodian for the funds and securities under its control; and if a custodian is appointed, pay the fees for the custodian's services from the interest earnings of the investment fund for which the custodian is appointed.
- 2.3.27 Administer oaths and affirmations in a District investigation or proceeding.
- 2.4 The District shall by Board Action:
 - 2.4.1 Appoint and fix the salary of the General Manager.
 - 2.4.2 Determine facilities the District should acquire or construct.
 - 2.4.3 Supervise and regulate each transit facility that the District owns and operates including:
 - a. fixing rates, fares, rentals, and charges and any classifications of rates, fares, rentals and charges; and
 - b. making and enforcing rules, regulations, contracts, practices, and schedules for or in connection with a transit facility that the District owns or controls.
 - 2.4.4 Control the investment of all funds assigned to the District for investment, including funds:
 - a. held as part of a District's retirement system; and
 - b. invested in accordance with the participating employees' designation or direction pursuant to an employee deferred compensation plan established and operated in compliance with Section 457 of the Internal Revenue Code.
 - 2.4.5 Invest all funds according to the procedures and requirements of Utah Code Title 51, Chapter 7, State Money Management Act.
 - 2.4.6 Manage financial accounting by:
 - a. causing an annual audit of all District books and accounts to be made by an independent certified public accountant;
 - b. as soon as practicable after the close of each fiscal year, submitting to the chief administrative officer and legislative body of each county and municipality with territory within the District a financial report showing:
 - (i) the result of District operations during the preceding fiscal year; and
 - (ii) the District's financial status on the final day of the fiscal year; and
 - c. supplying copies of the report to the general public upon request in a quantity that the Board considers appropriate.
 - 2.4.7 Report at least annually to the Transportation Commission the District's short-term and long-range public transit plans, including the transit portions of applicable regional transportation plans adopted by a metropolitan planning organization established under 23 U.S.C. §134.

- 2.4.8 Direct the internal auditor appointed under Utah Code §17B-2a-810 to conduct audits that the Board determines to be the most critical to the success of the organization.
- 2.4.9 Hear audit reports for audits conducted.
- 2.5 The General Manager shall:
 - 2.5.1 To govern the day-to-day operations of the District.
 - 2.5.2 To act as the chief financial officer including:
 - a. Preparation of an annual budget to be presented to the Board for approval with anticipated revenues and proposed expenditures;
 - b. Managing the day-to-day expenditures, finances, and budget reconciliation of the District; and
 - c. Managing all purchases in conformance with Utah purchasing and procurement laws.
 - 2.5.3 To provide recommendations to the Board as to the manner and method of administering and providing transit services, including the employment of appropriate personnel, contracts for services, the purchase or lease of land, the purchase lease or construction of improvements, facilities, systems, equipment and supplies.
 - 2.5.4 To provide recommendations to the Board as to the operation of the District, including the collection of revenues, disbursement of funds for expenses, custody and management of funds, and such other usual and necessary legal authority required for the District.
 - 2.5.5 To receive input and recommendations from the Board as to the day-to-day operations of the District and any such other recommendations as the Board may see fit.
 - 2.5.6 To ensure that the District and its Board of Trustees are insured against liability and errors and omissions.
 - 2.5.7 At a minimum, the Manager and Board chair, shall report annually or as otherwise requested by the Council, to the Summit County Council on the long- and short-term goals, budget, and activities as well as general business and operation of the District.
 - 2.5.8 To ensure that the District complies with all other laws of the state of Utah regulating local districts and otherwise as may be applicable.
- 2.6 Publication of Board Action.

Following the Board's adoption of an ordinance, resolution or action, the Board may provide for publication in a newspaper of general circulation within the jurisdictional boundaries of the District and in accordance with Utah Code §17B-1-313, a notice of action. For a period of thirty (30) calendar days after the date of publication of the notice of action, any person in interest may contest the regularity, formality, or legality of the ordinance, resolution or action by filing a complaint in district court. After the expiration of the thirty-day contest period, no one may contest the regularity, formality, or legality of the ordinance, resolution or action for any cause.

SECTION 3.0 GUIDING FISCAL POLICIES

3.1 OVERVIEW AND PURPOSE

These guiding principles shall govern financial planning, budgeting, and all other financial activities for the District. The District is subject to the Fiscal Procedures for Local Districts Act, Utah Code §§17B, Chapter 1, Parts 6 and 7. The purpose of this section is to provide for a uniform accounting, budgeting and financial reporting procedure in compliance with Utah law in order to enable the District to make financial plans for both current and capital expenditures, to ensure that staff administers their respective functions in accordance with adopted budgets, and to provide the public with information about the financial policies and administration of the District.

3.2 BUDGETING PRINCIPLES

The District shall apply sound budgeting principles as outlined in these policies under:

- A. *Section 4 - Budgeting Guidelines*

3.3 FINANCIAL CONTROLS

The District shall apply sound financial controls to protect its assets and to ensure District funds are expended in a responsible manner to the benefit of the District. The related policies are outlined in this manual and include:

- A. *Section 5 - Cash Receipts & Accounts Receivable*
- B. *Section 6 – Investments*
- C. *Section 7 – Credit Card Policy*
- D. *Section 8 – Vehicle Use Policy*
- E. *Section 10 – Risk Management*
- F. *Section 13 – Technology Policy*

3.4 FINANCIAL RESERVES

The District shall maintain sufficient financial reserves to comply with bond covenants; to preserve its financial stability; and to ensure stable, fair, and adequate rates and fees.

- A. The District shall set a target to maintain at least 120 days of its anticipated cash needs for operating expenses in its operating cash and reserve accounts. This is in addition to the other reserve funds outlined below.

In the event the balance in these operating cash and reserve accounts exceed one year of anticipated needs for cash operating expenses at the end of any calendar year, the Board shall evaluate the benefits of using a portion of these reserves for capital facility repair and replacement, equipment, the prepayment of debt, and/or the need for rate adjustments.

- B. By February 15 of each year, the District shall deposit 5.0% of that year's cash operating expense budget, excluding debt service payments, into the Capital Facilities Repair and Replacement Fund account.

The reserves in this account may only be used to pay for the replacement of obsolete equipment or facilities whose useful life has expired and other capital improvements necessary to keep the Transit Facilities in good operational condition.

Expenditures from this fund must be authorized by the Board through the budget process.

- C. The District shall maintain all Debt Service Reserve and Bond Fund accounts required for each bond issue pursuant to the General Indenture and the indenture specific to each bond issue. Funds from these accounts shall not be drawn upon until all other available District cash and reserves have been exhausted.
- D. District Management with the approval of the Board may establish additional reserve funds as it deems necessary.

3.5 ACCOUNTING

- A. The District shall operate as a governmental enterprise fund, accounting for all financial transactions using an economic resources measurement on a full accrual basis.
- B. The District shall comply with Generally Accepted Accounting Principles (GAAP), Governmental Accounting Standards Board (GASB) pronouncements, and Utah statutory requirements for governmental enterprise funds, including the Fiscal Procedures for Local Districts, UCA Title 17B, Chapter 1, Part 6.
- C. All non-exempt District employees shall prepare a time sheet on a biweekly basis that shall be approved by each employee's direct supervisor. Exempt employees, except the General Manager, shall report use of vacation and sick leave on a biweekly basis that shall be approved by the General Manager.
- D. The following budget funds are authorized:
 - 1. General Fund
 - 2. Debt Service Fund
 - 3. Capital Projects Fund
 - 4. Capital Facilities Repair and Replacement Fund

3.6 FINANCIAL REPORTING

- A. The Comptroller shall prepare monthly summary financial reports for District Management, showing the financial position and operations of the District for that month and for year-to-date. This report shall be provided to the Board monthly.
- B. District Management shall meet as needed to review detail budget-to-actual reports, and more often near year-end as deemed necessary.
- C. Within 180 days after the close of each fiscal year, the Comptroller shall present to the Board an annual audited financial report prepared in conformity with generally accepted accounting principles. This requirement shall be satisfied by presentation of the audit report furnished by the independent auditor.

3.7 INDEPENDENT AUDITOR/AUDIT COMMITTEE

- A. An audit committee, which shall consist of two members of the Board who are appointed by the Chair to terms of two years, shall meet, at a minimum, quarterly.
 - 1. Meetings of the audit committee are not subject to the Utah Open and Public Meetings Act.
 - 2. The audit committee shall be empowered to employ independent auditor(s) to conduct performance and financial audits of the District.
 - 3. The audit committee shall cause an independent financial audit of the District to be conducted annually. The annual financial audit report, inclusive of its findings, shall be presented to the Board. Within thirty (30) days after it is presented to the Board, the Board shall send a copy of the annual financial audit report to each member jurisdiction. Any member jurisdiction may request a meeting with the Board to discuss the annual financial audit report.
- B. The independent auditor(s) have the responsibility of reporting whether the District's financial statements are prepared in conformity with GAAP and GASB.
- C. Copies of the annual financial report or the audit report furnished by the independent auditor shall be filed with the State Auditor, bond holders, rating agencies, bond trustees, bond insurers, the appropriate state offices as required by state loans, the District's bank, and shall be filed as a public document in the office of the District.
- D. The District shall select its auditor pursuant to its Procurement Policy. The District shall not retain the same auditor for more than six (6) consecutive years, unless approved by the Board.

3.8 LONG-TERM FINANCIAL PLANNING

- A. The District shall develop a five-year financial plan that is updated annually. This plan shall guide the financial planning and budget processes.
- B. The District shall develop and recommend to the Board a capital facilities plan, and update it no less often than once every five years. The plan shall be updated to include the most current cost estimates and demand for services.

3.9 BOND COMPLIANCE

- A. The District shall comply with all bond and related indenture requirements and covenants.
- B. The District shall comply with all arbitrage tracking, record retention, and rebate calculations pursuant to Internal Revenue Service (IRS) requirements.

3.10 PAYMENT AND BANK TRANSFER APPROVALS

- A. The Comptroller shall prepare a voucher for each payment that shall be approved by the Treasurer before any check is distributed, except in emergencies. All checks must be signed by both the Comptroller and General Manager.
- B. All electronic payments and transfers shall be electronically pre-approved by both the Comptroller and General Manager, except that payroll transfers may be processed prior to

approval where those authorized to approve these payment they are not available. In those cases, the approval shall be obtained as soon as is reasonable.

- C. A summary timesheet shall be approved by both the Comptroller and General Manager prior to processing payroll. A payroll summary report shall be provided to the Comptroller and General Manager for review and post-approval.
- D. If either or both the Comptroller and General Manager are not available to approve payments, transfers or payroll in a timely manner, the Treasurer and Chair of the Board may approve payments on their behalf.
- E. The District shall provide a monthly check register to the Board at the first Board meeting held after that month's checks are issued.

SECTION 4.0 BUDGETING GUIDELINES

4.1 BUDGET OFFICER

The General Manager shall be designated as the Budget Officer of the District.

4.2 BUDGET GUIDELINES

- A. All annual budgets and capital plans shall comply with all District fiscal policies.
- B. No budget shall be approved that results in a negative net position for the District.
- C. No budget shall be approved that causes cash flow difficulties for the District that impairs its ability to pay all debt service payments, operating expenses and budgeted capital equipment and projects; and to meet all its reserve requirements.
- D. All budgets shall go through the following internal process:
 - 1. Department Directors shall submit requests to the Budget Officer.
 - 2. The Budget Officer shall compile budget requests.
 - 3. The Budget Officer shall review budget requests.
 - 4. The Budget Officer shall finalize budget requests for presentation to the Board.

4.3 BUDGET ADOPTION

- A. At the first regularly scheduled Board meeting in September, the Comptroller shall provide for the ensuing fiscal year an outline of key budget issues and revenue projections, and discuss salary and benefit adjustments. At the first regularly scheduled Board meeting in October, the General Manager shall provide the recommended tentative operating, capital, and debt service budgets. The Board may schedule additional meetings in October as deemed appropriate to discuss the budget. The Board shall adopt a tentative budget no later than at its first regularly scheduled meeting in November.
- B. The Board will hold a public hearing at least 30 days after the tentative budget is adopted, and prior to the beginning of the ensuing fiscal year. The Board may make any changes considered advisable in the tentative budget, pursuant to statute; except that debt service budgets may not be amended.
- C. The Board shall adopt the operating, capital, and debt service budgets for the ensuing fiscal year following the public hearing, and prior to the beginning of the ensuing fiscal year.
- D. The budget shall be adopted by the Board at the budget line item level – which is typically a department or specific group of similar departments, capital projects or capital equipment.

4.4 BUDGET AMENDMENTS

- A. The budget may be reopened by the Board at the request of the General Manager at any time during the fiscal year by properly noticing the meeting in accordance with state law. Board approval is required for any budget amendments that change a budget line item. The Board may,

in any regular meeting or special meeting called for that purpose, review the operating, capital, and debt service budget for the purpose of determining if the total should be amended. State law prohibits the amendment of debt service budgets below debt service requirements.

- B. When a detail budget account is exceeded within a budget line item, the overrun may be covered by a transfer from another budget account within the same budget line item with the approval of the Budget Officer.
- C. Funds designated for a particular department's use within a budget line item may only be utilized by a different department as approved by the General Manager.
- D. The budget may contain a District contingency to pay for any unanticipated expenses or to cover budget line item overruns. The use of an existing budgeted contingency may be used upon approval of the Board.

SECTION 5.0 ACCOUNTING & INTERNAL CONTROLS

5.1 SUMMARY

The purpose is to establish a policy of financial controls over the District in order to provide adequate safeguards over cash.

5.2 RECORD KEEPING REQUIREMENTS. The District shall maintain financial records in conformance with the Utah State Auditor's Office "Uniform Accounting Manual for Special Districts" and Utah Code §17B-1-603, Uniform Accounting System.

- A. **Purchases.** All Purchases are to be made according to the Purchasing Policies and Procedures adopted by the Board.
- B. **Pre-numbered Checks.** Expenditures shall not be made using cash. Pre-numbered checks shall be used and all checks, including those voided, will be accounted for.
- C. **Check Signatures.** Dual signature by authorized individuals is required for all District checks. Authorized individuals include the Board Chair, Treasurer, Comptroller, General Manager, and Board's designee (Utah Code §17B-1-635). Disbursements in excess of \$5,000 require that one of the two signatures be that of either the Board Chair.
- D. **State Purchasing Cards.** All receipts for purchases made with a state purchasing card shall be turned in to the Comptroller to document the transaction. Cardholders are responsible for the proper coding of purchases to fund and account number by department. Personal purchases are expressly prohibited.
- E. **Authorization of Payables.** Individual invoices are to be signed by the Comptroller and General Manager.
- F. **Board review of expenditures.** A list of all expenditures paid shall be prepared and submitted for approval by Board motion at each regularly scheduled business meeting. Individual invoices shall be made available for Board inspection at the request of any Board member.
- G. **Cash Receipts.**
 - 1. The Comptroller shall ensure the separation of responsibilities between authorized staff receiving payments and cash receipting.
 - 2. All receipts shall be deposited in a District bank account approved by the Comptroller and General Manager; except that bond trustee accounts must also be approved by the Board.
 - 3. The District strives to deposit all receipts and update the Cash Receipts and General Ledger systems daily. In no instance shall such deposit occur later than three business days after collection.
 - 4. The Comptroller or designee shall review receipts, deposits and billing adjustments on a weekly basis.
 - 5. Un-deposited payments shall be kept in a safe with access limited to authorized employees.

6. Electronic receipts initiated by a bank shall be updated to the Cash Receipts and General Ledger systems by the same authorized staff member doing so for cash receipts that day.
- H. **Bank Statements.** Bank statements shall be reconciled monthly and balanced to records of cash receipts and disbursements by the Comptroller. Each month the Treasurer shall review all bank account reconciliations.
- I. **Receivables.** Records shall be maintained of all receivables.
- J. **Collections/Deposits.** Board members are expected to have a good working understanding of District revenues. The Comptroller or his/her designee will ensure that all money due the District has been collected and deposited on a timely basis by staff. Deposits shall be made within a day of receipt when possible or within three business days of their receipt if revenues are collected over a weekend (Utah Code §17B-1-633).
- K. **Assets.** Records shall be maintained of all assets owned by the District and managed with “Asset Keeper” or comparable software according to the provisions of GASB rules.
- L. **Debt Service.** Records shall be kept of all bonds or other debts owed by the District (Utah Code §17B-1-632). The General Manager will ensure that principal and interest payments on bonds are made in a timely manner and understand that a delinquency in payment will constitute a “material event” which will be recorded with “Nationally Recognized Municipal Securities Information Repositories.” Delinquent payments may adversely affect the transferability and liquidity of the Bonds and their market price, and future District bond ratings.
- M. **Interfund Loans.** Subject to restrictions imposed by bond covenants, statute, or other controlling regulations, Utah Code provides for loans by one fund to another (Utah Code §17B-1-626). Interfund loans must be authorized by the Board, who shall prescribe interest rates, repayment terms, and any other conditions.
- N. **Financial Records.** The District will maintain a financial records management program for the District in accordance with the Records Retention section of the Uniform Accounting Manual for Local Districts.

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

5.3 PHYSICAL CONTROLS

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

5.4 REPORTING

- A. **Quarterly Financial Report.** In accordance with Utah Code, a quarterly financial report shall be prepared and presented to the Board showing the financial position and operations of the District for that quarter and the year to date status (Utah Code §17B-1-638).
- B. **Deposit and Investment Report.** In accordance with Utah Code, the Comptroller or his/her designee shall file a semi-annual financial report with the State Money Management Council (Utah Code §51-7-15).
- C. **Budget Certification.** The Comptroller shall certify a copy of the final budget for each fund and the General Manager shall file such certified budget to the State Auditor within 30 days after adoption (Utah Code §17B-1-614).
- D. **Independent Audit.** Utah Code requires an annual independent external audit of the District to be performed (Utah Code §§17B-1-639; 17B-1-640). The independent audit shall be submitted to the State Auditor's Office within 180 days after the close of each fiscal year (Utah Code §51-2a-202). Copies of the audit report shall be filed as a public document in the District office.
- E. **Continuing Disclosure.** In accordance with the provisions of paragraph (b) (5) (i.) (A) of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended (the "Rule"), the District will file or cause to have filed Financial Statements and

Continuing Disclosure Memorandum by July 15th of each year. If the filing is delinquent, a “material event” will have occurred.

SECTION 6.0 INVESTMENTS

6.1 INTRODUCTION

The District shall invest its cash assets in such a manner as to comply with the requirements of the State Money Management Act (the "Act").

6.2 SCOPE

District funds are typically invested with the Utah Public Treasurers Investment Fund (PTIF), although other investment options may be selected as allowed by the Act, as approved by the Board.

6.3 OBJECTIVES

The objectives of this investment policy include the following:

- A. To provide for the safety of principal, preservation of capital and the mitigation of risk.
- B. To provide for the liquidity necessary to match the District's cash requirements.
- C. To increase interest income through higher yielding investments.

6.4 POLICY

The following shall be the investment policies of the District:

- A. All investment activities shall be conducted with the same degree of judgment and care which an ordinary reasonable person exercises in the management of their own affairs.
- B. Professionals retained by the District as defined in the Act, so long as they are acting in accordance with the Act and this investment policy and exercise due diligence, shall be relieved of personal responsibility for credit or market price changes, provided that deviations are reported to the Board in a timely fashion and appropriate action, if necessary, is taken to control adverse developments.
- C. District professionals involved in investments shall refrain from personal business activity in conflict with proper execution of this investment policy.
- D. The Comptroller shall manage investment activities authorized by the Act in consultation with the General Manager and approval by the Board. The Comptroller shall maintain a system of internal controls so that District funds are protected at all times from loss, theft and fraud.
- E. The Comptroller shall name a financial institution with a Utah office that shall be the custodian for all investments made by the District, except for the PTIF investments which shall be held by financial institutions designated by the State Treasurer. In addition, the District shall purchase investments only from those certified dealers and registered agents that have registered with the State Money Management Council.
- F. To the extent possible, the District shall attempt to match investments with anticipated cash requirements, although the PTIF is preferred for periods up to two years.
- G. The Comptroller shall report the status of investments on a semi-annual basis to the Board.

SECTION 7.0 CREDIT CARD POLICY

7.1 OVERVIEW

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

7.2 CREDIT CARD TERMS

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

7.3 CREDIT LIMITS

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

7.4 THEFT OR FRAUD

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

7.5 FRAUD PREVENTION

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

7.6 CREDIT CARD RECONCILIATION

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

7.7 STATEMENT CYCLE

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

SECTION 8.0 VEHICLE POLICY

8.1 OVERVIEW

The District maintains a fleet of vehicles necessary to carry out the normal activities of the District. These vehicles are District property and every care should be taken to protect the District's investment. The vehicles shall be overseen by a Fleet Manager who is appointed by the General Manager.

8.2 ELIGIBILITY

- A. The General Manager may assign vehicles to employees under the following circumstances:
 - 1. To drive transit buses on District approved Public Transit routes during normal business hours.
 - 2. To enable employees to respond timely to both routine and after-hour emergencies, calls for assistance, and to maintain the District's water system.
 - 3. When employees are in geographically strategic positions and trained to respond to emergency situations in the event of a natural disaster.
 - 4. When employees are required to attend meetings during work, after or near the end of work, and/or in locations far from their normal work location.
- B. The General Manager shall have discretion to assign a District vehicle to an employee to use for commuting to and from work based upon locale, terrain, weather, job assignment, the need to have different types and sizes of District equipment, towing capability, and passenger accommodation.
- C. Use of a District vehicle will not be part of the compensation package for an employment position unless approved by the Board. Any such compensation is subject to IRS income tax rules and regulations.
- D. All use of District vehicles shall be in compliance with local, state, and federal law.
- E. Any District employee taking a District vehicle home outside of the boundaries of the District will reimburse the District at the rate of \$50.00 per month. No District vehicle may be taken home outside a 35-mile radius of the District. If an employee is not willing to pay the commuter rate, the vehicle shall be left at a secure District facility.
 - 1. As determined by the Board, District employees who are required to respond after hours to emergency calls shall be exempt from the commuter rate.
- F. Except as otherwise provided herein, under no circumstances shall a District owned vehicle be authorized for take home use for an employee who resides farther than thirty five (35) miles from the District boundaries.
- G. The distance of an employee's residence from the District boundaries shall be established by evidence generated by any commonly available internet or computer software program that estimates distances using driving directions. An employee who disagrees with the determination of the District regarding that distance calculation may appeal that determination to the General

Manager. The employee shall provide documentation supporting any disagreement with the distance determination by the District.

8.3 EMERGENCY RESPONSE VEHICLES

- A. The General Manager may allow employees to take home vehicles when doing so would allow the employees to respond to an emergency in a more expeditious manner. Vehicles provided to employees shall meet the following criteria:
 - 1. Be all-wheel or four-wheel drive vehicles;
 - 2. Have a clear logo on both vehicle front doors that contains the words "High Valley Transit";
 - 3. Have a license plate displaying the letters "EX";
 - 4. Have clearly visible operating emergency lights; and
 - 5. Have tools and other emergency equipment loaded in the vehicle.
- B. Any vehicle taken home by an employee that does not meet these criteria is subject to the IRS Commuter Tax, even if the vehicle is used by the employee to respond to an emergency.
- C. All vehicles shall have GPS tracking equipment installed and in working order. District Management shall use this equipment for emergency response and any other uses they deem necessary. Any tampering of the GPS tracking equipment is expressly prohibited and may subject the employee to disciplinary action, up to and including termination of employment.

8.4 PERSONAL USE

- A. District vehicles may be used only for District business and other de minimus personal use.
- B. Authorized staff shall prepare reports periodically that show miles driven, gallons of fuel purchased, and miles per gallon for each District vehicle.
- C. Travel to and from secondary employment in a District vehicle is prohibited.

8.5 GAS CARDS/FUEL USAGE

- A. As a government entity, Gas Cards allow the District to purchase fuel on credit without paying any state or federal fuel taxes.
- B. Each District vehicle and piece of heavy equipment shall be assigned a separate, unique Gas Card account number that shall be stored in the vehicle and used exclusively for that vehicle.
- C. Gas Cards shall be used to purchase all District fuel, except when a vehicle or piece of heavy equipment will run out of fuel before reaching a station that accepts Gas Cards. Employees shall take every reasonable effort to ensure Gas Cards are used whenever possible. In the case of small equipment and gas cans that require fuel, it is acceptable to use the District Credit Card.
- D. Gas Cards shall not be used for personal use, and employees violating this policy are subject to

disciplinary action up to and including termination of employment.

- E. Idling of vehicles must be controlled. Newer vehicles do not require the engine to idle (warm-up) before driving. In the winter, employees should start the vehicle, clear the windows and then drive. Employees shall not leave the vehicle idling when unoccupied.

8.6 ACCIDENTS AND VEHICLE MISUSE

- A. If an accident occurs in a District vehicle while an employee is engaged in District business, or for authorized commuting or de minimus personal use, and the employee caused or contributed to the accident, or the employee improperly and/or unlawfully uses a District vehicle, the District shall follow the disciplinary procedures as outlined in the District's Personnel Policies.
- B. All accidents or vehicle misuse shall be documented on a Vehicle Incident Report. Additionally, employees involved in an accident shall be required to participate in controlled substance testing as described in the District's Personnel Policies.

8.7 USE OF PERSONAL VEHICLES FOR DISTRICT BUSINESS

- A. Employees are required to use District vehicles when conducting District business. If a District vehicle is not available or it is impractical to use a District vehicle, the District will reimburse employees for the use of their personal vehicles for District business at the then approved IRS rate. Before a reimbursement is released an employee must provide to the Comptroller proof of insurance coverage for the employee's vehicle.
- B. If an accident occurs while an employee is engaged in District business using a personal vehicle, the District will reimburse employees for the amount of their vehicle insurance deductible up to \$2,500 if:
 - 1. The accident is:
 - a. Reported to law enforcement within two (2) hours of the occurrence;
 - b. Law enforcement completes an investigation of the accident;
 - c. An investigation report is prepared;
 - d. Within ten (10) working days, the employee provides the Human Resources Department with a copy of the accident report and proof of insurance coverage for the employee's vehicle; and
 - e. The employee did not cause or contribute to the accident by acts or omissions that were intentional, reckless, grossly negligent, or in violation of the provisions of the District's Vehicle Policy.
- C. If the vehicle damage was caused, or contributed to, by acts or omissions of a third party who was not an employee of the District, the personal insurance coverage of the employee or third party shall be the primary insurance to which all parties shall look for compensation.
- D. Additional payment by the District shall be considered only after the employee and/or his or her vehicle insurance provider has exhausted all legal remedies and collection efforts against each third party.

8.8 MAINTENANCE AND UPKEEP

- A. It shall be the duty and responsibility of the District to see that District vehicles are properly serviced, maintained and cleaned. However, where a District vehicle is permanently assigned to an employee, it is the responsibility of that employee to ensure proper service, maintenance, and

cleaning of the vehicle. This includes, but is not limited to, having the appropriate service performed on the vehicle at all designated intervals as set forth by the General Manager. A sticker will be affixed to the vehicle in a conspicuous place indicating time of usage and service due for the vehicle.

- B. If an employee who has been permanently assigned District vehicle fails to have the vehicle properly serviced or maintained as prescribed by the General Manager within thirty (30) working days or five hundred (500) miles of the required service or maintenance time, that employee may lose the use of the District vehicle.
- C. If a vehicle is assigned to an individual, that individual has the responsibility to keep the vehicle clean, both inside and outside. When an individual uses a vehicle from the fleet, that individual has the responsibility to remove all items from the interior of the vehicle upon returning it to the fleet; such failure may result in loss of use of the vehicle to the user, as well as possible disciplinary action.

8.9 SAFETY

- A. Each employee who operates a District vehicle shall obey all applicable traffic laws and shall operate the vehicle in a courteous manner that appropriately represents High Valley Transit.
- B. Each employee who drives a District vehicle shall possess a valid driver license that is appropriate for the type of vehicle that will be used and that is valid at the time the vehicle is used. Should an employee fail to produce a valid driver's license when requested to do so by the General Manager, that employee's driving privileges to operate a District vehicle shall be forfeited until the license becomes valid.
- C. Each occupant of a District vehicle and personal use vehicle used for Official Use shall wear a seat belt at all times the vehicle is in use.
- D. Cell phone use, by the operator, while a District vehicle is operating on a public roadway is prohibited.

8.10 FTA REQUIREMENTS FOR BUSES

- A. In accordance with FTA and the PTT, the District shall adhere to the following additional vehicle use policies for all buses:
 - 1. *Bus modifications* (e.g., adding a hitch): All bus modifications require approval from the PTT Director. Typically, special modifications to the bus need to be included in the final specification list prior to construction of the vehicle.
 - 2. *Service Animal*: If the animal is a service animal, then it is allowed. All other pets are not allowed.
 - 3. *Government Transportation*: Transportation of government officials to government business is allowed. While charter service is not allowed, the District may provide up to 80 hours of service for government officials to government-related events.

4. *Fees:* Fees cannot be charged for service, but donations can be requested or a donation box can be located in the vehicle.
5. *Maintaining Continuing Control:* The District must retain continuing control over the use of the property and be available for its originally authorized purpose.
6. *Natural disasters:* The vehicle may be used for other purposes during natural disasters.
7. *Attendants:* Attendants are allowed as needed.
8. *School bus service:* Utilization of vehicles for school bus service is not allowed by the PTT.
9. *Charter service:* Charter service is not allowed by the PTT.
10. *CDL:* A CDL is required for vehicles carrying more than 15 passengers, including the driver, or vehicles with a GVWR over 26,000 pounds. Bus drivers must also have passenger endorsements for their licenses. Transit, intercity, and motor coach operators must have a passenger vehicle (P) endorsement. Endorsements require a passing score on knowledge and skills tests administered by the state licensing agency or partner institution.

SECTION 9.0 MEETINGS

9.1 MEETINGS OF THE BOARD

- A. Regular Meeting. A regularly scheduled meeting of the Board for which notice of the date, time, and place has been given in the Annual Meeting Schedule.
- B. Special Meeting. Any meeting of the Board that replaces or is held in addition to regular meetings.
- C. Annual Meeting. The meeting at which Officers of the District are elected. The Bi-Annual Meeting shall be held on the date and hour of its regularly scheduled meeting in January.
- D. Emergency Meeting. A special meeting held as a result of unforeseen circumstances, to consider matters of an urgent or emergency nature.

9.2 PLACE OF MEETINGS

Except as may otherwise be determined, meetings of the Board shall be held at the principal place of business of the District.

9.3 PUBLIC NOTICE OF MEETINGS

- A. Annual Meeting Schedule. An annual schedule of the regular meetings of the Board shall be posted at all times in a conspicuous place at the District's principal office. The annual schedule of regular meetings shall be sent to the Utah Public Notice Website (www.utah.gov/pmn/index) and other organizations and individuals requesting such schedule.
- B. Regular Meeting. Notice of the date, time, place and agenda for each regular meeting shall be posted at the District's principal office and sent not less than five days before the beginning of each meeting to the Utah Public Notice Website (www.utah.gov/pmn/index) and other organizations and individuals requesting such notice.
- C. Special Meeting. Where possible, the notice described in Section 9.3.B shall be given. However, when unforeseen circumstances require calling a special meeting, including an emergency meeting, the notice requirements of Section 9.3.B may be disregarded and the best practicable notice given. No special meeting shall be held until a reasonable attempt has been made to notify all Board members, and a majority of Board members contacted and polled agree to hold the special meeting.

9.4 NOTICE TO BOARD MEMBERS AND SUMMIT COUNTY

- A. Notice of all regular and, when possible, special meetings of the Board shall be sent by the General Manager to all members of the Board by any of the following methods; ordinary mail, email, access via Drop Box, or hand delivered, at least five days in advance of each meeting. Such notice shall include the date, time, and place of the meeting as well as a copy of the previous meeting's minutes and the agenda for the present meeting.
- B. A copy of the agenda and notice for each Board meeting shall be provided via electronic mail to the Summit County Manager no less than twenty-four (24) hours prior to the scheduled meeting.

9.5 CONDUCT OF MEETINGS

- A. All meetings of the Board shall be conducted according to Robert's Rules of Order when requested by a Board member.
- B. Any Board member shall have the right to place any matter on the agenda if a reasonable notice of seven days is given. The meeting shall follow the agenda unless otherwise agreed.

9.6 QUORUM

A quorum of Board members (50% plus 1) is required to conduct District business. If a quorum is present, a majority of Board members present must vote in favor of any motion in order for that motion to pass.

9.7 PRESUMPTION OF ASSENT

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

9.8 NO PROXY

No Board member may appoint another individual, by proxy or otherwise, to assume his/her responsibilities as a Board member.

9.9 OPEN AND CLOSED MEETINGS; ACTIONS TAKEN

- A. Open Meeting. All meetings of the Board, except closed meetings, shall be open to the public.
- B. Closed Meeting. Except as otherwise directed by the Board, closed meetings shall be open only to Board members, and appropriate District staff. A closed meeting may be held upon the affirmative vote of two-thirds of the members of the Board present at an open meeting for which notice is given, provided a quorum is present. A closed meeting may be held for any of the following purposes:
 - 1. Discussion of the character, professional competence, or physical or mental health of an individual.
 - 2. Strategy sessions to discuss pending or reasonably imminent litigation.
 - 3. 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 District from completing the transaction on the best possible terms.
 - 4. Strategy sessions to discuss the sale of real property when: (a) public discussion of the transaction would disclose the appraisal or estimated value of the property under consideration or prevent the District from completing the transaction on the best possible terms; (b) the District previously gave public notice that the property would be offered for sale; and (c) the terms of the sale are publicly disclosed before the District approves the sale.

5. Discussion regarding deployment of security personnel, devices or systems.
 6. Investigative proceedings regarding allegations of criminal misconduct.
- C. Actions Taken. No ordinance, resolution, rule, regulation, contract, or appointment shall be approved at a closed meeting.

9.10 MINUTES OF MEETINGS TO BE KEPT

- A. Open Meeting. Written minutes shall be kept of all open meetings. Such minutes shall include:
1. The date, time, and place of the meeting.
 2. The names of members present and absent.
 3. The substance of all matters proposed, discussed, or decided, and a record, by individual member, of votes taken.
 4. The names of all citizens who appeared and the substance in brief of their testimony.
 5. Any other information that any member requests be entered in the minutes.
- B. Minutes shall not be “final” or “official” until they have been formally approved by the Board.
- C. Closed Meeting. Unless the closed meeting is called for purposes specified in Section 9.9.B.1 or 9.9.B.5, in which case the presiding officer shall sign a sworn statement affirming the purpose of the meeting, a recording shall be kept of the closed portion of the meeting. If minutes are kept, they shall include:
1. The date, time, and place of the meeting.
 2. The names of members present and absent.
 3. The names of all others present except where the disclosure would infringe on the confidentiality necessary to fulfill the original purpose of the closed meeting.
 4. The content of the meeting.

Recordings and written minutes of the closed meeting are protected records under Utah Code Title 63G, Chapter 2, Governmental Records Access and Management Act, and any person who violates the provisions of Utah Code §63G-2-801 is subject to the criminal penalties contained in that section. Recordings and written minutes of closed meetings may be disclosed pursuant to a Court order only as provided in Utah Code §52-4-304.

- D. A copy of the minutes of each Board meeting shall be provided via electronic mail to the Summit County Manager within five (5) working days follow the approval of the minutes.

9.11 PUBLIC HEARING PROCEDURES

- A. Public hearings before the Board shall follow the following procedural steps:

1. Declaration that the public hearing is open.
2. Verification that legal notification requirements have been met.
3. Staff presentation.
4. Questions by Board members.
5. Chair opens the meeting to public comment.
6. Call upon individuals who have filled out the sign-up sheet.
7. Allow other individuals who desire to make public comment.
8. Chair closes the meeting to public comment.
9. Staff response.
10. Questions by Board members.
11. Board discussion.
12. Board vote.

B. The following rules shall be observed during public hearings before the Board:

1. Members of the public who desire to speak, shall each first sign up on the sign-up sheet indicating the speaker's name, address and affiliations to the agenda item(s) (or whom he/she represents).
2. The Chair shall determine who will speak after reviewing the signup sheet. Each speaker shall be called by the Chair, and, at the discretion of the Board, speakers shall alternate between one speaking in favor of the agenda item and another speaking against it (continuing in this manner so long as possible).
3. Speakers shall state their names, addresses and affiliations to the agenda items (or whom they represent) before beginning their comments.
4. Speakers shall address their comments to the Chair, and they shall not debate with other meeting attendees or make personal attacks.
5. A predetermined time limit shall be placed on speakers. A speaker cannot combine his/her time with another (e.g., Speaker "X" cannot give his/her time to Speaker "Y" so that Speaker "Y" has double the time), and redundant speakers/comments will not be recognized by the Chair.
6. To permit everyone the opportunity to hear the proceedings, attendees shall be as quiet as possible.
7. The hearing is designed for civil discussion. Therefore, attendees shall not jeer, cheer, yell out comments, or clap.

8. Attendees shall not display any signs or distribute any handouts or flyers in the hearing room.
 9. After the close of the public comment period, discussion shall be limited to Board members and staff.
- C. The Chair shall enforce the procedures and rules set forth above in subsections A and B. The Chair, at its discretion and consistent with the District's Administrative Policies and Procedures, may take such additional actions as will promote an orderly and efficient public hearing.

SECTION 10.0 RISK MANAGEMENT

10.1 INSURANCE

The General Manager shall serve as the Risk Manager. The Risk Manager shall purchase outside insurance from the most cost-effective qualified insurer. This includes insurance on all vehicles, equipment, facilities, and other property as defined by FTA Circular 5010.1E, Grant Management Requirements. The District shall secure a certificate of insurance covering each motor vehicle demonstrating that the District has obtained all insurance required by state and federal law. The District shall carry at a minimum, the following coverage:

- A. General Liability - \$10,000,000
- B. Auto Bodily Injury - \$10,000,000
- C. Auto Property Damage - \$10,000,000
- D. Underinsured Motorist - \$50,000
- E. Uninsured Motorist - \$50,000
- F. Unemployment Insurance per state requirements
- G. Workers Compensation Insurance per state requirements
- H. Vehicle Comprehensive/Collision for Vehicles Valued in Excess of \$5,000
- I. Property Coverage for Facilities Valued in Excess of \$100,000 to insure against property damage for theft, vandalism, fire, earthquake, flood and wind.
 - 1. In the event that flood insurance is required by the Flood Disaster Protection Act of 1973, 42 U.S.C. §4012a(a) for any building located in a special flood hazard area (100-year flood zone), such insurance shall be obtained for an amount at least equal to the federal investment (less estimated land cost) before the receipt of federal assistance to acquire, construct, reconstruct, repair, or improve that building.

10.2 PROCEDURE FOR FILING AND PROCESSING OF CLAIMS

- A. The procedures for filing and settling claims shall be determined by the Risk Manager.
- B. All District employees and Board members shall promptly report all accidents, claims and injuries to their direct supervisor as soon as possible following any incident that may involve liability to the District or an insurance claim. The direct supervisor should notify the Risk Manager to investigate the incident as soon as possible.
- C. The Risk Manager shall notify the appropriate insurer.
- D. All District employees and Board members shall cooperate and assist the Risk Manager as requested.
- E. The General Manager shall advise the Board concerning claims which have been filed against the District at the next meeting of the Board.

10.3 INDEMNIFICATION OF EMPLOYEES

- A. The District shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil or criminal, administrative or investigative, by reason of the fact that he or she is or was the General Manager, an officer, employee, or agent of the District. The indemnification shall be for all expenses (including attorney fees), judgments, fines, and amount paid in settlement, actually and reasonably incurred by him or her in connection with the action, suit, or proceeding, including any appeal of the action, suit or proceeding, if he or she acted within the scope of their employment and in good faith or in a manner he or she reasonably believed to be in or not opposed to the best interests of the district, and with respect to any criminal action or proceeding, if he or she had no reasonable cause to believe the conduct was unlawful.
- B. Determination of any action, suit, or proceeding by judgment, order, settlement, conviction or on a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the party did not meet the applicable standard of conduct. Indemnification under this section may be paid by the district in advance of the final disposition of any action, suit, or proceeding, on a preliminary determination that the General Manager, officer, employee, or agent met the application standard of conduct.
- C. The District shall also indemnify the General Manager, an officer, employee, or agent who has been successful on the merits or otherwise, in defense of any action, suit, or proceeding, or in defense of any claim, issue, or matter in the action, suit, or proceeding related to their service or employment with the District, against all expenses, including attorney fees, actually and reasonably incurred, without the necessity of an independent determination that the General Manager, an officer, employee, or agent met any appropriate standard of conduct.
- D. The indemnification provided for in this section shall continue as to any person who has ceased to be the General Manager, an officer, employee, or agent, and shall inure to the benefit of the heirs, executors, and administrators of that person.

10.4 SAFETY, HEALTH AND RISK MANAGEMENT POLICY STATEMENT

- A. The District shall create a risk management plan ("Safety Manual"). The purpose of the Safety Manual is to protect the District against accidental losses which, in the aggregate, during any financial period, would significantly affect personnel, property, the budget, or the ability of the District to fulfill its responsibilities to its customers, employees, taxpayers and the public.
- B. The Safety Manual shall include: systematic risk identification; risk and hazard evaluation; safety, training and loss control activities; claims processing; and program monitoring.
- C. District employees are to be aware of all department safety rules and procedures; properly use all safety equipment and devices; and be safety conscious.
- D. District staff shall prepare a budget recommendation to the Board to fund selected methods and procedures for reducing the identified risks and to implement safety training activities. At least annually, the Risk Manager shall prepare a report to the Board summarizing the losses incurred by the District, their causes, and risk and loss prevention activities implemented by the District.

10.5 BONDING

The District will bond the Comptroller, Treasurer and employees who have the responsibility for the safekeeping and investment of public funds in keeping with Utah Code §51-7-15.

Budget	Percent for Bond	Minimum Bond
\$1,000,000 to \$5,000,000	6% but not less than	\$70,000
\$5,000,001 to \$10,000,000	5% but not less than	\$300,000
\$10,000,001 to \$25,000.000	4% but not less than	\$500,000

SECTION 11.0 CONDUCT & ETHICS

11.1 STANDARDS OF CONDUCT

A. Board Members

1. The Board commits itself and its members to ethical, businesslike and lawful conduct, including proper use of authority and appropriate decorum.
2. Board members shall conduct all business in legal meetings in accordance with procedures prescribed in the rules and regulations and will reach decisions only after full consideration and debate on the issues in question. Once a decision is made, all Board members will abide in good faith by the decision.
3. Board members shall represent the interests of the whole organization. This accountability supersedes:
 - a. any conflicting loyalty to other advocacy or interest groups;
 - b. loyalty based upon membership on other boards or staffs; and
 - c. conflict based upon the Board members' use of the services provided by the District.
4. Board members may not attempt to exercise individual authority over the organization. The Board shall not be bound in any way by any statement or action on the part of any individual Board member, except when such statement or action is identified as a directive of the Board.
 - a. Board members' interaction with the General Manager or with staff must recognize the lack of authority vested in individual Board members except when explicitly authorized by the Board.
 - b. Board members' interaction with the public, press or other entities must recognize the same limitation and the inability of any Board member to speak for the Board except to repeat explicitly stated Board decisions. This limitation does not restrict any Board member from engaging constituents directly regarding their concerns and needs.
 - c. Board members shall not publicly make or express individual negative judgments about General Manager or staff performance. Any such judgments of General Manager or staff performance shall be made in closed session and only by the Board.
5. Board members shall maintain confidentiality appropriate to issues of a sensitive nature and information that otherwise may tend to compromise the integrity or legal standing of the Board, especially those matters discussed in closed session.
6. Board members shall refrain from any self-dealing or any conduct of private business or personal services between any Board member and the District except as procedurally controlled to assure openness, competitive opportunity and equal access to otherwise "inside" information.

7. Board members must not use their positions to obtain for themselves, or for their family members, employment or the award of a contract with the District. Should a Board member desire employment or the award of a contract, he or she must first resign.
8. When the Board is to decide upon an issue about which a member has an unavoidable conflict of interest, that member shall recuse him/herself from the deliberation and abstain from the vote.
9. In order to build and maintain productive and effective relationships, Board members shall maintain a system of communication and interaction that builds upon mutual respect and trust. Accordingly, Board members shall:
 - a. Exercise honesty in all written and interpersonal communication.
 - b. Demonstrate respect for the opinions of others.
 - c. Focus on issues rather than on personalities.
 - d. Maintain focus on common goals.
 - e. Communicate in a timely manner to avoid surprises.
 - f. Respect majority decisions of the Board.
 - g. Withhold final judgment on issues until fully informed.
 - h. Seek first to understand rather than to be understood.
 - i. Criticize privately, praise publicly
 - j. Use closed sessions appropriately and judiciously.
 - k. Maintain appropriate confidentiality.
 - l. Openly share personal concerns.
 - m. Take the initiative to communicate and ask questions for clarification.
 - n. Share information and knowledge.
 - o. Give direction as the whole, not as individuals.
 - p. Make every reasonable effort to protect the integrity and promote the positive image of the organization and one another.
 - q. Deal with outside entities or individuals, with members, staff and each other in a manner reflecting fair play, ethics and straightforward communication.

Board members shall not:

- r. Embarrass each other or the organization.
- s. Intentionally mislead or misinform each other.
- t. Maintain hidden agendas.
- u. Undermine majority decisions of the board.
- v. Assume responsibility for resolving operational problems or complaints.

B. Employees

The standards of conduct for District employees can be found in the District's Personnel Policy.

11.2 BOARD MEMBER CONFLICTS OF INTEREST

Board members will annually disclose their involvement with other organizations, businesses or associations which might produce a conflict of interest. Board members are expected to avoid conflicts of interest involving any matter pending before the Board. A conflict of interest is deemed to exist when a Board member is confronted with an issue in which the Board member has a personal or pecuniary interest or an issue or circumstance that could render the Board member unable to devote complete loyalty and singleness of purpose to the organization.

- A. If a Board member has a personal or private interest in a matter pending before the Board, the Board member shall disclose such interest to the Board, shall not vote on the matter and shall not attempt to influence the decisions of other members of the Board.
- B. The Board shall not enter into any contract with any of its Board members or with a firm in which a Board member has a controlling financial interest. Accordingly, a Board member shall not:
 - 1. Disclose or use confidential information acquired in the course of official duties as a means to further the Board member's personal financial interests or the interests of a member of the Board member's immediate family.
 - 2. Solicit or accept a gift of substantial value or economic benefit for personal use which would tend to improperly influence a reasonable person, or which the Board member knows or should know is primarily for the purpose of a reward for official action.
 - 3. Engage in a substantial financial transaction for private business purposes with any employee of the District.
 - 4. Perform an official act that directly confers an economic benefit on a business in which the Board member has a substantial financial interest or is engaged as a counsel, consultant, representative or agent.

11.3 BOARD RELATIONSHIP TO DISTRICT STAFF

- A. The Board's sole connection to the District's operational organization is the General Manager. Only decisions of the Board acting as an entity are binding on the General Manager. Accordingly:
 - 1. Decisions or instructions of individual Board members, officers or committees are not binding on the General Manager except when the Board has specifically authorized such exercise of authority by individuals or committees.
 - 2. In the case of Board members or committees requesting information or assistance without Board authorization, the General Manager may refuse such requests that require, in the General Manager's opinion, a material amount of staff time or resources or that are disruptive
 - 3. Unless specifically authorized by a vote of the Board in an open meeting, individual Board members are prohibited from giving instructions to or directly supervising District employees.

11.4 ETHICS

- A. The District is subject to the following sections of Utah State Code, Annotated:
 - 1. Utah Code Title 67, Chapter 16 (*Utah Public Officers and Employees' Ethics Act*).
 - 2. Utah Code §76-8-105 (*Receiving or Soliciting Bribe or Bribery by Public Servant*).
- B. Refer to Procurement Policy for definitions and further discussion of the District's ethics policies.

SECTION 12.0 PUBLIC RECORDS POLICY

12.1 GOVERNMENT RECORDS ACCESS AND MANAGEMENT ACT

The District is subject to, and complies with, the Government Records Access and Management Act ("GRAMA"), Utah Code Title 63G, Chapter 2.

12.2 EXECUTIVE/CHIEF ADMINISTRATIVE OFFICER

- A. The General Manager shall serve as the District's Chief Administrative Officer for purposes of GRAMA.
- B. The General Manager shall appoint with the consent of the Board a GRAMA Officer.

12.3 FEES

The District shall charge and collect those costs and fees allowed by GRAMA for responding to a request for a record, as determined by the Comptroller.

12.4 REQUESTS FOR RECORDS

Pursuant to Utah Code §63G-2-204 request for a record shall be directed to the District's GRAMA Officer at the District's place of business. Prior to releasing any records, the GRAMA Officer shall consult with the General Counsel to determine what records shall be released in accordance with state law.

12.5 RECORDS RETENTION

The District will retain records according to the retention schedule adopted by State Archives for local governments.

SECTION 13.0 TECHNOLOGY POLICY

13.1 PERSONAL USE OF DISTRICT COMPUTERS & OFFICE ITEMS

- A. Employees may use District computers and information systems for de minimus personal use. Such use shall not disrupt employees from work responsibilities.
- B. All data stored, and software developed, on District computer equipment is the property of the District and may be viewed/reviewed by the General Manager or designee, at any time.
- C. Postage. No employee shall be allowed to take postage stamps from the District inventory without fully compensating the District for the actual value of the postage. Related reimbursements to the District shall be documented and deposited into petty cash.
- D. FAX and Copying Machines. Any employee desiring to use District FAX or copying machines for items of a personal nature may do so after paying for such use at the employee rate which is in effect at the time of use. Related reimbursements to the District shall be documented and deposited into petty cash.

13.2 PERSONAL USE OF TELEPHONES (LAND LINES)

- A. Employees shall limit use of District telephones to conduct District business with the following exceptions:
 - 1. Local personal calls shall be made sparingly and only when necessary.
 - 2. Long distance personal calls shall be limited to emergencies.
 - 3. All personal use of District telephones must not disrupt the carrying out of employee responsibilities and shall be used judiciously.
 - 4. Employees may be required to reimburse the District for any additional costs resulting from personal use of District telephones.

13.3 CELL PHONE USAGE

- A. The District may provide cell phones or allowances for the following District positions:
 - 1. General Manager, Comptroller, and General Counsel;
 - 2. Board members;
 - 3. The following permanent employees, as determined by the General Manager:
 - a. Information Technology (IT) employees who may need to be contacted to coordinate IT issues and/or resolve IT issues in a timely manner;
 - b. Operations employees who may need to coordinate activities, communicate with their supervisor or dispatch, or who may be required to respond to an emergency;
 - c. Other employees who may be required to respond to an emergency; and
 - d. Other employees as approved by the Board.
- B. Requests for cell phone allowances must be made using a Cell Phone Plan Form.
- C. District cell phone use should be limited to District business with the following exceptions:

1. Local personal calls may be made on a de minimus use basis; and
 2. Long-distance personal calls shall be limited to emergencies.
- D. All personal use of District cell phones must not disrupt the carrying out of employee responsibilities and shall be used judiciously.
- E. Employees may be required to reimburse the District for any additional costs resulting from personal use of District cell phones.
- F. The District will replace a cell phone when, in the opinion of the technology manager, replacement is appropriate but in no event more than once per year for each employee authorized to receive a District cell phone. If an employee loses or damages a cell phone that she/he has had for less than 12 months, the employee may be charged \$50 for the replacement phone. Replacement phone styles and models will be determined by the technology manager. All District issued cell phones are required to be covered by a protective device.
- G. Each District employee is responsible to know, understand, and comply with the laws of the State of Utah regarding the use of cell phones while driving, including, specifically, the prohibition on using a handheld wireless communication device while operating a moving vehicle as set forth in Utah Code §41-6a-1716. The District expressly prohibits the use of cell phones while operating District vehicles, driving while on District business, or operating heavy machinery.

13.4 CELL PHONES AND TEXTING

- A. In order to maintain a safe and productive workplace, the District has the following policies surrounding texting and use of cell phones (work issued or personal) while working. Texting includes the use of all types of messaging and other data services.
- B. Texting should not be excessive, disrupt your productivity, or cause a disruption to your coworkers.
- C. Any use of a cell phone including texting while driving a company vehicle or using heavy machinery is expressly prohibited. Any use of the internet, email, apps, etc. is also prohibited while driving.

13.5 INTERNET CONNECTION ALLOWANCE

- A. The General Manager may authorize reimbursements or allowances for personal Internet service for employees who need to be able to work from home to:
1. Respond to emergencies;
 2. Coordinate District activities;
 3. Provide access to information in order to respond to inquiries; or
 4. Allow employees to work from home when sick, or when weather or travel conditions warrant.
- B. Requests for Internet Allowance must be approved by the General Manager.

13.6 TABLETS

- A. Certain personnel may be issued District tablets (iPads), as approved by the General Manager, to carry out job responsibilities. Every care must be taken by employees to protect these assets. Tablets are not to be used for personal reasons. All applications installed on District issued tablets must be installed by IT. All rules regarding electronic communication and Internet use apply to tablets.

SECTION 14.0 PROCUREMENT POLICY

14.1 BACKGROUND

- A. **Policy:** This shall be known as the High Valley Transit Procurement Policy.
- B. **Purpose:** The purpose of this Procurement Policy is to identify the procedure for approval and payment for all purchases or encumbrances by the District and to ensure that all such payments and encumbrances are fair and reasonable and are not in conflict with applicable law. The Procurement Policy is applicable to all Board Members and employees.
- C. **Applicability of the Utah Procurement Code:** The District is subject to the Utah Procurement Code (Utah Code §§63G-6a-101 *et. seq.*) and, as such, purchases by the District shall be made in accordance with applicable sections of the Utah Procurement Code, as now constituted or as it may be amended and modified from time to time. For purposes of the application of the Utah Procurement Code and this Procurement Policy, the District is a Procurement Unit with independent procurement authority (Utah Code §63G-6a-106).
 - 1. **Exception - State or Federal Law or Regulations:** Whenever any purchase or encumbrance is made with state or federal funds and applicable state or federal law or regulations are in conflict with this Procurement Policy, to the extent that following the provisions of this Procurement Policy might jeopardize the use of those funds or future state or federal funds, such conflicting provisions of this Procurement Policy shall not apply and the District shall follow the procedure required by the applicable state or federal law or regulation.
 - 2. **Exception – Federal or State Funding/Grants:** When a procurement involves the expenditure of federal or state assistance or contract funds, the District shall comply with any mandatorily applicable federal or state law and regulations which are not reflected in this Procurement Policy. This Procurement 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 (Utah Code §63G-6a-107.2).

14.2 DEFINITIONS

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

- A. **Board:** For purposes of the Utah Procurement Code and this Procurement Policy, the District Board of Trustees is the Rulemaking Authority for the District (Utah Code §63G-6a-103(77)).
- B. **Statutory Definitions:** The definitions of terms set forth in Utah Code §63G-6a-103, as they may be amended from time-to-time are, to the extent applicable to this Policy and the activities of the District, incorporated herein by this reference.
- C. **Procurement Officer:** The General Manager shall be the District's "Procurement Officer" and other employees of the District may act as Procurement Officers as authorized and delegated by the Board and/or the General Manager (Utah Code §63G-6a-103(57)). References in this Procurement Policy to the Procurement Officer shall include any "designee" or "delegate" designated by the General Manager or the Board.

D. **Additional Definitions:**

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

of deceit or in violation of law, favors one vendor over another in the process of awarding a contract. Examples of ways in which District contracts may improperly be steered to a “favored vendor” include, but are not limited to:

- a. Collusion or manipulation of the procurement to steer a contract award to a particular vendor;
- b. Illegal bribes or kickbacks paid by a vendor in exchange for a contract award;
- c. Unjustified sole source contract awards to a vendor;
- d. Bid rigging schemes;
- e. Writing specifications that are overly restrictive or written in a way that gives an unfair advantage to a particular vendor;
- f. Improperly splitting purchases to avoid use of a standard competitive procurement process;
- g. Leaking bid or proposal information to a particular vendor to the exclusion of other vendors; or
- h. Not following established policies and procedures when approving change orders.

- 14. **Immaterial Error:** means an irregularity or abnormality that is a matter of form that does not affect substance or an inconsequential variation from a requirement of a solicitation that has no, little or a trivial effect on the procurement process and that is not prejudicial to other vendors, and includes (a) a missing signature, missing acknowledgement of an addendum or missing copy of a professional license, bond or insurance certificate, (b) a typographical error, (c) an error resulting from an inaccuracy or omission in the solicitation, or (d) any other error that the Procurement Officer reasonably considers to be immaterial.
- 15. **Mandatory Requirement:** means a condition set out in the specifications/statement of work that must be met without exception.
- 16. **New Technology:** means any invention, discovery, improvement, or innovation that was not available to the District on the effective date of the contract, whether or not patentable, including, but not limited to, new processes, emerging technology, machines, and improvements to or new applications of existing processes, machines, manufactures and software. Also included are new computer programs, and improvements to, or new applications of, existing computer programs, whether or not copyrightable and any new process, machine, including software, and improvements to, or new applications of, existing processes, machines, manufactures and software.
- 17. **Participating Addendum:** means an agreement issued in conjunction with a State Cooperative Contract awarded by the Division of Purchasing and General Services (a “**Cooperative Contract**”) that authorizes a public entity such as the District to use the Cooperative Contract.
- 18. **Payment Bond:** is a bond that guarantees payment for labor and materials expended on the contract.
- 19. **Price Analysis:** means the evaluation of price data without analysis of the separate cost components and profit.
- 20. **Price Data:** means factual information concerning prices for procurement items.

21. **Record**: shall have the meaning specified in Utah Code §63G-2-103.
22. **Retention Schedule**: refers to the record retention schedule applicable to the District as approved by the State Records Committee, or the model retention schedule maintained by the State Archivist if the District does not have its own approved retention schedule.
23. **Surety Bond**: (performance bond) means a promise to pay the District a certain amount if the principal (contractor) fails to meet some obligation, such as fulfilling the terms of a contract. The surety bond protects the District against losses resulting from the principal's failure to meet the obligation. In the event that any obligation is not met, the District may recover its losses via the bond.
24. **Utah Resident Bidder**: means a bidder qualified under this Procurement Policy.

14.3 GENERAL PROVISIONS

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

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

- B. **Approval of Contracts**: The General Manager shall sign all contracts of the District. Approval of contracts shall be as provided hereunder.

Category	Limitation	Authorization
Surplus Property	\$10,000.00 or Less	Procurement Officer
Surplus Property	Greater than \$10,000.00	Board
Small Purchases	\$100,000.00 or Less	Procurement Officer
Small Purchases-Architectural and Engineering Services	\$250,000.00 or Less	Procurement Officer
Small Purchases-Construction	\$400,000.00 or Less	Procurement Officer
Intermediate Purchases	\$100,000.00 - \$500,000.00	General Manager
Major Purchases	Greater than \$500,000.00	Board
Sole Source Contracts	Any amount	General Manager
Emergency Procurement	Any amount	General Manager
State and Federal Grants	Any amount	Board

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

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

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

E. **Cooperative Purchasing and Purchasing Preferences:**

1. **Cooperative Purchasing:** Nothing contained herein 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 Utah Procurement Code, entitled “Interaction Between Procurement Units”.

a. Cooperative purchasing will be conducted in accordance with the requirements set forth in Utah Code §§63G-6a-2104 and 2105.

b. A state cooperative contract may not be used for:

i. An anti-competitive practice such as:

- (1) Bid rigging;
- (2) Steering a contract to a preferred state cooperative contractor;
- (3) Utilizing auction techniques where price quotations are improperly disclosed and contractors bid against each other’s price;
- (4) Disclosing pricing or other confidential information prior to the date and time of the opening; or
- (5) Any other practice prohibited by the Procurement Code.

2. **Preference for State Products and Resident Contractors:** Utah Code §63G-6a-1002 provides for a reciprocal preference for the providers of procurement items produced, manufactured, mined, grown, or performed in Utah and §63G-6a-1003 provides a reciprocal preference for resident Utah contractors. In the event more than one equally low preferred bidder or contractor qualifies for the reciprocal preference, the Procurement Officer shall consider the preferred bidders or contractors to be tied and

will award the bid utilizing the following ranked preferences: (a) bidder who is the provider of state products; (b) bidder who is closest to the point of delivery; (c) bidder who received the previous award; or (d) bidder who will provide the earliest delivery date. (Utah Code §63G-6a-608)

F. Purchase Records:

1. **Invoices and Receipts:** Invoices prepared by the vendor, cash register receipts and/or other written documentation to substantiate District expenditures will be maintained as part of the District's financial records in accordance with customary procedures for public entities such as the District. Whenever possible, original invoices will be used as supporting documentation for District purchases.
2. **Penalty for Double Payment:** An intentional effort on the part of a supplier to obtain a double payment may serve as the basis for a "debarment" under which that supplier will be precluded from providing materials, goods and/or services to the District for a prescribed time not to exceed 3 years (Utah Code §63G-6a-904). Similarly, any intentional effort on the part of a District employee to receive a double reimbursement may result in sanctions, including termination.
3. **Use of Forms:** All departments are required to file with the Procurement Officer detailed requisitions for their requirements of supplies, contractual services, materials and equipment.

G. Surplus Personal Property and Salvage:

1. **Disposal of Surplus Personal Property:** Surplus personal property having a value of **\$10,000.00** or less may be disposed of in a commercially reasonable manner as the Procurement Officer sees fit, with all proceeds of the disposal to be the property of the District. Depending on the nature of the surplus personal property, donation, disposal or destruction may be considered commercially reasonable. Surplus personal property with a value in excess of **\$10,000.00** may not be disposed of until the Board has declared the property to be surplus, after which it may be disposed of for the benefit of the District in a commercially reasonable manner as directed by the Board. This requirement shall not apply when the surplus property, such as a vehicle or equipment, is being "traded in" on the purchase of substitute property, provided that the acquisition of the substitute property is in conformance with the requirements of this Procurement Policy.
2. **Salvage:** Metal and other items of some residual value may be salvaged by employees of the District while working on District facilities and improvements. Such salvaged items continue to be the property of the District and are to be disposed of accordingly. As a consequence, all receipts from salvaging such items shall be the property of the District and shall be safeguarded and accounted for as such.

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

I. Technology Modification: Any contract may be subject to a modification for technological upgrades if a provision to that effect was included in the solicitation or the contract. Any modification to a contract for upgraded technology should be substantially within the scope of the

original procurement or contract. Then, if both parties agree to the modification, the contract may be modified for a technological upgrade without going through a new procurement process. A technological upgrade or modification may extend the contract term beyond the original term of the contract only as provided in the Procurement Code and this Procurement Policy.

14.4 CONTRACTUAL TERMS

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

1. **In Excess of Five Years:** Notwithstanding the foregoing, or anything to the contrary in this Procurement Policy, a contract may be entered into for a period in excess of five years, or for an indeterminate period that is terminable at-will by the District, with or without cause, based upon a written determination by the Procurement Officer, as provided in Utah Code §63G-6a-1204(7), that:

- a. A longer period is necessary in order to obtain the procurement item,
- b. A longer period is customary for industry standards, or
- c. A longer period is in the best interest of the District.

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

2. **Availability of Funds:** As allowed by law or the underlying contract, when funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, a multi-year contract may be canceled and the contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the contract. The cost of cancellation may be paid from any appropriation available for that purpose.

3. **Indefinite Term:** Based upon a written determination by the Procurement Officer, with the concurrence of the contracting parties, a contract may be entered into as, or may be modified to become, an indefinite term contract terminable at will by the District.

B. Type of Contract:

1. **Generally:** Subject to the limitations of this Section, any type of contract which will promote the best interest of the District may be used; provided that, if a contract other than a firm fixed price contract is used, the Procurement Officer must make a written determination as required by Utah Code §63G-6a-1205(3) 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 Utah Code §63G-6a-1205(3)(c). The various contract types that may be used are identified in Utah Code §63G-6a-1205(4).

2. **Cost-Plus-a-Percentage-of-Cost:** As provided in Utah Code §63G-6a-1205(5), the District may not enter into a cost-plus-a-percentage-of-cost contract unless the contract form is approved by the Procurement Officer; it is standard practice in the industry to obtain the subject procurement item through a cost-plus contract; and any percentage and the method of calculating costs stated in the contract are in accordance with industry standards.
3. **Cost Reimbursement:** As provided in Utah Code §63G-6a-1205(6), a cost reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the District than any other contract type or that it is impracticable to obtain the supplies, services, or construction required except under such a contract, and the proposed contractor has an adequate accounting system to timely develop cost data in the form necessary for the District to timely and accurately make payments under the contract and to allocate costs in accordance with generally accepted accounting principles.

- C. **Installment Payments:** The District may make installment payments in accordance with Utah Code §63G-6a-1208.

14.5 SMALL PURCHASES

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

1. **Definition:** A "Small Purchase" is a procurement conducted by the District without using a standard procurement process.
2. **Thresholds:** Small Purchase thresholds are as follows:
 - a. The "Individual Procurement Threshold" is a maximum amount of **\$10,000** for a procurement item. For individual procurement item(s) costing up to **\$10,000**, the District may select the best source by direct award and without seeking competitive bids or quotes.
 - b. The "Single Procurement Aggregate Threshold" is a maximum amount of **\$25,000** for multiple procurement item(s) purchased from one source at one time.
 - c. The annual cumulative threshold from the same source is a maximum amount of **\$100,000**.
3. **Vendor Prequalification:** Should the District elect to pre-qualify vendors for a small purchase, the District will follow the process described in Utah Code §63G-6a-410 to prequalify potential vendors and Utah Code §63G-6a-507 to develop an approved vendor list, or Part 15 of the Utah Procurement Code for the selection of architectural and engineering services.
4. **Rotation System:** Whenever practicable, the District will use a rotation system or other

system designed to allow for competition when using the small purchases process.

B. Small Purchases Threshold for Architectural and Engineering Services:

1. **Threshold:** The small purchase threshold for architectural or engineering services is a maximum amount of **\$250,000** per budget year.
2. **Procedure:** Architectural or engineering services may be procured, up to a maximum of **\$250,000**, by direct negotiation after reviewing the qualifications, experience and background of a minimum of three architectural or engineering firms. As part of the selection process, the District shall consider the specific individuals assigned by the firm to the project, the time commitments of each to the project, the project schedule and the approach to the project that each firm will take (Utah Code §17B-1-108(3)).
3. **Specifications:** The District will include minimum specifications when using the small purchase threshold for architectural and engineering services.

C. Small Purchases Threshold for Construction Projects:

1. **Threshold:** The small construction project threshold is a maximum of **\$400,000** for direct construction costs, including design and allowable furniture or equipment costs.
2. **Procedure:** The District will follow the process described in Utah Code §63G-6a-410 to prequalify potential vendors and in Utah Code §63G-6a-507 to develop an Approved Vendor List, or other applicable selection methods described in the Utah Procurement Code for construction services.
3. **Specifications:** Minimum specifications will apply when using the small purchases threshold for construction projects.
4. **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.
5. **From \$50,000 to \$400,000:** The District may procure small construction projects costing more than **\$50,000** up to a maximum of **\$250,000** by obtaining a minimum of two competitive quotes that include minimum specifications, and will award the work to the contractor with the lowest quote that meets the specifications after documenting that all applicable building code approvals, licensing requirements, permitting and other construction related requirements will be met.
6. **Over \$250,000:** Between **\$250,000** and **\$400,000**, 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 Utah Code §63G-6a-507, the District will procure construction projects costing more than **\$250,000** using an invitation to bid or other approved source selection method outlined in the Utah Procurement Code and may do the same for construction projects that cost less than **\$250,000**, in the District's discretion.

D. Quotes for Small Purchases between \$10,000 and \$100,000:

1. **From \$10,000 to \$100,000:** For such procurement item(s) costing more than **\$10,000**, up to a maximum of **\$100,000**, the District will obtain at least two price quotations, either through direct inquiry to vendors or other documented research, that include minimum specifications and may purchase the procurement item from the responsible vendor offering the lowest quote or best value that meets the specifications.
2. **Above \$100,000:** For procurement item(s) costing more than **\$100,000**, the District will conduct an invitation for bids or other procurement process outlined in the Utah Procurement Code.
3. **Public Record:** The names of the vendors offering quotations or bids and the date and amount of each quotation or bid will be recorded and maintained as a governmental record (Utah Code §63G-6a-2002).

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

1. **Up to \$250,000:** The small purchase threshold for professional service providers and consultants is a maximum amount of **\$250,000** per budget year.
2. **Procedure:** After reviewing the qualifications of a minimum of two professional service providers or consultants, the District may obtain professional services or consulting services:
 - a. Up to a maximum cost of **\$100,000** by direct negotiation; or
 - b. Over **\$100,000** up to a maximum of **\$250,000** by obtaining a minimum of two quotes.
3. **Cost Not Primary:** The District need not select the professional service provider presenting the lowest cost quotation, but may instead base the selection on other documented factors such as experience, knowledge and reputation.

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

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

H. Open Charge Accounts: The District, for convenience, may maintain one or more open charge accounts with vendors who regularly provide supplies and materials. Purchases on the account must be approved by the Procurement Officer or an authorized designee prior to the purchase. Receipts are to be maintained for all credit card purchases and vendor statements are to be reconciled against those receipts prior to making credit card payments. Unless there is a dispute arising from the reconciliation or otherwise, or sufficient funds are not immediately available, all

credit card charges are to be timely paid so as to avoid finance charges. No open charge account is to be utilized to circumvent the competitive requirements of this Procurement Policy.

14.6 VENDOR PREQUALIFICATION

- A. **Prequalification of Potential Vendors.** General procurement provisions, including prequalification of potential vendors, approved vendor lists, and small purchases, will be conducted in accordance with the requirements set forth in Utah Code §§63G-6a-410, 506 and 507. This Subsection provides additional procedures and is to be used in conjunction with the Utah Procurement Code.
- B. **Approved Vendor Lists.**
 - 1. **Thresholds:** The District may establish approved vendor lists in accordance with the requirements of Utah Code §§63G-6a-410 and 507.
 - a. Contracts or purchases from an approved vendor list may not exceed the following thresholds:
 - i. Construction Projects: **\$400,000** per contract, for direct construction costs, including design and allowable furniture or equipment costs, awarded using an invitation for bids or a request for proposals;
 - ii. Professional and General Services, including architectural and engineering services: **\$250,000**; and
 - iii. Information Technology: **\$500,000**.
 - b. Thresholds for other approved vendor lists may be established by the Procurement Officer.

14.7 SPECIFICATIONS

- A. **Content:** The District will include in solicitation documents specifications for the procurement item(s) being sought.
 - 1. **Economy and Competition:** Specifications will be drafted with the objective of clearly describing the District's requirements and encouraging competition (Utah Code §63G-6a-111).
 - 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 regarding the purposes and non-restrictiveness of specifications shall apply to all specifications including, but not limited to, those prepared for the District by architects, engineers, designers, and draftsmen.
 - 2. **Conflicts Generally Prohibited:** Except as specifically provided in this Subsection, persons with a conflict of interest, or who anticipate responding to the proposal for which the specifications are written, may not participate in writing specifications. A person may be

retained to assist in writing specifications, scopes of work, requirements, qualifications, or other components of a solicitation. A person assisting in writing specifications shall not, at any time during the procurement process, be employed in any capacity by, nor have an ownership interest in, an individual, public or private corporation, governmental entity, partnership, or unincorporated association bidding on or submitting a proposal in response to the solicitation provided, however, that this restriction shall not apply to a design build construction project or other procurements as determined in writing by the Procurement Officer.

- a. A non-employee of the District (such as a consulting engineer) who has prepared specifications for use by the District may participate in a District procurement using those specifications only if the person declares, in a writing delivered to the District Director, an intent to do so and the District Director makes a written determination, which is placed in the bid or contract file, indicating that it is in the best interest of the District to allow the identified non-employee to participate in the procurement, including an identification of specific benefits that are expected to be received by the District and a determination that participation by the non-employee will not be prejudicial to the fair and equal conduct of the procurement process.
- b. Violations may result in:
 - i. The bidder or offeror being declared ineligible to be awarded the contract (Utah Code §63G-1-120; §63G-6a-904 and §63G-6a-2404);
 - ii. The solicitation being canceled (Utah Code §63G-6a-902; §63G-6a-119);
 - iii. Voiding of an awarded contract (Utah Code §63G-6a-2405); or
 - iv. Any other action determined to be appropriate by the Board.

3. Brand Name or Equal Specifications:

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

4. Brand Name Sole Source Requirements:

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

- c. Notwithstanding the foregoing, or anything to the contrary in this Policy, when the equipment or other procurement items designated by brand name for a construction project are projected to cost no more than ten percent (10%) of the total cost of the construction project, a designated brand may be identified in the specifications and the District will not be required to consider arguably equivalent products.

14.8 COMPETITIVE PROCUREMENT

- A. **Request for Information:** Before issuing an invitation for bids or a request for proposals, the District may issue a request for information to determine whether to issue an invitation for bids or request for proposals and generate interest in a potential procurement by the District as provided in Utah Code §63G-6a-409.
 - 1. A Request for Information is not a procurement process and may not be used to (i) solicit cost, pricing, or rate information, (ii) negotiate fees, (iii) make a purchase, or (iv) enter into a contract.
 - 2. The District is still required to use a standard procurement process or meet the statutory requirements for an exemption to make an actual procurement.
 - 3. A response to a Request for Information is not an offer and may not be accepted to form a binding contract.
 - 4. The purpose of a Request for Information is to:
 - a. Obtain a wide range of information, including (a) the availability of a procurement item, deliver schedules, industry standards and practices, product specifications, training, new technologies, capabilities of potential providers of a procurement item and alternate solutions from potential bidders or offerors before issuing an Invitation to Bid or Request for Proposals;
 - b. Determine whether to issue an Invitation to Bid or a Request for Proposals; and
 - c. Generate interest in a potential Invitation to Bid or a Request for Proposals.
 - 5. A Request for Information may be useful in order to:
 - a. Prepare to issue an Invitation to Bid or a Request for Proposals for an unfamiliar or complex procurement;
 - b. Determine the market availability of a procurement item; or
 - c. Determine best practices, industry standards, performance standards, product specifications, and innovations relating to a procurement item.
 - 6. A Request for Information may seek a wide range of information, including:
 - a. Availability of a procurement item;
 - b. Delivery schedules;

- c. Industry standards and practices;
- d. Product specifications;
- e. Training;
- f. New technologies;
- g. Capabilities of potential providers of a procurement item; and
- h. Alternate solutions.

7. Information submitted to or by a governmental entity in response to a request for information is protected under Utah Code §63G-2-305.

B. Competitive Bids and Proposals - Over \$100,000.00: Except as otherwise allowed by law and this Procurement Policy, contracts for services, supplies, materials, or equipment where the amount to be paid annually by the District is more than \$100,000.00 shall be awarded only after competitive sealed bids or proposals have been requested and received. Sealed written bids or proposals are to be obtained for all such purchases in excess of \$100,000.00 from at least three suppliers (provided that there are at least three available suppliers willing to submit a bid or proposal). Documentation regarding the sealed written bids or proposals is to be maintained by the District and the purchase is to be documented as required by the District's applicable rules and regulations.

C. Bidding Procedure: Competitive Sealed Bidding shall be conducted in accordance with the requirements set forth in Utah Code §§63G-6a-602 through 63G-6a-608 and as provided in this Procurement Policy.

1. Invitation for Bids: Except as otherwise provided in this Procurement Policy, contracts will generally be awarded by competitive sealed bidding. When a contract is to be awarded by competitive sealed bidding, an invitation for bids will be issued.

a. The invitation for bids shall include the information required by Utah Code §63G-6a-603 and may include a "Bid Form" or forms which provide lines for bidder information such as the following:

- i. The bidder's bid price;
- ii. The bidder's acknowledged receipt of addenda issued by the District;
- iii. Identification by the bidder of other applicable submissions; and
- iv. The bidder's signature

b. Bidders may be required to submit descriptive literature and/or product samples to assist in the evaluation of whether a procurement item meets the specifications and other requirements set forth in the invitation for bids.

- i. Product samples must be furnished free of charge unless otherwise stated in the invitation for bids and, if not destroyed by testing, will upon written request within any deadline stated in the invitation for bids, be returned at the bidder's expense. Samples must be labeled or otherwise identified as specified in the invitation for bids.

- c. Bid, payment and performance bonds or other security may be required for procurement items as set forth in the invitation for bids. Bid, payment and performance bond amounts shall be as prescribed by applicable law or be based upon the estimated level of risk associated with the procurement item and may not be increased above the estimated level of risk with the intent to reduce the number of qualified bidders.
- d. Bids must be based upon a definite calculated price.
 - i. "Indefinite quantity contract" means a fixed price contract for an indefinite amount of procurement items to be supplied as ordered by the District and does not require a minimum purchase amount, or provide a maximum purchase limit;
 - ii. "Definite quantity contract" means a fixed price contract that provides for the supply of a specified amount of goods over a specified period, with deliveries scheduled according to a specified schedule; and
 - iii. Bids may not be based on using or referencing another bidder's price, including a percentage discount, a formula, any other amount related to another bidder's price, or conditions related to another bid.

2. Addenda to Invitation for Bids: Prior to the submission of bids, the District may issue addenda which may modify any aspect of the invitation for bids.

- a. Addenda will be distributed within a reasonable time to allow prospective bidders to consider the addenda in preparing bids.
- b. After the due date and time for submitting bids, at the discretion of the Procurement Officer, addenda to the invitation for bids may be limited to bidders that have submitted bids, provided the addenda do not make a substantial change to the invitation for bids that, in the opinion of the Procurement Officer, likely would have impacted the number of bidders responding to the invitation for bids.

3. Pre-Bid Conferences/Site Visits:

- a. Pre-bid conferences and/or site visits may be conducted to explain the procurement requirements. If there is to be a pre-bid conference or a site visit, the time and place of the pre-bid conference/site visit should be stated in the invitation for bids.
- b. A pre-bid conference or a site visit may be mandatory, but only if the invitation for bids states that the conference/site visit is mandatory and provides the location, date and time of the conference/site visit and also states that failure to attend a mandatory conference/site visit shall result in the disqualification of any bidder that does not attend.
- c. Attendance at a pre-bid conference may be conducted via any of the following as determined by the Procurement Officer:
 - i. Attendance in person;
 - ii. Teleconference participation;
 - iii. Webinar participation; or
 - iv. Other approved electronic media.

- d. A site visit may generally only be attended in person provided, however, at the discretion of the Procurement Officer, an audio or video recording of a site visit may be used.
- e. Attendance and participation at all pre-bid conferences and site visits must be by an authorized representative of the vendor submitting a bid and as may be further specified in the invitation for bids.
- f. The District will maintain an attendance log including the name of each attendee, the firm the attendee is representing, the attendee's contact information, and any documents distributed to the attendees; and the District may maintain minutes of the pre-bid conference/site visit.
- g. The District may, as appropriate, publish as an addendum to the solicitation:
 - i. The attendance log;
 - ii. Minutes of the pre-bid conference and any documents distributed to the attendees at the pre-bid conference or site visit; or
 - iii. Any oral modification made to any of the solicitation documents, which shall be reduced to writing.

4. **Public Notice:** Public notice of the invitation for bids is to be given at least seven days prior to the date set forth therein for the opening of bids, in accordance with Utah Code §63G-6a-112. The notice shall be published using one of the following methods: in a newspaper of general circulation in the area, on the main website of the District, or on a state website that is owned, managed by, or provided under contract with, the Utah Division of Purchasing and General Services for posting a public procurement notice. (Utah Code §63G-6a-112)

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

- a. Bids and modifications to a bid submitted electronically or by physical delivery, after the established due date and time, will not be accepted for any reason, except as set forth in Section 14.8.C.5.d.
- b. When submitting a bid or modification electronically, bidders must allow sufficient time to complete the online forms and upload documents. The solicitation will end at the closing time posted in the electronic system, if applicable. If a bidder is in the process of uploading a bid when the closing time arrives, the bid or modification of the bid will not be accepted.
- c. When submitting a bid or modification to a bid by physical delivery (U.S. mail, courier service, hand-delivery, or other physical means) bidders are solely responsible for meeting the deadline. Delays caused by a delivery service or other physical means will not be considered as an acceptable reason for a bid or modification to a bid being late.
 - i. All bids or modifications to bids received by physical delivery will be date and time stamped
- d. To the extent that an error on the part of the District or an employee of the District results in a bid or modification to a bid not being received by the

established due date and time, the bid or modification to a bid will be accepted as being on time.

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

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

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

8. **Re-solicitation of a Bid:**

- a. Re-solicitation of a bid may occur if the Procurement Officer determines that:

- i. A material change in the scope of work or specifications has occurred;
- ii. Procedures outlined in the Procurement Code were not followed;
- iii. Additional public notice is desired;
- iv. There was a lack of adequate competition; or
- v. Any other reason exists that causes re-solicitation to be in the best interest of the District.

- b. Re-solicitation may not be used to avoid awarding a contract to a qualified vendor in an attempt to steer the award of a contract to a favored vendor.

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

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

10. **Only One Bid Received:**

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

11. **Multiple or Alternate Bids:**

- a. Multiple or alternate bids will not be accepted, unless otherwise specifically required or allowed in the invitation for bids.

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

12. Methods to Resolve Tie Bids:

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

13. Notice of Award:

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

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

- a. The Procurement Officer may hold a pre-bid conference to discuss the multiple stage bidding process or for any other permissible purpose.

D. Unpriced Offers: When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued under Section 14.8.C requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

E. Competitive Sealed Proposals: Whenever the Procurement Officer or other designated employee of the District determines that the use of competitive sealed bidding is either not practicable or not advantageous to the District, a contract may be entered into using competitive sealed proposals. A request for proposals ("RFP") shall be subject to the Public Notice requirement of this Procurement Policy and conducted in accordance with the requirements set forth in Utah Code §§63G-6a-701 through 63G-6a-712 and as provided below.

1. Content of the Request for Proposals:

- a. In addition to the requirements set forth under Utah Code §63G-6a-703, the request for proposals solicitation shall include:
 - i. A description of the format that offerors are to use when submitting a proposal, including any required forms; and
 - ii. Instructions for submitting price.

- f. If, in the negotiation of exceptions and/or additions with a particular offeror, an agreement is not reached, after a reasonable amount of time, as determined by the Procurement Officer, the negotiations may be terminated, a contract will not be awarded to that offeror, and the District may move to the next eligible offeror.

4. Protected Records:

- a. The following are protected records, and may be redacted in accordance with the Governmental Records Access and Management Act (GRAMA) Title 63G, Chapter 2 of the Utah Code.
 - i. Trade Secrets, as defined in Utah Code §13-24-2.
 - ii. Commercial information or non-individual financial information subject to the provisions of Utah Code §§63G-2-305(2) and (3).
 - iii. Other Protected Records under GRAMA.
- b. Any person requesting that a record be protected shall include with the proposal or submitted document:
 - i. A written indication of which provisions of the proposal or submitted document are claimed to be considered for business confidentiality or to be protected (including trade secrets or other reasons for non-disclosure under GRAMA); and
 - ii. A concise statement of the reasons supporting each claimed provision of business confidentiality or other basis for protection. (Utah Code §63G-2-309)

5. Notification:

- a. A person who complies with Section 14.8.E.4 will be notified by the District prior to the public release of any information for which a claim of confidentiality has been asserted.
- b. Except as provided by court order, the District may not be compelled to disclose a record claimed to be protected under Section 14.8.E.4, but which the District or State Records Committee determines should be disclosed until the period in which to bring an appeal expires or the end of the appeal process, including judicial appeal, is reached. This Subsection 14.8.E.5 does not apply where the claimant, after notice, has waived the claim by not appealing or intervening before the State Records Committee. To the extent allowed by law, the parties to a dispute regarding the release of a record may agree in writing to an alternative dispute resolution process.
- c. Any allowed disclosure of public records submitted in the request for proposals process will be made only after the selection of the successful offeror(s) has been made public.

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

- a. If an offeror submits a proposal that contains information claimed to be business confidential or protected information, the offeror must submit two separate proposals:

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

7. Pre-proposal Conferences/Site Visits:

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

- iii. Any oral modification made to any of the solicitation documents, which shall be reduced to writing.

8. Addenda to Request for Proposals:

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

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

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

- a. Proposals and modifications to a proposal submitted electronically or by physical delivery, after the established due date and time, will not be accepted for any reason.
- b. When submitting a proposal or modification to a proposal electronically, offerors must allow sufficient time to complete the online forms and upload documents. The solicitation will end at the closing time posted in the electronic system. If an offeror is in the process of uploading a proposal when the closing time arrives, the proposal or modification to a proposal will not be accepted.
- c. When submitting a proposal or modification to a proposal by physical delivery (U.S. mail, courier service, hand-delivery, or other physical means) offerors are solely responsible for meeting the deadline. Delays caused by a delivery service or other physical means will not be considered as an acceptable reason for a proposal or modification to a proposal being late.

- i. All proposals or modifications to proposals received by physical delivery will be date and time stamped by the District.

11. Proposal Correction, Withdrawal or Clarification

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

12. Evaluation of Proposals:

- a. The evaluation of proposals shall be conducted in accordance with Part 7 of the Utah Procurement Code.
- b. An evaluation committee may ask questions of offerors to clarify proposals. A record of questions and answers shall be maintained in the file.

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

13. Correction or Withdrawal of Proposal:

- a. In the event an offeror submits a proposal that on its face appears to be impractical, unrealistic or otherwise in error, the Procurement Officer may contact the offeror to either confirm the proposal, permit a correction of the proposal, or permit the withdrawal of the proposal, in accordance with Utah Code §63G-6a-114.
- b. Offerors may not correct errors, deficiencies, or incomplete responses in a proposal that has been determined to be not responsible or not responsive, or that does not meet the mandatory minimum requirements stated in the request for proposals.

14. Interviews and Presentations:

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

Representations must be consistent with the offeror's original proposal and may only be used for purposes of clarifying or filling in gaps in the offeror's proposal.

- d. The Procurement Officer shall establish a date and time for the interviews or presentations and shall notify eligible offerors of the procedures. Interviews and presentations will be at the offeror's expense.

15. Best and Final Offers: Best and final offers (BAFO) shall be requested in accordance with Utah Code §63G-6a-707.5 and this Procurement Policy.

- a. The BAFO process is an optional step in the evaluation phase of the request for proposals process in which offerors are requested or given an opportunity to modify their proposals. At any time during the evaluation process, the evaluation committee, with the approval of the Procurement Officer, may request best and final offers from responsible offerors who have submitted responsive proposals that meet the minimum qualifications, evaluation criteria, or applicable score thresholds identified in the Request for Proposals, if any one of the following applies:
 - i. No single proposal addresses all the specifications stated in the Request for Proposals.
 - ii. All or a significant number of the proposals are ambiguous on a material point and the evaluation committee requires further clarification in order to conduct a fair evaluation of proposals.
 - iii. The evaluation committee needs additional information from all offerors to complete the evaluation of proposals.
 - iv. The differences between proposals in one or more material aspects are too slight to allow the evaluation committee to distinguish between proposals.
 - v. All cost proposals are too high or over budget.
 - vi. Another reason exists supporting a request for best and final offers.
- b. Proposal modifications submitted in response to a request for best and final offers may only address the specific issues and/or sections of the RFP described in the request for best and final offers.
 - i. An offeror may not use the best and final offers process to correct a material error or other deficiencies in the offeror's proposal not called for in the request for best and final offers issued by the District.
- c. When a request for best and final offers is issued to reduce cost proposals, offerors shall submit itemized cost proposals which clearly indicate the tasks or scope reductions that can be implemented to bring costs within the available budget.
 - i. The cost information of one offeror may not be disclosed to a competing offeror during the best and final offers process and such cost

information shall not be shared with other offerors until after the contract has been awarded.

- ii. The District shall ensure that auction tactics are not used in the discussion process, including discussing and comparing the costs and features of other proposals.
- d. The best and final offers process may only be conducted during the evaluation phase of the RFP process and may not be conducted as part of the contract negotiation process.
- e. The District may not use the best and final offers process to allow offerors a second opportunity to propose on the entire RFP.
- f. If a proposal modification is made orally during the interview or presentation process, the modification must be confirmed in writing.
- g. A request for best and final offers shall:
 - i. Comply with all public notice requirements provided in Utah Code §63G-6a-112;
 - ii. Include a deadline for submission that allows offerors a reasonable opportunity to prepare and submit their responses; and
 - iii. Indicate how proposal modifications in response to a request for best and final offers will be evaluated.
- h. If an offeror does not submit a best and final offer, its immediate previous proposal will be considered as its best and final offer.
- i. Unsolicited best and final offers will not be accepted.

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

- a. A cost-benefit analysis is not required if the contract is awarded based solely on the qualifications of the construction manager/general contractor and the management fee described in Utah Code §63G-6a-707(10(b)), provided:
 - i. A competitive process is maintained by the issuance of a request for proposals that requires the offeror to provide, at a minimum:
 - (a) A management plan;
 - (b) References;
 - (c) Statements of qualifications; and
 - (d) A management fee which contains only the following:
 - (i) Preconstruction phase services;
 - (ii) Monthly supervision fees for the construction phase; and
 - (iii) Overhead and profit for the construction phase.
 - ii. The awarded contract must be in the best interest of the District.

17. Only One Proposal Received:

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

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

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

- (c) Discuss the scoring sheet and evaluation criteria set forth in the RFP; and
 - (d) Provide a copy of relevant portions of this Procurement Policy to the evaluation committee and any staff members who will have access to the proposals.
- ii. Once the proposals have been received and it is clear which offerors will be involved in the RFP process, each member of the evaluation committee may be asked to sign a written statement certifying that he/she does not have a conflict of interest, as set forth in Utah Code §63G-6a-707(5)(b) and in this Procurement Policy.
- c. Unless an exception is authorized by the Procurement Officer, in order to avoid cost influencing the evaluation committee's scoring of non-price criteria, in accordance with Utah Code §63G-6a-707(7), costs may not be revealed to the evaluation committee until after the committee has finalized its scoring on all other technical non-price criteria stated in the RFP.
- d. After receipt of proposals, each committee member shall independently read and score each proposal based on the technical non-price criteria set forth in the RFP to assess the completeness, quality, and desirability of each proposal.
 - i. Proposals must be evaluated solely on the criteria stated in the RFP.
 - (a) Past performance ratings and references may be considered if listed as evaluation criteria in the RFP.
 - (b) Personal opinions based on prior experience with a procurement item or the offeror are not to be considered in scoring proposals, except as provided in the RFP.
 - (c) Personal favoritism for a vendor or bias against a vendor cannot be considered in scoring proposals, but a committee member may properly have a bias based upon the review of a proposal in comparison to the criteria stated in the RFP.
 - ii. Evaluators are encouraged to request technical support from the Procurement Officer when conducting their independent assessments and scoring.
 - iii. After the proposals have been evaluated and scored by the individual committee members, the entire committee shall meet to discuss the proposals; if applicable, to conduct interviews; to resolve any factual disagreements; and to arrive at the final scoring. All committee members must be present in person or by electronic means to take any official action.
 - (a) If a committee member does not attend an evaluation committee meeting (including electronic attendance), the member may be removed from the evaluation committee and the remainder of the committee may take official action, provided there are at least three evaluation committee members remaining.

- iv. If there are mandatory minimum requirements, those offerors not meeting the requirements will be eliminated from further consideration.
- v. During committee discussions, each member may change his/her initial scoring. If additional information or clarification is needed from an offeror, the committee may, with approval by the Procurement Officer, request information or clarification from an offeror. Such request will only be approved if it can be done in a manner that is fair to all offerors.
- vi. At any time during the evaluation process, the evaluation committee may, with the approval of the Procurement Officer, request best and final offers from responsible and responsive offerors and evaluate those offers in accordance with Utah Code §63G-6a-707.5 and applicable portions of this Procurement Policy.
- vii. Each evaluation committee member shall turn in a completed scoring sheet, signed and dated by the evaluation committee member.
- e. The evaluation committee may tally the final scores for criteria other than cost to arrive at a consensus score by either of the following methods:
 - i. Total of all of the points given by individual committee members; or
 - ii. An average of the individual scores.
- f. The evaluation committee shall submit its final recommended scores for all criteria other than cost to the Procurement Officer.
- g. In accordance with Utah Code §63G-6a-707, the District shall do the following:
 - i. Review the evaluation committee's final recommended scores for each proposal for all criteria other than cost;
 - ii. Score cost based on the applicable scoring formula; and
 - iii. Calculate the total combined score for each responsive and responsible proposal.
- h. The evaluation committee and/or the Procurement Officer shall prepare the cost justification statement and any applicable cost-benefit analysis in accordance with Utah Code §§63G-6a-707 and 708.
- i. The District may replace any member on the evaluation committee or reconstitute the committee in any way the District deems appropriate to cure an impropriety. If the impropriety cannot be cured by replacing a committee member, then a new evaluation committee may be appointed or the procurement may be cancelled.
- j. Nothing in this Policy shall preclude the Procurement Officer from serving on an evaluation committee.

19. Criteria for Scoring Criteria Other Than Cost:

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

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

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

21. Evaluation Committee Members Required to Exercise Independent Judgment:

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

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

- a. A contract with a consultant providing professional or technical services, such as accounting and legal services, may be awarded using the RFP procedure or as a small purchase.
- b. Contracts with consultants providing professional or technical services, such as accounting and legal services, may be extended from year-to-year in the discretion of the Board and after consulting the General Counsel (Utah Code §63G-1-802.7).

23. Publicizing Awards:

- a. The following shall be disclosed after receipt of a GRAMA request and payment of any lawfully enacted and applicable fees:
 - i. The contract(s) entered into as a result of the selection and the successful proposal(s), except for those portions that are to be non-disclosed under Section 14.8.E.4;

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

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

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

24. **Timing of Rejection:** As provided in Utah Code §63G-6a-120, the District may, at anytime during the RFP process, reject a proposal based on a determination that the submitter of the proposal is not responsible or the proposal is not responsive. As such, the evaluation committee may make a determination that a proposal is nonresponsive or not responsible at any time even if the proposal initially passed the pass/fail review.

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

G. **Conformity to Solicitation Requirements:**

1. **Rejection:**

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

- c. Any bid or offer that fails to conform to the delivery schedule or permissible alternates stated in the solicitation shall be rejected.

2. **Conditions or Exceptions:** A bid or offer shall be rejected when the bidder or offeror imposes conditions or takes exceptions that would modify requirements or terms and conditions of the solicitation or limit the bidder or offeror's liability to the District, since to allow the bidder or offeror to impose such conditions or take exceptions would be prejudicial to other bidders or offerors. For example, bids or offers shall be rejected in which the bidder or offeror:

- a. For commodities, protects against future changes in conditions, such as increased costs, if total possible costs to the District cannot be determined;
- b. Fails to state a price and indicates that price will be the price in effect at time of delivery or states a price but qualifies it as being subject to the price in effect at the time of delivery;
- c. When not authorized by the solicitation, conditions or qualifies a bid by stipulating that it is to be considered only if, before the date of award, the bidder or offeror receives (or does not receive) an award under a separate solicitation; or
- d. Limits any right of the District under any contract clause.

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

H. **Unreasonable or Unbalanced Pricing:**

1. **Rejection:**

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

- c. All bids or offers with separately priced line items or subline items may be analyzed to determine if the prices are unbalanced. If cost or price analysis techniques indicate that an offer is unbalanced, the District shall:
 - i. Consider the risks to the District associated with the unbalanced pricing in determining the competitive range and in making the source selection decision; and
 - ii. Consider whether award of the contract will result in paying unreasonably high prices for contract performance.
- d. A bid or offer may be rejected if the Procurement Officer determines that the lack of balance poses an unacceptable risk to the District.

I. Rejection for Nonresponsibility or Nonresponsiveness:

- 1. **Nonresponsible Bidder or Offeror:** Subject to Utah Code §63G-6a-120, the Procurement Officer shall reject a bid or offer from a bidder or offeror that is determined to be nonresponsible. A responsible bidder or offeror is defined in Utah Code §63G-6a-103(74). The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility of that bidder or offeror. If a bid is rejected due to nonresponsibility, such shall be documented in writing by the Procurement Officer.
- 2. **Nonresponsive Offer:** In accordance with Utah Code §63G-6a-120, the Procurement Officer may not accept a bid or proposal that is not responsive. Responsiveness is defined in Utah Code §63G-6a-103(75).
- 3. **Bid Security Failure:** When bid security is required and a bidder fails to furnish the security in accordance with the requirements of the invitation for bids, the bid shall be rejected. (Utah Code §63G-6a-1102)
- 4. **Documentation:** The originals of all rejected bids, offers, or other submissions, and all written findings with respect to such rejections, shall be made part of the procurement file and be available for public inspection.

J. Rejection for Suspension/Debarment:

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

14.9 CANCELLATION, REJECTION AND DEBARMENT

A. General Provisions:

- 1. **Cancellation:** An Invitation for Bids, a Request for Proposals, or other solicitation may be canceled prior to the deadline for receipt of bids, proposals, or other submissions, when it is in the best interest of the District as determined by the Procurement Officer. In the event a solicitation is cancelled, the written justification for cancellation shall be made part of the procurement file and shall be available for public inspection and the District shall:
 - a. Re-solicit new bids or proposals using the same or revised specifications; or

- b. Withdraw the requisition for the procurement item(s).

2. **Rejection of Bids and Proposals:** The Procurement Officer may reject a bid or proposal for:

- a. A violation of the Utah Procurement Code or this Procurement Policy by the offeror;
- b. A violation of a requirement of the Invitation for Bids or Request for Proposals by the offeror;
- c. Unlawful or unethical conduct by the offeror;
- d. A change in the offeror's circumstance that, had the change been known at the time the proposal was submitted, would have caused the proposal to not have the highest score;
- e. A failure by the offeror to sign a contract within ninety (90) calendar days after the contract award;
- f. The offeror not being responsible; or
- g. The bid or proposal not being responsive or not meeting the mandatory minimum requirements, evaluation criteria, or applicable score thresholds stated in the solicitation.

3. **Documentation:** The reason(s) for cancellation or rejection shall be in the form of a written finding, which is made part of the contract file and is available for public inspection. In all cases, a copy of the written finding shall be provided to the offeror whose bid or proposal was rejected.

B. Re-solicitation:

1. **No Response:** In the event there is no response to an initial solicitation, the Procurement Officer may:

- a. Contact the known supplier community to determine why there were no responses to the solicitation;
- b. Research the potential vendor community; and,
- c. Based upon the information obtained under (a) and (b), modify the solicitation documents.

2. **Inadequate Supplemental Response:** If the District has modified the solicitation documents and, after the re-issuance of a solicitation, there is still no competition or there is insufficient competition, the Procurement Officer may:

- a. Further modify the procurement documents; or,
- b. Cancel the requisition for the procurement item(s).

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

14.10 EXCEPTIONS – PROCUREMENT WITHOUT COMPETITION

- A. **Contracts Awarded Without Competition:** The Procurement Officer or the Board, through appropriate action, may determine that a specific contract for a supply, service or construction item should be awarded without receipt or review of competitive bids or proposals if one of the circumstances stated in 1 through 5 below exists. In the event that a contract is awarded without competition for one of these reasons, a written determination of both the reason for purchasing or contracting without competition as well as the basis for the selection of the particular contractor

and/or supplier will be recorded. With these written determinations, a record containing the contractor's or supplier's name, the amount and type of the contract, the total dollar value of the procurement item including, when applicable, the actual or estimated full life-cycle cost of maintenance and of the service agreement, the duration of the proposed sole source contract, documentation that there is no other competing source for the procurement item (unless the procurement is under 1.b or c below), a description of the procurement item, and any other information desired by the Procurement Officer will be maintained in the contract file.

1. Sole Source:

- a. Sole source procurements shall be conducted in accordance with requirements set forth in Utah Code §63G-6a-802. A sole source procurement may be conducted if:
 - i. There is only one source for the procurement item;
 - ii. The transitional costs are a significant consideration in selecting a procurement item and the results of a cost-benefit analysis demonstrate that transitional costs are unreasonable or cost-prohibitive, and that the award of a contract without engaging in a standard procurement process is in the best interest of the District;
 - iii. The award of a contract is under circumstances that make awarding the contract through a standard procurement process impractical and not in the best interest of the District; or
 - iv. The procurement item is needed for trial use or testing pursuant to Utah Code §63G-6a-802.3 to determine whether the procurement item will benefit the District.
- b. Sole source procurements over **\$50,000** shall be published, and less costly sole source procurements may be published, in accordance with Utah Code §63G-6a-802(3).
- c. Upon receipt of information contesting a sole source procurement, the Procurement Officer shall conduct an investigation to determine the validity of the challenge and make a written determination either supporting or denying the challenge.

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

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

- iii. The extension is necessary:
 - (a) To prevent the loss of federal funds;
 - (b) To mitigate the effects of a delay of a state or federal appropriation;
 - (c) To enable the District to continue to receive a procurement item during a delay in the implementation of a contract award pursuant to a procurement that has already been conducted; or
 - (d) To enable the District to continue to receive a procurement item during a period of time during which negotiations with a vendor under a new contract for the procurement item are being conducted.
- iv. An extension is necessary for the period of a protest, appeal, or court action, if the protest, appeal or court action is the reason for delaying the award of a new contract.
- v. An extension is necessary and the General Counsel determines in writing that the contract extension does not violate state or federal antitrust laws and is consistent with the purpose of ensuring the fair and equitable treatment of all persons who deal with the procurement system.

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

4. **Cooperative Contract:** When the District makes purchases pursuant to a cooperative procurement in accordance with Utah Code §63G-6a-2105. 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 (Utah Code §63G-6a-2103).

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

- a. An emergency procurement may only be used if the procurement is necessary to:
 - i. Avoid a lapse in a critical government service;
 - ii. Mitigate a circumstance that is likely to have a negative impact on public health, safety, welfare or property; or
 - iii. Protect the legal interests of the District.
- b. Emergency procurements are limited to those procurement items necessary to mitigate the emergency.

- c. While a standard procurement process is not required under an emergency procurement, when practicable, the Procurement Officer may seek to obtain as much competition as possible through use of phone quotes, internet quotes, limited invitations to bid, or other selection methods while avoiding harm, or risk of harm, to the public health, safety, welfare, property, or impairment of the ability of the District to function or perform required services.
- d. The Procurement Officer shall be notified of the emergency condition prior to the acquisition of any material or supplies, goods, wares or merchandise as provided above. In the event an emergency which requires immediate action should arise after business hours, on a weekend or holiday and/or when it is otherwise not possible or convenient to notify the Procurement Officer, emergency purchases may be made by the department in charge without so notifying the Procurement Officer, but such purchases shall be reported to the Procurement Officer on the first working day after the occurrence. Where circumstances permit, the Procurement Officer may propose lists of approved vendors for emergency purchases.
- e. A written determination by the Procurement Officer documenting the basis for the emergency and the selection of the procurement item shall be kept in the contract file. The required documentation may be prepared after the emergency condition has been alleviated.

14.11 PROCUREMENT OF CONSTRUCTION

A. State Law: District construction projects are governed by Utah Code §63G-6a-1302 and by this Subsection.

- 1. **Alternative Approach:** To the extent allowed by law, and notwithstanding anything to the contrary in this Procurement Policy, the District may procure construction pursuant to the requirements of Title 11, Chapter 39 of the Utah Code, in which event the “bid limit” calculated as provided in Utah Code § 11-39-101(1) shall replace all construction cost estimate and/or bid requirements based upon cost provisions of this Procurement Policy, including small purchase provisions hereunder, in which event otherwise applicable requirements of this Procurement Policy shall be superseded and replaced by the provisions of Title 11, Chapter 39.

B. Construction Cost Estimate: The Procurement Officer shall cause plans and specifications for construction projects, including the estimated cost of the improvement, to be prepared by the District’s engineer (in house or consulting) or other qualified person. The cost estimate shall be submitted to the Board either when the bid is submitted for formal approval or before the District undertakes the project using its own work crew or an invitation to bid or to submit proposals is issued, or the Board will be provided an explanation of why plans and specifications and/or a cost estimate cannot be provided, as may be the case if a design-build contract is under consideration. If the estimated cost of the improvement is **\$100,000** or less, the District may make the improvement using an independent contractor Section 14.8.C.

C. Extra Work and Change Orders: The Procurement Officer is authorized to approve extra work or change orders in an amount not to exceed 10% of the contract when justified by contract specifications and deemed to be in the best interest of the District. At the conclusion of the contract, a final written report will be presented to the Board.

1. **Certification - Increases in Contract Amount:** Any change order which increases the contract amount shall be subject to prior written certification that the change order is within the determined project or contract budget. The certification may be made by the Comptroller or other official responsible for monitoring and reporting upon the status of the costs of the total project or contract budget.
 2. **Availability of Funds or Adjustment in Scope of Work:** If the certification discloses a resulting increase in the total project or contract budget, the Procurement Officer shall not execute or make the change order unless sufficient funds are available or the scope of the project or contract is adjusted to permit the degree of completion feasible within the total project or contract budget as it existed prior to the change order under consideration. However, with respect to the validity, as to the contractor, of any executed change order upon which the contractor has reasonably relied, it shall be presumed that there has been compliance with the provisions of this Section 14.11. (Utah Code §63G-6a-1207)
- D. **Modification of Specifications:** The Procurement Officer shall have authority to waive or modify the District's construction specifications upon a determination that such waiver or modification does not significantly jeopardize the interests of the District and is reasonable and appropriate under the facts and circumstances presented. Such waivers and modifications may be based upon either requests from developers and other interested persons or District staff recommendations.
1. **Permanent Modifications:** Whenever the deletion or modification of the District's construction specifications is intended to be permanent and to apply to all or a significant number of future construction contracts to be performed within the boundaries of the District, the Procurement Officer shall so notify the Board within a reasonable time.
 2. **Appeal to the Board:** At the Procurement Officer's discretion, specific requested waivers or modifications of the District's construction specifications may be presented to the Board for final resolution and any contractor or other interested party may appeal the Procurement Officer's decision regarding the modification of construction specifications to the Board.
 3. **Status of Decision Prior to Board Action:** Until the Procurement Officer's decision regarding a waiver or modification of the District's construction specifications has been modified or reversed by the Board, it shall be the decision and position of the District.
- E. **Construction Contract Management:** The method of construction contracting management utilized for any given project shall be determined by the Procurement Officer in consultation with the District's engineer, if there is one. Any lawful method of construction contracting management that is determined to be feasible may be utilized.
1. **Recommendations of Engineer:** In determining which method of construction contracting management is to be used for a particular project, the recommendations of the District's engineer, if there is one, are to be given great weight. The method selected will be the method deemed to be most advantageous to the interests of the District.
 2. **Factors to Be Considered:** It is intended that the Procurement Officer have sufficient flexibility in formulating the construction contract management method for a particular project to fulfill the needs of the District. Before selecting a construction contracting management method, the Procurement Officer, in consultation with the District's engineer (if there is one), shall carefully consider the following factors: (a) when the project improvements must be ready for use; (b) the type of project; (c) the extent to

which the requirements of the District, and the ways in which they are to be met, are known; (d) the location of the project; (e) the size, scope, complexity, and economics of the project; (f) the amount and source of funding and any resulting constraints or limitations necessitated by the funding source; (g) the availability, qualification and experience of District personnel to be assigned to the project and the amount of time the District personnel can devote to the project; (h) the availability, qualifications, and experience of outside consultants and contractors (including construction managers/general contractors) to complete the project under the various methods being considered; (i) the results achieved on similar projects in the past and the methods used; and (j) the comparative advantages and disadvantages of the construction contracting methods and how they might be adapted or combined to fulfill the needs of the District. The factors to be considered in achieving the purposes set forth herein are not to be construed as an exclusive list. (Utah Code §63G-6a-1302)

- a. The following descriptions are provided for the more common construction contracting management methods which may be used by the District. The methods described are not mutually exclusive, and may be combined on a project. These descriptions are not intended to be fixed in respect to all construction projects. These descriptions may be adapted to fit the circumstances of any given project. (Utah Code §63G-6a-1205)
 - i. Single Prime (General) Contractor. The single prime contractor method is typified by one business, acting as a general contractor, contracting with the District to timely complete an entire construction project in accordance with drawings and specifications provided by the District. Generally, the drawings and specifications are prepared by an architectural or engineering firm under contract with the District. Further, while the general contractor may take responsibility for successful completion of the project, much of the work may be performed by specialty contractors with which the prime contractor has entered into subcontracts.
 - ii. Multiple Prime Contractors. Under the multiple prime contractor method, the District will contract directly with a number of general contractors or specialty contractors to complete portions of the project in accordance with the District's drawings and specifications. The District may have primary responsibility for the successful completion of the entire project, or the contracts may provide that one or more of the multiple prime contractors has this responsibility.
 - iii. Design-Build. In a design-build project, an entity, often a team of a general contractor and a designer, contract directly with the District to meet the District's requirements as described in a set of performance specifications and/or a program. Design responsibility and construction responsibility both rest with the design-build contractor. This method can include instances where the design-build contractor supplies the site as part of the package.
 - iv. Construction Manager Not at Risk. A construction manager is a person or firm experienced in construction who has the ability to evaluate and to implement drawings and specifications as they affect time, cost, and quality of construction and the ability to coordinate the construction of the project, including the administration of change orders as well as other responsibilities as described in the contract.

- v. Construction Manager/General Contractor (Construction Manager at Risk). The District may contract with the construction manager early in a project to assist in the development of a cost effective design. In a Construction Manager/General Contractor (CM/GC) method, the CM/GC becomes the general contractor and is at risk for all of the responsibilities of a general contractor for the project, including meeting the specifications, complying with applicable laws, rules and regulations, completing the project on time and not exceeding a specified maximum price.
- 3. **Written Statement:** In making a decision concerning the method of construction contracting management to utilize for any given project, the Procurement Officer is to execute and include in the contract file a written statement setting forth the facts which led to the selection of a particular method of construction contracting management for that project.
- 4. **Design Build Contracts:** The District may procure architect-engineer services and construction using a single contract with the design-build provider.
 - a. The District will consult a professional engineer or a licensed architect with design-build experience as provided in Utah Code §11-39-107(2)(c).
- 5. **Construction Manager/General Contractor (CM/GC):** The District may enter into a contract for the management of a construction project which allows the contractor to subcontract for additional labor and materials that were not included in the contractor's cost proposal submitted at the time of the procurement of the construction manager/general contractor's services. The term "construction manager/general contractor" shall not refer to a contractor whose only subcontract work not included in the original cost proposal is subcontracted portions of approved change orders. Should the District utilize the CM/GM method of construction contract management, the construction manager/general contractor will be selected using a "standard procurement process" as defined in Utah Code §63G-6a-103, or an exception allowed under Part 8 of the Utah 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. (Utah Code §63G-6a-1302)
 - a. As used herein, "management fee" includes only the following fees of the CM/GC:
 - i. Preconstruction phase services;
 - ii. Monthly supervision fees for the construction phase; and
 - iii. Overhead and profit for the construction phase.
 - b. When selecting a CM/GC for a construction project, the evaluation committee:
 - i. May score a CM/GC based upon criteria contained in the solicitation, including qualifications, performance ratings, references, management plan, certifications, and other project specific criteria described in the solicitation;

- ii. May, as described in the solicitation, weight and score the management fee as a fixed rate or as a fixed percentage of the estimated contract value;
- iii. May, at any time after the opening of the responses to the request for proposals, have access to, and consider, the management fees proposed by the offerors; and
- iv. Except as provided in Utah Code §63G-6a-707, may not know or have access to any other information relating to the cost of construction submitted by the offerors, until after the evaluation committee submits its final recommended scores on all other criteria.

F. Contract Clauses: Utah Code §63G-6a-1202 encourages the District “to establish standard contract clauses to assist the [District] and to help contractors and potential contractors to understand applicable requirements.” To that end, clauses providing for adjustments in prices and time of performance and covering the following subjects will generally be included in construction contracts: (a) the unilateral right of the District to order in writing changes in the work within the scope of the contract and changes in the time of performance of the contract that do not alter the scope of the contract work; (b) variations occurring between estimated quantities of work in a contract and actual quantities; (c) suspension of work ordered by the District; and (d) site conditions differing from those indicated in the construction contract, or ordinarily encountered, except that differing site conditions clauses need not be included in a construction contract when the contract is negotiated, when the contractor provides the site or design, or when the parties have otherwise agreed with respect to the risk of differing site conditions.

1. Prohibited Contract Terms:

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

2. **Remedy Clauses:** Construction contracts may include clauses providing for appropriate remedies and covering the following subjects, among others: (a) liquidated damages; (b) specified excuses for delay or nonperformance; (c) termination of the contract for default; and (d) termination of the contract in whole or in part for the convenience of the District.
3. **Qualified Health Insurance Coverage:** The District is subject to Utah Code §17B-2a-818.5, which requires minimum standards of qualified health insurance coverage for contractors and subcontractors who bid on certain projects of the District.

G. State Construction Registry:

1. **Notice of Commencement:** No later than 15 days after commencement of physical construction work at the project site, the District or its contractor shall file a notice of commencement with the State Construction Registry established by the Division of Occupational and Professional Licensing as required by Utah Code §38-1b-201.
2. **Notice of Intent to Complete:** The District or the District's contractor shall file a notice of intent to obtain final completion with the State Construction Registry in accordance with Utah Code §38-1a-506 if:
 - a. Completion of performance time under the original contract is greater than 120 days;
 - b. The total original construction contract price exceeds **\$500,000**; and
 - c. A payment bond is not obtained in accordance with Utah Code §14-2-1.
3. **Notice of Completion:** Upon final completion of a construction project (regardless of whether a notice of intent to obtain final completion has been filed), a notice of completion may be filed with the State Construction Registry, including the name, address, telephone number, and e-mail address of the person filing the notice of completion; the name of the County in which the project property is located; information identifying the District's construction project; the date on which final completion occurred, and the method used to determine final completion; all as allowed by Utah Code §38-1a-507.

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

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

14.12 INSPECTIONS

- A. **Justification:** Circumstances under which the District may perform inspections include inspections of the contractor's manufacturing/production facility or place of business, or any location where the work is performed, to determine: whether the definition of "responsible", as defined in Utah Code §63G-6a-103 and in the solicitation documents, has been met or is capable of being met; and if the contract is being performed in accordance with its terms.
- B. **Access to Contractor's Manufacturing/Production Facilities:** The District may enter a contractor's or subcontractor's manufacturing/production facility or place of business to: (a) inspect procurement items for acceptance by the District pursuant to the terms of a contract; (b) audit cost or pricing data or audit the books and records of any contractor or subcontractor; and (c) investigate in connection with an action to debar or suspend a vendor from consideration for award of a contract.
- C. **Inspection of Supplies and Services:**
1. **Contract to Control:** Contracts may provide that the District may inspect procurement items at the contractor's or subcontractor's facility and perform tests to determine whether any procurement item conforms to solicitation and contract requirements.
- D. **Conduct of Inspections:** Inspections or tests shall be performed so as not to unduly delay the work of the contractor or subcontractor. No inspector may change any provision of the specifications or the contract without written authorization by the Procurement Officer. The presence or absence of an inspector or an inspection shall not relieve the contractor or subcontractor from any requirement of the contract. When an inspection is made, the contractor or subcontractor will be expected to provide, without charge, all reasonable facilities and assistance for the safety and convenience of the person performing the inspection or testing.

14.13 PRICE AND COST

- A. **Price Adjustments:** A contract may allow price adjustments, but cost or pricing data shall be required in support of a proposal leading to the adjustment of any contract pricing. All accounting for contracts and contract price adjustments, including allowable incurred costs, shall be conducted in accordance with generally accepted accounting principles for government.
1. **Exceptions:** Cost or pricing data exceptions:
 - a. Cost or pricing data need not be submitted when the terms of the contract state established market indices, or catalog prices or other benchmarks are used as the basis for contract price adjustments, or when prices are set by law or rule;
 - b. If a contractor submits a price adjustment that is higher than established market indices, catalog prices or other benchmarks established in the contract, the Procurement Officer may request additional cost or pricing data; or
 - c. The Procurement Officer may waive the requirement for cost or pricing data, provided a written determination is made supporting the reasons for the waiver. A copy of the determination shall be kept in the contract file.
 2. **Computation:** Adjustments in price pursuant to required clauses 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 this Procurement Policy, which are issued as allowed by Utah Code §63G-6a-1206, and subject to other applicable provisions of the Utah Procurement Code.

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

4. **Price Analysis:**

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

5. **Cost Analysis:** Cost analysis includes the verification of cost data. Cost analysis may be used to evaluate:

- a. Specific elements of costs;
- b. Total cost of ownership and life-cycle cost;
- c. Supplemental cost schedules;
- d. Market basket cost of similar items;
- e. The necessity for certain costs;
- f. The reasonableness of allowances for contingencies;
- g. The basis used for allocation of indirect costs; and,

- h. The reasonableness of the total cost or price.

6. **Auditing of Books of Contractor or Subcontractor:**

- a. The Procurement Officer may audit the books and records of a contractor or subcontractor.
- b. An audit is limited to the books and records that relate to the applicable contract or subcontract and may occur only at a reasonable time and place.
- c. A contractor shall maintain all books and records relating to a contract for six years after the day on which the contractor receives the final payment under the contract, or until all audits initiated under this policy within the six-year period have been completed, whichever is later.
- d. A subcontractor shall maintain all books and records relating to the subcontract for six years after the day on which the subcontractor receives the final payment under the subcontract, or until all audits initiated under this policy within the six-year period have been completed, whichever is later.

7. **Retention of Books and Records:** Contractors shall maintain all records related to the contract for at least three years after the final payment, unless a longer period is required by law. (Utah Code §63G-6a-1206.3)

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

9. **Use of Federal Cost Principles:**

- a. In dealing with contractors operating according to federal cost principles, the Procurement Officer may use federal cost principles, including the determination of allowable, allocable, and reasonable costs, as guidance.
- b. In contracts not awarded under a program which is funded by federal assistance funds, the Procurement Officer may explicitly incorporate federal cost principles into a solicitation, and thus into any contract awarded pursuant to that solicitation. The Procurement Officer and the contractor, by mutual agreement, may incorporate federal cost principles into a contract during negotiation or after award.
- c. In contracts awarded under a program which is financed in whole or in part by federal assistance funds, all requirements set forth in the assistance document, including specified federal cost principles, must be satisfied. To the extent that the cost principles specified in the grant document conflict with the cost principles issued pursuant to Utah Code §63G-6a-1206, the cost principles specified in the grant shall control.

10. **Authority to Deviate from Cost Principles:** Before the District may deviate from the cost principles set forth in this Policy, a written determination must be made by the

Procurement Officer specifying the reasons for the deviation. The written determination shall be made part of the contract file.

14.14 MULTIPLE AWARD CONTRACTS – INDEFINITE QUANTITY CONTRACTS

As authorized under Utah Code §§63G-6a-1204.5 and 1205 the District may enter into multiple award contracts.

A. Multiple Award: A multiple award contract is a procurement process where two or more bidders or offerors are awarded a contract under a single solicitation. Purchases are made through an order placed with one of the contractors pursuant to the procedures established in the solicitation and the contract. Contractors receiving a contract award are not guaranteed that procurement items will be purchased from their contracts.

1. Use: A multiple award contract may be awarded under a single solicitation to two or more bidders or offerors when similar procurement items are needed or desired for adequate delivery, service, availability, or product compatibility.

2. Solicitation: In addition to the requirements set forth in Utah Code §§63G-6a-603 and 63G-6a-703, when it is anticipated that a procurement will result in multiple contract awards, the solicitation shall include a statement that indicates that contracts may be awarded to more than one bidder or offeror;

3. Invitation for Bids: Multiple award contracts in an invitation for bids shall be issued in accordance with Part 6 of the Utah Procurement Code to the lowest responsive and responsible bidders meeting the objective criteria described in the invitation for bids and may be awarded to satisfy delivery, service, availability or product compatibility needs of the District using the following methods:

a. Lowest bid for all solicited procurement items provided:

i. The solicitation indicates that multiple contracts will be awarded to the lowest bidders for all procurement items being solicited as determined by a break in prices specifically stated in the solicitation, such as any price within a specific percentage of the lowest responsive and responsible bid price, or other methodology described in the solicitation.

b. Lowest bid by Category provided:

i. The solicitation indicates that contracts will be awarded based on the lowest bid in a category; and
ii. Only one bidder may be awarded a contract per category if so specified in the solicitation;

c. Lowest bid by line item provided:

i. The solicitation indicates that contracts will be awarded based on the lowest bid per line item; and
ii. Only one bidder may be awarded a contract per line item if so specified in the solicitation;

- d. Any combination of (a), (b) and/or (c) above, or
- e. Any other methodology described in the solicitation.
- f. All responsive and responsible bidders may be awarded a contract, provided the contracts specifically direct that orders must be placed first with the low bidder unless the lowest cost bidder cannot provide the needed procurement item, then with the second lowest bidder unless the second lowest cost bidder cannot provide the needed procurement item, then with the third lowest bidder unless the third lowest cost bidder cannot provide the needed procurement item, and so on in order from the lowest cost responsive and responsible bidder to the highest cost responsive and responsible bidder until the order is filled or the list of responsive and responsible bidders has been exhausted.

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

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

- a. An unidentified procurement item is defined as a procurement item that, at the time the solicitation is issued:
 - i. Has not been specifically identified but will be identified at some time in the future, such as an approved vendor list or approved consultant list.
 - ii. Does not have a clearly defined project or procurement specific scope of work; and
 - iii. Does not have a clearly defined project or procurement specific budget.
- b. Unidentified procurement items may be procured under approved vendor list thresholds established by the Board.
- c. An RFP or other solicitation issued for a multiple award contract for unidentified procurement items must specify the methodology that will be used to determine which vendor under the multiple award contract will be selected to receive an order.
 - i. The methodology must include a procedure to document that the District is obtaining best value, including an analysis of cost and other evaluation criteria outlined in the solicitation.
 - ii. The methodology must also ensure the fair and equitable treatment of each multiple award contract vendor, including using methods to select a vendor such as:
 - (a) Using a rotation system, organized alphabetically, numerically, or randomly;
 - (b) Assigning a potential contractor to a specified geographical area;

- (c) Classifying each potential contractor based on the potential contractor's field or area of expertise; or
- (d) Obtaining quotes or bids from two or more contractors.

6. Ordering From Multiple Award Contracts:

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

7. Primary and Secondary Contracts:

- a. Designations of multiple award contracts as primary and secondary may be made if a statement to that effect is contained in the solicitation documents.
- b. When the Procurement Officer or designee determines that the need for a procurement item will exceed the capacity of any single primary contractor, secondary contracts may be awarded to additional contractors.
- c. Purchases under primary and secondary contracts will be made, initially from the primary contractor offering the lowest contract price until the primary contractor's capacity has been reached or the items are not available from the primary contractor, then from secondary contractors in progressive order from lowest price or best availability to the next lowest price or best availability, and so on.

8. **Intent to Use:** If a multiple award is anticipated prior to issuing a solicitation, the method of award shall be stated in the solicitation.
- B. **Contracts and Change Orders -- Contract Types:** The District may use contract types to the extent authorized under Utah Code §63G-6a-1205.
- C. **Prepayments:** Prepayments are subject to the restrictions contained in Utah Code §63G-6a-1208.
- D. **Leases of Personal Property:**
1. **Requirements:** Leases of personal property are subject to the following:
 - a. A lease (including a lease with a purchase option) may be entered into provided that the District complies with Utah Code §63G-6a-1209 and:
 - i. The lease is in the best interest of the District;
 - ii. All conditions for renewal and cost are set forth in the lease;
 - iii. The lease is awarded through a standard procurement process, or an exception to the standard procurement process described in Part 8 of the Utah Procurement Code; and
 - iv. The lease is not used to avoid a competitive procurement.
 2. **Completion Requirement:** Lease contracts will be conducted with as much competition as practicable under the circumstances.
- E. **Modification of Contract Terms:** Contract clauses may be as set forth in standard documents approved from time to time by the Board maintained at the office of the District. However, the Procurement Officer or the Board may modify the clauses for inclusion in any particular contract. Any variation may be supported by a written determination that describes the circumstances justifying the variation, and notice of any material variation may be included in the invitation for bids or requests for proposals.

14.15 PROCUREMENT OF ARCHITECT, ENGINEERING AND SURVEYING SERVICES

- A. **Hiring a Professional Architect, Engineer or Surveyor:** Other than small purchases, the District shall procure design professional services by publicly announcing all requirements for those services through a Request for Statement of Qualifications ("RSQ") and negotiate a contract for said services on the basis of demonstrated competence and qualification for the type of services required, which at a minimum shall include: (a) the qualifications, experience and background of each firm (or individual if the professional is not part of a firm) submitting a proposal; (b) the management plan, including specific individual(s) assigned or to be assigned to the project and the time commitments of each to the project; (c) the approach to the project that each firm (or individual) will take, (d) the performance ratings earned by the firm or references for similar work, (e) any quality assurance or quality control plan, (f) the quality of the firm's past work product, (g) the time, manner of delivery, and schedule of delivery of the firm's services, (h) the firm's financial solvency, and (i) any other project specific criteria that the Procurement Officer establishes.. The District may engage the services of a professional architect, engineer or surveyor based on the above criteria rather than based solely on the lowest cost so long as the Procurement Officer determines that the cost is fair and reasonable. A RSQ shall not include a request for a price or cost component for the services. Subject to the above, the provisions of Utah Code §§63G-6a-1501 - 1506 apply to the procurement of services within the scope of the practice of architecture as defined in Utah Code §58-3a-102 or professional engineering as defined in Utah Code §58-22-102.

1. **Architect-Engineer Evaluation Committee:** The Procurement Officer shall appoint members of the Architect-Engineer Evaluation Committee. The evaluation committee must consist of at least three members who are qualified under Utah Code §§63G-6a-1503(3)(b).
2. **Request for Statements of Qualifications:**
 - a. The District will issue a public notice for a request for statements of qualifications to be used in ranking architects or engineers.
 - b. A request for statement of qualifications will state:
 - i. That the District is conducting the procurement to acquire the procurement item;
 - ii. Information on how to contact the District;
 - iii. Information on how to obtain a copy of the procurement documents;
 - iv. The type of procurement item to which the request for statements of qualifications relates;
 - v. The scope of the work to be performed;
 - vi. The instructions and the deadline for providing information in response to the request for statements of qualifications; and
 - vii. Criteria to be used to evaluate statements of qualifications including:
 - (a) Basic information about the person or firm;
 - (b) Experience and work history;
 - (c) Management and staff;
 - (d) Qualifications;
 - (e) Licenses and certifications;
 - (f) Applicable performance ratings;
 - (g) Financial statements;
 - (h) Quality assurance or quality control plan;
 - (i) Quality of past work product;
 - (j) Time, manner of delivery, and schedule of delivery of the professional services; and
 - (k) Other pertinent information.
 - c. Key personnel identified in a statement of qualifications may not be changed without the advance written approval of the Procurement Officer.
 - d. Architects and engineers shall not include cost information in a response to a request for statements of qualifications.
3. **Evaluation of Statements of Qualifications:** The evaluation committee shall evaluate statements of qualifications in accordance with Utah Code §§63G-6a-1503.5 and 63G-6a-707 to rank (score) architects or engineers.
4. **Negotiation and Award of Contract:** The Procurement Officer or designee shall negotiate a contract with the most qualified firm for the required services at compensation determined to be fair and reasonable.
5. **Failure to Negotiate Contract with the Highest Ranked Firm:**

- a. If fair and reasonable compensation, contract requirements, and contract documents cannot be agreed upon with the highest ranked firm, the Procurement Officer shall advise the firm in writing of the termination of negotiations.
- b. Upon failure to negotiate a contract with the highest ranked firm, the Procurement Officer shall proceed in accordance with Utah Code §§63G-6a-1505.

6. Notice of Award:

- a. The District may award a contract to the highest ranked firm with which the fee negotiation was successful.
- b. Notice of the award shall be made available to the public.

B. Contract Extensions: Contracts with consultants providing engineering and architectural services may be extended from year-to-year at the discretion of the Board.

14.16 BONDS

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

A. Bid Security Requirements:

- 1. **Construction:** Invitations for Bids and Requests for Proposals for construction contracts require the submission of a bid bond in an amount equal to at least 5% of the bid, at the time the bid is submitted.
- 2. **Other Procurements:** Invitations for Bids and Requests for Proposals for other procurements may require the submission of a bid security, including specifications for the form and type of bid security, when the Procurement Officer determines it to be in the best interest of the District
- 3. **Acceptable Bid Security Not Furnished:** If a bid security is required and acceptable bid security is not furnished, the bid shall be rejected as nonresponsive, unless the failure to comply is determined by the Procurement Officer to be nonsubstantial. Failure to submit an acceptable bid security may be deemed nonsubstantial if:
 - a. The bid security is submitted on a form other than the required bid bond form and the bid security meets all other requirements of this Policy and the contractor provides acceptable bid security by the close of business of the next succeeding business day after being notified of the defective bid security;
 - b. Only one bid is received, and there is not sufficient time to re-solicit;
 - c. The amount of the bid security submitted, though less than the amount required by the Invitation for Bids or RFP, is equal to or greater than the difference in the price stated in the next higher acceptable bid; or

- d. The bid security becomes inadequate as a result of the correction of a mistake in the bid or bid modification which is allowed by this Policy, if the bidder increases the amount of the guarantee to required limits within 2 business days after the bid opening.
 - 4. **Forfeiture:** If the successful bidder fails or refuses to enter into the contract or furnish the additional bonds required as provided above, the bidder's bid security may be forfeited.
- B. **Performance Bonds for Construction Contracts:** A performance bond is required for all construction contracts in the amount of 100% of the contract price. The performance bond shall be delivered by the contractor to the District within fourteen days of the contractor receiving notice of the award of the construction contract. If a contractor fails to deliver the required performance bond, the contractor's bid/offer shall be rejected, its bid security may be enforced, and award of the contract may be made to the next lowest responsive and responsible bidder or the next highest ranked offeror.
- C. **Surety or Performance Bonds for Non-construction Procurement Items:**
 - 1. **Permissive:** A surety or performance bond may be required on any non-construction contract as the Procurement Officer deems necessary to guarantee the satisfactory completion of a contract, provided the Invitation for Bids or Request for Proposals contains a statement that a surety or performance bond is required in an amount:
 - a. Equal to the amount of the bid or offer;
 - b. Equal to the project budget or estimated project cost, if the budget or estimated project cost is published in the solicitation documents;
 - c. Equal to the previous contract cost, if the previous contract cost is published in the solicitation documents; or
 - d. The Invitation for Bids or Request for Proposals contains a statement that a surety or performance bond, in an amount less than the amount determined under (a), is required; and the Invitation for Bids or Request for Proposals contains a detailed description of the work to be performed or item(s) to be provided for which the surety or performance bond is required.
 - 2. **Limitation:** Surety or Performance Bonds should not be used to unreasonably eliminate competition or be of such unreasonable value as to eliminate competition.
- D. **Payment Bonds:** A payment bond is required for all construction contracts in the amount of 100% of the contract price. If a contractor fails to timely deliver the required payment bond, the contractor's bid or offer shall be rejected, its bid security may be enforced, and award of the contract shall be made to the next lowest responsive and responsible bidder or the next highest ranked offeror.
 - 1. **Failure to Obtain:** If the District fails to obtain a payment bond for a construction project, there may be liability to anyone furnishing labor or supplying materials for the construction project as provided in Title 14, Chapter 1 of the Utah Code.
- E. **Waiver:** The Procurement Officer may waive any bonding requirement if it is determined in writing by the Procurement Officer that:

1. Bonds cannot reasonably be obtained for the work;
2. The cost of the bond exceeds the risk to the District; or
3. Bonds are not necessary to protect the interests of the District.

14.17 PROHIBITED ACTS/ETHICS

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

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

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

- J. **Procurement Professional:** Should any employee of the District be classified as a “Procurement Professional” as defined in Utah Code §63G-6a-2402, the Procurement Professional shall be governed by Part 24 of the Utah Procurement Code, in addition to other applicable laws. [It is anticipated that very few local districts or special service districts will retain a Procurement Professional who effectively is dedicated to procurement activities, in which event this Subsection will not apply.]

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

14.18 CONTROVERSIES AND PROTESTS

- A. **Utah Procurement Code Provisions:**
1. **Part 16:** Controversies and protests shall be conducted in accordance with the requirements set forth in Utah Code §§63G-6a-1601 - 1603. This Procurement Policy provides additional requirements and procedures, and will be used in conjunction with the Utah Procurement Code. Unless otherwise designated by the Board, the Procurement Officer shall be the “Protest Officer”.
 2. **Part 19:** Part 19 of the Procurement Code, Utah Code §§63G-6a-1901-1911, contain provisions regarding:
 - a. Limitations on challenges of:
 - i. A procurement;
 - ii. A procurement process;
 - iii. The award of a contract relating to a procurement;
 - iv. A debarment; or
 - v. A suspension; and

- b. The effect of a timely protest or appeal;
- c. The costs to or against a protester;
- d. The effect of prior determinations by employees, agents, or other persons appointed by the District;
- e. The effect of a violation found after award of a contract;
- f. The effect of a violation found prior to the award of a contract;
- g. Interest rates; and
- h. A listing of determinations that are final and conclusive unless they are arbitrary and capricious or clearly erroneous.

B. General: Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Protest Officer.

1. Deadline. A protest with respect to the invitation for bids or a request for proposals is to be submitted in writing prior to the opening of bids or the closing date for proposals, unless the aggrieved person did not know and should not have known of the facts giving rise to the protest prior to the bid opening or the closing date for proposals. In any event, the protest shall be submitted in writing within 7 days after the aggrieved person knows or should have known of the facts giving rise thereto. Anyone failing to file a protest within the time prescribed may not:

- a. Protest to the Protest Officer a solicitation or award of a contract; or
- b. File an action or appeal challenging a solicitation or award of a contract before an appeals panel, a court, or any other forum. (Utah Code §63G-6a-1602)

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

- a. The person's mailing address and e-mail address of record; and
- b. A concise statement of the facts and evidence leading the protestor to claim that protestor has been aggrieved in connection with a procurement and providing the grounds for the protestor's protest and supporting the protestor's claim of standing. (Utah Code §63G-6a-1602)
- c. A protest may not be considered unless it contains facts and evidence that, if true, would establish:
 - i. a violation of this policy or other applicable law or rule,
 - ii. the District's failure to follow a provision of a solicitation,
 - iii. an error made by an evaluation committee or the District,
 - iv. a bias exercised by an evaluation committee or an individual committee member, excluding a bias that is a preference arising during the

evaluation process because of how well a solicitation response meets criteria in the solicitation,

- v. a failure to correctly apply or calculate a scoring criteria, or
 - vi. that specifications in a solicitation are unduly restrictive or unduly anticompetitive.
- d. A protest may not be based on the rejection of a solicitation response due to a protestor's failure to attend or participate in a mandatory conference, meeting or site visit held before the deadline for submitting a solicitation response or a vague or unsubstantiated allegation.
- e. A protest may not include a request for:
- i. an explanation of the rationale or scoring of evaluation committee members,
 - ii. the disclosure of a protected record or protected information in addition to the information provided under the disclosure provisions of the Procurement Code, or
 - iii. other information, documents or explanations not explicitly provided for herein.

3. **Resolution/Correction of Errors:** The Protest Officer or designee shall have the authority to settle and resolve a protest. Furthermore, if at any time during the protest process it is discovered that a procurement is out of compliance with any part of the Procurement Code or this Policy, including errors or discrepancies, the Protest Officer may take administrative action to correct or amend the procurement to bring it into compliance, correct errors or discrepancies, or cancel the procurement.

C. **Verification of Legal Authority:** A person filing a protest in a representative capacity may be asked to verify that the person has legal authority to file the protest on behalf of the public or private corporation, governmental entity, sole proprietorship, partnership, or unincorporated association.

D. **Intervention in a Protest:** After a timely protest is filed in accordance with the Utah Procurement Code, the Protest Officer shall notify awardees of the subject procurement, and may notify others, of the protest.

1. **Period of Time to File:** A motion to intervene must be filed with the Protest Officer no later than ten days from the date such notice is sent by the Protest Officer. Only those motions to intervene made within the time prescribed in this Policy will be considered timely. The District and the intended beneficiaries of the procurement (the intended awardee of the procurement) are automatically considered to be parties of record and need not file a motion to intervene.

2. **Contents of a Motion to Intervene:** A copy of any motion to intervene will be mailed or e-mailed to the party protesting the procurement.

- a. Any motion to intervene must state, to the extent known, the position taken by the intervenor and the basis in fact and law for that position. A motion to

intervene must also state the intervenor's interest in sufficient factual detail to demonstrate that:

- i. The intervenor has a right to participate which is expressly conferred by statute or by applicable rule, order, or other action; and
- ii. The intervenor has or represents an interest which may be directly affected by the outcome of the proceeding, including an interest as a consumer; customer; competitor; security holder of a party; or the person's participation is in the public interest.

3. **Granting of Status:** If no written objection to a timely motion to intervene is filed with the Protest Officer within seven calendar days after the motion to intervene is received by the protesting person, the intervenor becomes a party at the end of this seven-day period. If an objection is timely filed, the intervenor becomes a party only when the motion is expressly granted by the Protest Officer based on a determination that a basis for intervention exists as stated in this Policy.

4. **Late Motion:** If a Motion to Intervene is not timely filed, the Motion shall be denied by the Protest Officer.

E. **Delay in Award of Contract:** In the event of a timely protest under Subsection B. above, the District will not proceed further with the solicitation or with the award of the contract until all administrative and judicial remedies have been exhausted or until the General Manager, after consultation with the General Counsel, makes a written determination that the award of the contract without delay is in the best interests of the District. (Utah Code §63G-6a-1903)

F. **Proceedings to Debar/Suspend Potential Contractors:**

1. **Debarment:** After at least ten (10) day's prior notice to the person/entity involved and a reasonable opportunity for that person/entity to be heard, the General Manager, after consulting with the General Counsel and holding a hearing in accordance with Utah Code §63G-6a-904, shall have authority to debar a person/entity for cause from consideration of award of a contract for a period not exceeding three years for any of the causes set forth in Utah Code §63G-6a-904.

2. **Suspension:** After at least ten (10) day's prior notice to the person/entity involved and a reasonable opportunity for that person/entity to be heard, the General Manager, after consultation with the General Counsel and holding a hearing in accordance with Utah Code §63G-6a-904, shall have authority to suspend a person/entity from consideration for the award of a contract if there is probable cause to believe that the person/entity has engaged in any activity which might lead to debarment. The suspension shall not be for a period exceeding three months unless an indictment has been issued for an offense which would be a cause for debarment as set forth in Utah Code §63G-6a-904, in which event the suspension shall, at the request of the District's attorney, remain in effect until after the trial of the suspended person.

G. **Resolution of Controversies:** The Procurement Officer is authorized to settle and resolve a controversy which arises between the District and a contractor under or by virtue of a contract. This includes, without limitation, controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.

- H. **Written Decision:** The Procurement Officer shall promptly issue a written decision regarding any protest, debarment or suspension or contract controversy if it is not settled by mutual agreement. The decision shall state the reasons for the action taken and inform the protestor, contractor, or prospective contractor of the right to administrative or judicial review as provided in Utah Code, Title 63G, Chapter 6a, Parts 16, 17, 18 and 19.
- I. **Timing and Finality of Decision:**
1. **Adverse Decision Presumed After 30 Days:** As provided in Utah Code §63G-6a-1603(9), if a final written decision regarding a protest is not issued within 30 calendar days after the day on which a written request for a final decision is filed with the Protest Officer, or within such longer period as may be agreed upon by the parties, the protestor, prospective vendor, or vendor may proceed as if an adverse decision had been received.
 2. **Finality:** Except as otherwise specifically provided in this Procurement Policy, a decision of the Procurement Officer shall be effective until stayed or reversed on appeal.
 3. **Written Decision:** Once available, a copy of the decision shall be immediately mailed or otherwise furnished to the protestor, prospective contractor, or contractor and any parties that have been allowed to intervene in the proceeding. The decision shall be final and conclusive unless the protestor, prospective contractor, or contractor (a “vendor”) timely files an appeal to an appeals panel established by the Procurement Policy Board in accordance with Utah Code §§63G-6a-1701-1705 within the applicable 7- day statute of limitations period specified in Utah Code §63G-6a-1702.
- J. **Violation of Law:** If, before an award of a contract, it is finally determined administratively or upon administrative or judicial review that a solicitation or proposed award of a contract is in violation of law, the solicitation or proposed award shall be canceled or revised to comply with applicable law, unless different relief is mandated. (Utah Code §63G-6a-1909)
- K. **Options After Adverse Determination:** If, after an award of a contract, it is finally determined administratively or upon administrative or judicial review that a solicitation or award of a contract is in violation of law, provided that the recipient of the award has not acted fraudulently or in bad faith, unless different relief is ordered: (i) 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 (ii) 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. (Utah Code §63G-6a-1907(1)(a))
- L. **Fraudulent Conduct by Contractor:** If, after an award of a contract, it is determined administratively or upon administrative or judicial review that a solicitation or award of a contract is in violation of law and if the recipient of the award has acted fraudulently or in bad faith, unless different relief is ordered: (i) the contract will be declared null and void; or (ii) 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. (Utah Code §63G-6a-1907(1)(b))
- M. **Limitation on Consequential Damages:** Under no circumstances is a person entitled to consequential damages in relation to a solicitation or award of a contract under this Procurement Policy, including consequential damages for lost profits, loss of business opportunities, or damage to reputation. (Utah Code §63G-6a-1907(2))

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

SECTION 15.0 PERSONNEL POLICY

15.1 PERSONNEL SYSTEM PROVISIONS

A. **Purpose:**

High Valley Transit is a local district created pursuant to Utah Code Title 17B and operating under the laws of the State of Utah and administers public funds. The policies and procedures relative to the personnel working for the District are set forth for a dual purpose:

1. To give employees clear, concise information as to their rights, privileges, obligations, and responsibilities.
2. To provide the administration direction in dealing fairly and consistently with all employees.

B. **Functions of the Personnel Policy:**

This Personnel Policy is not intended to alter the employment-at-will relationship in anyway.

1. This Personnel Policy contains general statements of District policy and should not be read as including the fine details of each policy, nor as forming an express or implied contract or promise that the policies discussed in it will be applied in all cases. The District may add to the policies or revoke or modify them from time to time. Every effort will be made to keep the Personnel Policy current, but there may be times when policy will change before this material can be revised.
2. The Personnel Policies will be provided to individual employees in manual form. All manuals are District property and are assigned to employees holding a District position. The General Manager is responsible for distribution of the manuals to newly hired employees. Each employee shall sign a statement that they have received, read and understand the manual. Amendments shall be distributed through the General Manager. Each employee shall sign a statement that they have received, read, and understand the amendment.
3. The Board of Trustees has been established with the authority to review and make changes to the District's personnel policies. The General Manager, department managers and supervisors are encouraged to recommend changes or new policies. All policies are to be adopted in final form by the Board. Once adopted, the General Manager is responsible for disseminating new policy information to employees.
4. The General Manager, department managers, and supervisors should refer to the manual whenever questions of policy interpretation or implementation arise. They should, when possible, refer the employee to the policies and to, exercise caution in copying materials and avoid disseminating fragmented portions of these policies. Issues needing clarification should be referred to Human Resources.
5. As used in the Personnel Policy and its manual:
 - a. The words "shall" or "will" are to be construed as mandatory and the word "may" as permissive;

- b. Any reference to a specific gender shall be construed to include any gender.

C. **Applicability of Policies and Procedures:**

The policies and procedures set forth herein shall apply to all personnel, except where specifically excluded within the text of individual contracts or elsewhere in this document. If lawful and applicable federal or state governmental regulations concerning elected and appointed officials are contrary to these policies, such governmental regulations shall have precedence. These policies and procedures do not apply to members of boards and commissions, persons engaged under contract to supply professional or technical services, and volunteer personnel who receive no or nominal compensation from the District.

D. **System Standards:**

The system standards subscribed to by the District shall conform to the following:

1. Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skill levels, including open consideration of qualified applicants for initial appointment.
2. Providing equitable and adequate compensation.
3. Educating employees as needed, to assure high quality performance and justify reasonable performance standards.
4. Normally, retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected or corrected in a timely manner.
5. Assuring non-discrimination for applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, age, military status, disability, sexual orientation, gender identification, and with proper regard for their privacy and constitutional rights as citizens.
6. Providing information to employees regarding their political rights and prohibited practices under the Hatch Act or related legal guidelines.
7. Providing a formal procedure for processing the appeals and grievances of employees without discrimination, coercion, restraint, or reprisal.

15.2 EQUAL EMPLOYMENT OPPORTUNITY

A. Legal Compliance:

It is the policy of the District to comply with the guidance set forth in Title VII of the Civil Rights Act of 1964 according to Public Law 92-261 approved March 24, 1972; with Executive Order No. 11246, of September 24, 1967; with Title V, Section 503 of the Rehabilitation Act of September 26, 1973 (Public Law 93-112); Americans with Disabilities Act of July 26, 1990; Civil Rights Act of 1991; amendments to the above laws and any other regulation which is or may yet be promulgated relating to fair employment practices.

B. Anti-Discrimination:

The District will provide fair treatment of applicants and employees in all aspects of personnel administration without regard to race, color, religious creed, sex, national origin, age, military status, disability (including breast feeding and/or pregnancy), sexual orientation, gender identification and with proper regard for constitutional rights. No class of jobs will be closed to any individual because of the above referenced criteria.

C. Compensation:

Employees will be compensated on the basis of equal pay for equal work as determined through a formal job classification system. No individual will receive reduced compensation for equal work on the basis of race, color, religion, sex, national origin, age, military status, disability (including breast feeding and/or pregnancy), sexual orientation or gender identification.

D. Nepotism:

It shall be the policy of the District to comply with the Anti-Nepotism provisions of Utah Code §52-3-1 *et. seq.*

1. Employment of relatives and household members prohibited.

- a. "Relative" means a father, mother, husband, wife, son, daughter, sister, brother, uncle, aunt, nephew, niece, first cousin, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law.
- b. "Household member" means a person who resides in the same residence as the public officer.
- c. No supervisor may employ, appoint, or vote for or recommend the appointment of a relative or household member in or to any position of employment, when the salary, wages, pay, or compensation of the individual will be paid from public funds and the individual will be directly supervised by a relative or household member, except as follows:
 - i. The individual is eligible or qualified to be employed by the District as a result of their compliance with merit system laws or regulations;
 - ii. The individual will be compensated from funds designated for vocational training;

- iii. The individual is a volunteer as defined by the Utah Code Title 67, Chapter 20;
 - iv. The individual is the only person available, qualified, or eligible for the position; or
 - v. The Board determines that the supervisor is the only person available or best qualified to perform supervisory functions for the individual.
- 2. No supervisor may directly supervise an individual who is a relative or household member when the salary, wages, pay, or compensation of the relative or household member will be paid from public funds, except as follows:
 - a. The relative or household member was appointed or employed before the supervisor assumed their position, if the relative's or household member's appointment did not violate the provisions of Utah Code §52-3-1 in effect at the time of their appointment;
 - b. The individual is eligible or qualified to be employed by the District as a result of their compliance with merit system laws or regulations;
 - c. The individual will be compensated from funds designated for vocational training;
 - d. The individual is a volunteer as defined by Utah Code;
 - e. The individual is the only person available, qualified, or eligible for the position; or
 - f. The Board determines the supervisor is the only person available or best qualified to perform supervisory functions for the individual.
- 3. When the General Manager or department manager supervises a relative or household member:
 - a. The supervisor shall make a complete written disclosure of the relationship to Human Resources, General Manager, and the Board;
 - b. The supervisor who exercises authority over a relative may not evaluate the relative's job performance or recommend salary increases for the relative.
- 4. No individual may accept or retain employment if they are paid from public funds, and they are under the direct supervision of a relative, except as follows:
 - a. The individual was appointed or employed before the supervisor assumed their position;
 - b. The individual is eligible or qualified to be employed by the District as a result of their compliance with merit system laws or regulations;
 - c. The individual is the only person available, qualified, or eligible for the position;

- d. The individual is compensated from funds designated for vocational training;
- e. The individual is a volunteer as defined by Utah Code; or
- f. The Board has determined that the individual's relative is the only person available or qualified to supervise the individual.

E. Affirmative Action:

The District shall take affirmative action in all aspects of personnel management to assure compliance with Equal Employment Opportunity standards (EEO). Affirmative Action plans and programs shall be undertaken when deemed necessary by the General Manager or Human Resources or otherwise required by a regulatory agency of the State of Utah or the federal government. Implementation shall be at the direction of the General Manager.

15.3 ADMINISTRATION

A. Administration of Policies

The day-to-day management of personnel activities and operations within the District is the responsibility of the General Manager under the direction of the Board. The General Manager shall coordinate with Human Resources in managing all aspects of the personnel management system and enforce all policies and procedures which shall include but not be limited to:

1. The administration of the classification and compensation plans.
2. The administration of a system of employee performance management.
3. Notification of vacancies, recruitment, and selection processes.
4. Procedures involving the training and disciplining of employees.
5. Maintenance of all personnel records and actions.
6. Promotions, demotions, suspensions, and separations.
7. Reassignments and reclassifications.
8. Make reasonable and practical interpretations in the absence of precedent regarding the meaning and intent of policies, procedures, etc.
9. Other actions as prescribed by District rules, regulations, policies and procedures.

B. Personnel Committee

In order to review policies and procedures, job descriptions, grievances, and other items of personnel nature, the Board shall establish a Personnel Committee (PC) as a subcommittee of the Board.

1. General Organization: The PC shall be comprised of the Human Resource Director and two (2) members of the Board appointed by the Chair.
2. Chairperson: The Human Resource Director shall be the chair of the PC.
3. Authority: The PC shall have an advisory role only, unless otherwise allowed or delegated by the Board or these policies. Personnel policy proposals or recommendations shall be submitted to the Board.

C. Management Prerogative

The General Manager and department managers retain the responsibility to exercise all managerial functions including:

1. To assign, supervise, discipline, and dismiss employees;
2. To determine and change starting times, ending times, and shifts which are consistent with District policy;

3. To transfer employees within other departments within the District and other classifications;
4. To recommend the size and qualifications of the work force to the District Director and/or Board;
5. To determine and change methods by which departmental operations are to be carried out;
6. To assign duties to employees in accordance with the District's needs and requirements and to carry out all ordinary administrative and management functions.

D. Employee Supervision

It is the policy of the District that the work of all employees is to be assigned, directed, and reviewed by supervisory personnel. Employees ordinarily are to have only one supervisor to whom they report.

1. A primary role of each supervisor is to provide an effective link between management and non-management employees. As such, supervisors are expected to communicate the goals and policies of management to their employees. At the same time, they are expected to communicate back to management the attitudes, suggestions, and complaints of their employees.
2. Supervisors must, in addition to mastering the technical skills needed for their work unit, be able to lead and motivate their employees to do their jobs effectively and efficiently. To this end, supervisors should be prepared to:
 - a. Treat employees as individuals;
 - b. Give recognition for good performance, as well as guidance for correcting mistakes;
 - c. Explain in advance when and why changes are necessary;
 - d. Recommend employees with growth potential for promotion, even if it means losing them to other departments;
 - e. Show integrity by admitting mistakes instead of shifting the blame to others;
 - f. Be impartial and let employees know the reasons for any decisions that might be interpreted as unfair;
 - g. Demonstrate a desire for good performance by setting work goals and standards for employees;
 - h. Perform and complete employee performance evaluations in accordance with District guidelines. Evaluations shall be in conducted during the month of December each year;
 - i. Create a feeling of teamwork and belonging among employees; and

- j. Set good examples by holding themselves to the standards of conduct and performance that they demand of their employees.
3. Supervisors are responsible to ensure that the goals regarding employee conduct and performance established by management are achieved and that the personnel policies established by this manual are implemented. Therefore, they are expected to be involved in:
- a. Recommending the hiring of personnel and overseeing special job training;
 - b. Keeping employees informed on factors relating to their work assignments, work progress, and opportunities for advancement;
 - c. Evaluating the performance of new employees on a monthly basis, regular employees annually, and employees who are being terminated;
 - d. Recommending salary adjustments, promotions, transfers, and termination of employees under existing District policies;
 - e. Scheduling vacations, lunch, and rest breaks;
 - f. Approving reimbursement of employee expenses;
 - g. Controlling absenteeism and tardiness and approving requests for time off;
 - h. Verifying employee time records and approving overtime when necessary;
 - i. Recommending job elimination when appropriate;
 - j. Complying with applicable federal and state laws and regulations concerning employee safety;
 - k. Maintaining neat and orderly work areas;
 - l. Implementing all policies and procedures; and
 - m. Ensuring that all rules and regulations are observed by employees.
4. Nothing in this policy should be considered as a contract or promise, express or implied, to employees that supervisors will in each case perform any or all of the activities described above, or that such activities will be performed uniformly in each case.

E. Official Personnel Records:

- 1. It is the policy of the District to maintain personnel records for applicants, employees, and past employees in order to document employment related decisions, evaluate and assess policies, and comply with government record keeping and reporting requirements.
- 2. The District strives to balance its need to obtain, use, and retain employment information with each individual's right to privacy. To this end, it attempts to restrict the personnel information maintained to that which is necessary to conducting District business or which is required by federal or state law or County ordinance.

3. The General Manager or designee is responsible for overseeing the record keeping for all personnel information and will specify what information should be collected and how it should be stored and secured. The Human Resource Director will have access to these records upon request. According to law, all medical files shall be maintained separate from other personnel records. In addition, verification of prior employment and reference checks are maintained separately from other personnel records.
4. Employees have a responsibility to make sure their personnel records are up to date and should notify the General Manager of any changes in at least the following:
 - a. Name;
 - b. Address;
 - c. Telephone number;
 - d. Marital status (for benefits and tax withholding purposes only);
 - e. Number of dependents;
 - f. Addresses and telephone numbers of dependents and spouse or former spouse (for insurance purposes only);
 - g. Beneficiary designations for any of the District's insurance, disability, and retirement plans;
 - h. Persons to be notified in case of emergency.
5. Personnel records shall contain, as appropriate:
 - a. Record of application for employment and employment eligibility certification (I-9);
 - b. Reference to transcripts of academic preparation;
 - c. Performance evaluation ratings;
 - d. References to any formal reprimand, corrective action or commendation;
 - e. Records of actions affecting employee salary, status, or standing;
 - f. Leave records; and
 - g. Any other information felt to be pertinent by the department manager, General Manager, Human Resource Director or employee.
6. The District will, upon written request, supply the employee with a copy of any document it places in the employee's file.
7. An employee has the right to review, upon written request, the contents of their personnel record as governed by law and may challenge any information contained in the official personnel record, but may not remove any of its contents. All challenges must be directed either to the Human Resource Director or General Manager.

8. If a disciplinary action is rescinded or disapproved upon appeal, all forms, documents, and records pertaining to the case shall be removed from the personnel record and destroyed.
9. Personnel records are private data and available for review only to the employee and persons authorized by law or as determined by the General Manager to have a legitimate "need to know." A log or record of those reviewing personnel records and information shall be maintained together with the reasons for access to the records. All requests for reviews of personnel records shall be in writing and review shall be done in the presence of the General Manager or their designee.

10. Requests for Information:

Information and records management shall be conducted in a manner consistent with the Utah Government Records Access & Management Act (GRAMA), as amended within the Utah Code. Any person requesting information or documents under GRAMA must submit a written request on an approved form, detailing the specific information or document requested and the number of copies. Any request asking for information regarding verification of employment, including name, gender, gross compensation, job titles, job descriptions, business addresses, business telephone numbers, numbers of hours worked per pay period, dates of employment, relevant education, previous employment, and similar job qualifications of present employees, shall be directed to the General Manager and shall be deemed public information as provided by Utah law, unless otherwise classified.

Any GRAMA request seeking information which can be classified as private, controlled or protected under the provisions of Utah Code §63-2-302 through §63-2-304, shall be first referred to the General Counsel for review. The District reserves the right to assess a fee to cover the costs of reviewing, collecting, and copying information requested under GRAMA.

Any request for information regarding a reference check on a former or current employee shall be forwarded to the General Manager or their designee, who shall issue a response similar to employment verification, consistent with the District's Policies and Procedures. Under no circumstances shall character judgments be issued during these requests.

11. Records Retention: All active employee files shall be kept up to date and the content of the file must be relevant to some aspect of current employment and work history. All records related to inactive or terminated employees shall be retained as required by law. For complete and accurate records of all medical examinations required by the law and records of any personal or environmental monitoring of exposure to hazardous materials - such records are required by OSHA to be retained for 30 years.

F. "At-will" Confirmation

Nothing in this Personnel Policy should be considered as altering the employment-at-will relationship or as creating an express or implied contract or promise concerning the policies or practices that the District has implemented or will implement in the future. Accordingly, the District retains the right to establish, change, and abolish its policies, practices, rules and regulations at will, and as it sees fit.

G. Savings Clause

If any provision of these policies and procedures or the application thereof is found to be in conflict with any state or federal law, the conflicting part is hereby declared inoperative to the extent of the conflict, but such conflict shall not affect the operation of the remainder of these policies and procedures or any of its application.

15.4 POSITION MANAGEMENT

A. Position Allocation:

It is District policy, as much as possible, to initiate proposed changes in the number of personnel or reclassification of personnel during the process of budget approvals for the ensuing year. This allows for the most thorough consideration of personnel expenditures and available revenues. The establishment of a position by the District cannot take place without the appropriate budget approval of the Board. No person shall be hired or appointed and no regular employee promoted to any position (exceptions may occur for the occasional emergency/temporary, contractual or part-time professional work needs), until it has been properly allocated as follows:

1. The development or revision of a current job description.
2. The proper classification of the position and assignment to an established pay range.
3. The presentation of justification as to the need for the position or for the promotion and advancement of an employee.
4. Verification that funds are available to support the position, promotion or change in classification.

B. Job Description:

The initial content of all job descriptions shall be provided by subject matter experts such as department managers, General Manager, supervisors, and incumbent workers through the use of questionnaires, written documents, and related materials. If needed, verification shall be obtained through on-site job audits conducted or coordinated by the General Manager. Based upon obtained information, the General Manager or their designee shall prepare the description in approved format for finalizing. The General Manager shall utilize the Personnel Committee to review and finalize the description for full-time positions. All employees will be assigned to a position with an established job description and must be able to meet the requirements for performing the "essential functions" of the position to which assigned. Standard formats shall be established by Human Resources to include essential and marginal duties and responsibilities and minimum qualifications (training, education, and experience). The description shall be used by the District as the basis for:

1. The classification of the position and determination of its rate of pay.
2. Preparation of examinations and for determination as to whether an applicant or employee meets minimum requirements for a particular class of positions.
3. For preparation of a position announcement soliciting applications from interested individuals for position vacancies.
4. The orienting of a new employee to the duties and responsibilities of a position to which hired or promoted by an administrative officer, supervisor or department manager.
5. The development of performance management objectives and evaluations.

C. Classification:

All District positions are evaluated on a set of common factors (i.e., difficulty of work, complexity,

judgment, responsibility, controls over the work, minimum qualifications, education and training, physical environment, etc.) and assigned a grade encompassing a specific salary range on the salary plan. All employees hired on a full-time or part-time basis will receive compensation according to the classification of the position for which they are hired. Recommendations for advancement shall be in writing, and must be approved by the General Manager and Human Resource Director.

D. Reclassification:

If the duties and responsibilities of a position change significantly, the department manager shall submit a request for reclassification to the General Manager and Human Resource Director with a draft job description. The Human Resource Director will perform an analysis of the job to determine reclassification eligibility. Reclassification of a position to a class with a lower pay range shall not generally change an employee's salary. Normally, the employee's pay shall be adjusted within the new pay range which is at least equal to the current salary. The General Manager shall utilize the Personnel Committee to review and finalize the description.

E. Reorganization:

Reclassification may be required from time to time as a result of reorganization. Circumstances may arise from the reorganization or reclassification process which require the abolition of a position, which shall be treated as a reduction-in-force. Reorganization shall also be sufficient cause for reclassification by way of reassignment. In an effort to minimize the effects of a reduction-in-force brought about by reassignment, reclassification or reorganization, the following options shall be considered:

1. Options

- a. The employee may be assigned to a lesser position; or
 - b. The employee may be reassigned to another position within the employee's department, depending upon qualifications and available position.
2. If the employee's pay is greater than the maximum for the position to which assigned or transferred the employee shall be placed on a salary freeze for a period not to exceed two (2) years. If during the two-year period, the employee's rate of pay falls back within the assigned pay range, the freeze shall be lifted. If at the end of two years, the employee's pay rate still falls above the maximum of the pay range, that employee's pay rate shall be reduced to the maximum of the assigned position.

15.5 HIRING FOR NEW AND VACANT POSITIONS

A. Recruiting:

Selecting and advancing employees in the District personnel system shall be on the basis of their ability, knowledge, and skill levels related to the vacant position. The General Manager may execute, with the approval of the Board, written employment agreements for certain services.

B. Disqualification:

The District reserves the right to reject any application which is incomplete or indicates on its face that the applicant does not possess the minimum qualifications required for the position. Applicants and subsequently hired applicants who make false or misleading statements, or who are found to have engaged in any type of deception or fraud in the application or testing process shall be rejected or immediately terminated.

C. Testing:

Applicants may be subjected to competitive testing which may include, but is not limited to: determination of bondability, rating of education and experience, written, oral, or physical agility tests, psychological testing, essential function demonstrations, and/or background investigations, proof of academic attainment, etc. Applicants for positions which require the worker to operate District vehicles or equipment on public roadways may be required to provide a copy of a State Department of Motor Vehicle driving record. The driving record will be used to assist in the ranking of applicants who meet the minimum qualifications.

D. Physical Examination/Drug Testing:

Public health and safety demands that employees be physically able to perform the duties and essential functions of the position for which they are hired. The physical requirements of the job constitute bona-fide occupational qualifications. The District will make every effort to provide reasonable accommodations for employees and applicants in compliance with the Americans with Disabilities Act (ADA), however if the requested accommodation creates an undue hardship on the District it shall not be obligated to provide such.

1. A physical examination may be required before an applicant is appointed to any District position. The results of the exam will be presented to the General Manager, in writing. A disabled applicant may be required to submit to a physical exam only subsequent to a job offer being made and only if all others being hired are required to do the same.
2. The District may require a medical examination at any time during the employee's work tenure, if deemed necessary to assure the safety and health of the employee, co-workers, and the public. The District will pay the cost of any required medical examination.
3. Final candidates for any position may be required to undergo chemical screen testing to determine the presence of chemical substances in the body. Subject to the ADA, any applicant who tests positive, tampers with or adulterates their sample may be disciplined.

according to these policies and procedures and state law (see Drug Free Work Place policy, Utah Code §34-38-8, District Policies and Procedures, Section 15.12).

E. Employment Eligibility Verification:

1. In conformance with the "Immigration Reform and Control Act of 1986" (P.L. 99-603) and in order to avoid monetary penalties for the hiring of undocumented workers, the General Manager shall establish an employment verification system, and shall verify that all applicants for vacant positions or persons hired to fill vacant positions are authorized to work within the boundaries of the United States.
2. The General Manager or designee shall complete or have completed Immigration and Naturalization Service Form I-9 prior to or on a hired employee's first day of work and verify work eligibility through examining such documents as a United States Passport, birth certificate, social security card, driver's license, an alien identification document or other qualifying documentation.
3. Employees must also attest in writing that they are authorized to work in the United States. Forms and all written verifications shall be kept along with other personnel records and shall be kept in accordance with the Utah State Records Management Act. These documents shall be made available to the Immigration and Naturalization Service or the Department of Labor as requested.

F. Hiring Procedures:

1. When a position opens or a need arises to create a new position or fill a vacancy for a full-time position or an enumerated year-round part-time position, the General Manager shall notify, in writing, the Human Resource Director and Board of recruitment needs. Notification shall be accompanied by the position title and a description of the duties, responsibilities and required knowledge, and skills. Minimum qualifications for education and experience shall be outlined for recruited positions. Authorization to hire individuals must be in accordance with this Section 15.4.
2. Advertisements will be placed only by Human Resources. Upon being given approval to recruit and receiving signed documentation from the General Manager authorizing the creation of a position, the Human Resource Director or their designee shall prepare, advertise and post the opening where District employees will be made aware of the opportunity. First consideration in filling the vacancy for all merit positions will be given to District employees who qualify. Current employees interested in the position must apply within seven (7) calendar days of the posting date. All in-house recruitment shall be posted in the District offices and designated locations. If the same position is being recruited for multiple times within the span of one year of the first in-house advertisement, the in-house posting requirement is waived.
3. Following the in-house posting, if the position is not filled by promotion or transfer, the community and labor market shall become the object of an appropriate recruitment effort. All applications will be received by Human Resources. Outside applications will be accepted for a minimum of seven (7) calendar days. If necessary, outside recruitment may be extended as needed to attract sufficient qualified applicants.
4. Upon closing the community and labor market recruitment Human Resources shall review all applications to determine those that meet the minimum qualifications. Those

applicants who meet minimums shall then be ranked by using a formal system for rating applicant training, education and experience, etc. The rated list then constitutes the certified list of eligible applicants and a hiring register for the recruited position and functionally similar positions within the District. The certified eligible list for the advertised position shall remain active for six (6) months.

5. Upon ranking the applicants, the finalists for the position will be determined and the scores will be submitted to the department manager. In the case of full-time positions, the finalists for the position shall be selected from the scores and submitted to the General Manager.
 - a. The department manager or their designee(s) will conduct the interviews. Upon the selection of the individual to be hired the department manager shall submit the name of their choice and proposed salary in writing to the General Manager and Human Resource Director for the development of a formal employment offer and processing. No offer is final until approved by the General Manager.
6. Before extending a conditional offer of employment to the finalist, the Human Resource Director will secure the following:
 - a. Signed documentation by the General Manager and department manager if a new employee is hired or a current employee is promoted to an amount higher than the starting wage for that position.
 - b. All notes, scores, or other documentation created and or received during the interview process.
 - c. The results of any physical/medical/psychological examinations.
 - d. The results of any job-related skills or agility tests.
7. Included in the conditional offer of employment to the finalist, the Human Resource Director will:
 - a. Require the necessary background check information be submitted.
 - b. Provide the instructions for the finalist's required pre-employment drug screening test (if applicable).

G. Employee Induction:

After the new employee is hired, they shall promptly receive a general orientation concerning benefits, compensation practices, personnel policies and procedures and various employment expectations from the General Manager or their designee. Job specific orientation shall be conducted by the immediate supervisor. All new employees must sign a document stating they have read and understand the District's Personnel Policies and Procedures.

H. Orientation Period:

All appointments to year-round positions within the District, whether new hires, rehire, reinstated (affected by reduction-in-force or leave without pay) transfer, or promotional, require an orientation period during which both the District and the employee can determine compatibility and competence.

1. This period is regarded as a testing period designed to acquaint the new employee with the position and allow the employee, supervisor, department manager, and General Manager, to measure fairly the employee's ability to perform the job. An employee who is either serving a new hire or promoted/transferred orientation period is not eligible for promotion, transfer or reassignment.
 - A. New Hire Orientation: During the orientation period, the supervisor shall conduct a written performance review at least monthly to coach the employee in the job duties, apprise the employee of their suitability for the position, and determine the employment action to be recommended to the General Manager. (see Section 15.6, Conditional Employees).
 - i. The orientation period for all District employees shall be six (6) months in duration with the period extendable up to an additional six (6) months for good cause, but with the condition that the orientation period employee may appeal any undue prolongation of the period designed to thwart merit principles. The employment relationship may be terminated at any time during the new hire orientation period, with or without notice, and with or without cause, by either the employee or the District.
 - ii. During the new hire orientation period, all benefits accrue. In the case of vacation benefits, they accrue but cannot be used until the completion of the orientation period, without approval of the General Manager.
 - iii. At the close of the orientation period, the department manager shall submit the new employee's written evaluations and may recommend up to a 3% increase for the new employee.
 - B. Career Ladder Adjustment: Employees participating in a Career Ladder Adjustment will not participate in an orientation period.
 - C. Promoted or Transferred Employee Orientation: During the promoted or transferred employee orientation, the supervisor shall conduct a written performance review at least monthly to coach the employee in the new job duties, apprise the employee of their suitability for the position, and determine the employment action to be recommended to the General Manager. Promoted or transferred employees who fail to demonstrate competence and/or compatibility with the new assignment within the six (6)-month orientation period may be reassigned to the same or equivalent position with the equivalent pay and tangible benefits previously held if one is available. Reassigned employees shall have all rights of appeal and due process as defined by policy and procedures. There shall be no orientation period increase at the completion of a promoted or transferred employee orientation period.

15.6 EMPLOYMENT STATUS

A. Applicability:

All merit employees, officers, and other personnel not exempted herein, who prior to the effective date of these policies and procedures, have successfully completed the orientation period; are deemed to be fully covered employees under these personnel policies and procedures.

B. Merit Exempt Positions:

It shall be the policy of the District to comply with Local District Personnel Management, Utah Code Title 17B, Chapter 1, Section 8 (1953 as amended). The following types of positions have been designated as being exempt from the provisions of the personnel system. Exempt positions should be reviewed annually to determine whether or not their exempt status should be withdrawn based on changes of duties and related factors. Written employment agreements with the District Director may include applicable policies and procedures. Workers in such positions are "at will" and may be separated from employment for reasons other than cause.

1. District Director;
2. Each department manager charged by the District Director with the responsibility of assisting to formulate and carry out policy matters;
3. Members of policy, advisory, review, and appeal boards, or similar bodies who do not perform administrative duties as individuals;
4. Attorneys serving as outside legal counsel, special advisors, and any person employed to make or conduct a temporary and special inquiry, investigation, or examination on behalf of the Board;
5. Each employee appointed to perform:
 - a. Work that does not exceed three (3) years in duration, or
 - b. Work with limited funding;
6. Bona fide independent contractors;
7. Temporary and seasonal employees as defined herein;
8. Contractual personnel hired to perform time limited services requiring specific professional skills and abilities. Employment contracts shall not be valid until approved by the General Manager.

C. Temporary Employees:

The District Director may make temporary appointments to carry out necessary District responsibilities as the budget will permit. The District shall create a pool of eligible temporary employees. When the Director needs to utilize the services of a temporary employee, they shall

select an individual from the temporary employee pool. Department managers may request individuals of their choice be added to the temporary employee pool.

Temporary employees shall work not more than 29 hours per week and shall not qualify for regular benefits, except that mandatory benefits shall be provided as prescribed by law, i.e. social security, workers compensation, and unemployment. These appointments shall not exceed 320 hours in succession. Temporary employees cannot work more than 29 hours per week or 320 hours in succession without a 90-day rest period (no employment activity with any department of the District) before additional work hours are permitted. In extenuating circumstances, a department manager may petition the Director to extend a temporary employee's term of service. Upon review, the General Manager may approve or deny the department manager's request. The temporary employee, on approval, will have additional time allotted to their term of service. The additional time shall not exceed an additional 320 hours and no more than 29 hours per week for a total 640 hours. Temporary employment does not count as credit toward the completion of an orientation period.

D. Full-time Employees:

An employee who has satisfactorily met the requirements for employment, is generally working forty (40) hours per week (is expected to work 2080 hours per year), and successfully completed the appropriate orientation period is considered a full-time employee. Full-time employees are eligible for all the benefits programs and rights and privileges described in District policies and procedures.

E. Part-time Employees:

Employees expected and scheduled to work less than a yearly average of forty (40) hours per week shall be considered part-time.

1. Merit Status: Consistent with the provisions of Utah Code Title 17B, Chapter 1, Part 8, and Section 15.6.B, part time employees hired after March 1, 2021 shall be considered Merit Exempt.
2. FLSA Exempt: Part-time employees who are considered exempt under the federal Fair Labor Standards Act ("FLSA") and under Section 15.6.G shall be compensated at a fixed rate, based upon the expected hours of work per week for the part time position they hold. All other part time employees shall be compensated at an hourly rate in accordance with federal law.
3. Benefits: Part-time employees who work less than thirty (30) hours per week, shall not qualify for benefits offered to full-time employees. Part-time employees who work a yearly average of thirty (30) or more hours per week, but less than forty (40), shall qualify for the following benefits only:
 - a. Employees working on average thirty (30) hours per week shall qualify for health care at the same rate as full-time employees.
 - b. Mandatory benefits shall be provided as prescribed by law, i.e. social security, workers compensation, retirement and unemployment.

F. Conditional Employees:

All new and promoted employees shall be considered conditional employees and are required to

serve an orientation period. The orientation period shall be six (6) months for all employees. Conditional employees who are new hires may be terminated with or without cause.

Conditional employees who are promoted or transferred and are unable to satisfactorily perform the requirements of the new position, during the orientation period, may be reassigned to their former position, if available, reassigned to a like position of similar pay grade, or reassigned to a position of lesser pay grade. If a promoted or transferred conditional employee violates District policy and procedures, they may be terminated but shall have all rights of appeal and due processes as defined by these Policies and Procedures (see Section 15.14).

This period is designed to acquaint the new employee with their position and allow the supervisor to assess the employee's performance (see Orientation Period, Section 15.5).

G. FLSA Exempt Employees:

There are two (2) types of employment classes in the District relative to FLSA minimum wage and maximum hour requirements, exempt and non-exempt.

1. Exempt employees are those in an executive, administrative or professional position and certain merit exempt employees. These employees will normally be classified in category 1 and 2 according to the EE04 definitions. These codes generally include: officials, administrators, and professionals.
2. Non-exempt employees are generally included in all other EE04 categories. Category 3 includes technicians, category 4 protective service workers, category 5 office and clerical, category 6 craft workers, category 7 operators (semi-skilled), laborers (unskilled), category 8 service workers.
3. Full-time, part-time, temporary, and seasonal employees shall be paid overtime if they are non-exempt and hours actually worked exceed forty (40).
4. Holidays, vacation, sick leave, and other paid leave such as jury duty, military leave, and funeral leave shall not be counted as time worked for purposes of overtime.
5. Volunteers and Board Members are exempt from FLSA minimum wage and overtime requirements and will not be considered an employee of the District. They may receive a nominal stipend or reimbursement for expenses.

H. Seasonal Employees:

Due to the seasonal nature of the work demands placed upon some District departments, the General Manager may designate certain positions as seasonal hires. Seasonal employees are hired for a specific portion of the year and generally not to exceed twenty-nine (29) hours per week or 640 hours total to meet the increased demands during that period. If approved by the Board in the annual budget, some seasonal employees may work up to forty (40) hours per week for a period not longer than six (6) months. Upon the conclusion of the high demand period, employees shall be terminated, or furloughed until they are recalled to meet the needs of a new "high need period". A furlough does not create a vacancy or reduce the number of approved positions. Such employees are not merit employees as described above. All seasonal appointments must be determined through a competitive recruitment process.

15.7 PERSONNEL ACTIONS

A. Promotion:

A promotion is defined as a change in job title and grade recognizing increased capacity and responsibility of an employee from a position in one job class to a position in another job class having a higher entrance salary. Whenever a position comes open in a department, whether a newly created position or a vacated position, the General Manager will first look within the District to determine if the promotion of a qualified, interested employee is possible. If it is determined to be so, then the position may be filled in that manner. A notice of the job opportunities may be circulated among District employees describing the position. Personnel promoted into a higher pay grade shall receive a pay increase commensurate with their abilities and other employees holding the same or similar position. The General Manager shall take into consideration; longevity, performance evaluations, and budget. The General Manager will work in conjunction with the Human Resource Director in establishing promotion criteria for various job classifications. Employees who are full-time shall be entitled to continued benefits notwithstanding the orientation period and conditional status associated with such promotion.

B. Career Ladder Adjustment:

If approved by the Board, the District may implement a Career Ladder system. A career ladder adjustment is defined as moving an employee from one position in a job class to a similar position with a higher entrance salary in the same job class. This change recognizes an employee's increased capacity and responsibility to perform their work to a higher standard. If budgeted, personnel receiving a career ladder adjustment will be moved to the bottom of the new range or receive a six percent (6%) increase, whichever is greater. The General Manager will work in conjunction with the Human Resource Director in establishing criteria for moving employees into various job classifications. There is no orientation period required for an employee receiving a career ladder adjustment.

C. Layoff (Reduction-in-Force):

Should it become necessary to undergo a reduction of the work force, brought about by a reduction of operating revenues, technological innovation, the discontinuance or reduction of services, or other grounds consistent with economic and efficient administration of the District; the General Manager shall lay off the necessary number of employees considering such factors as, but not limited to, longevity, performance, and organizational needs. The decision matrix shall be filed with Human Resources. Individuals being separated by a reduction in force do not have a

right to prior notice. In determining which employees should be laid off, the General Manager shall utilize the following sequence to achieve the required reduction:

1. Temporary/seasonal employees (shall be separated or reduced in workhours).
2. Part-time employees (shall be separated or reduced in workhours).
3. Full-time employees (may be separated or reduced in workhours).

D. Abolishment of Job:

If a circumstance should arise requiring the abolition of a certain position, employment status may be maintained by one of the following:

1. The employee may be returned to a previous position, if a position is open or allocated by the Board at a salary appropriate for the position, which may entail a reduction in pay.
2. The employee may be promoted based upon performance, qualifications, and position availability.
3. The affected employee may be transferred to another department to fill an open position, for which they are qualified, commanding equal or lesser compensation.
4. If none of the alternatives are available, the employee shall be separated.

E. Separation:

Merit employees may be subject to separation for cause, reasons of reduction-in-force, reduction of work, abolishment of a position, or lack of funds. An employee placed on disability leave which exceeds 180 days shall be separated from the District. Otherwise, all employees will be retained on the basis of their performance and separated if inadequate performance cannot be corrected. Merit employees have the right to appeal as outlined in the grievance procedures of Section 14 if they perceive the separation to be unjustified. Part-time, temporary, seasonal, contract, and exempt personnel may be terminated "at will" or according to terms of individual employment agreements.

F. Resignation:

Excessive turnover is costly and therefore, should be avoided. Competent employees who resign voluntarily should be interviewed by the General Manager to determine the potential for reconsideration. If the reason for the resignation is a misunderstanding or mistake by the District, an effort shall be made to correct the situation. Employees who resign and desire to leave the District in good standing should give a minimum of two (2) weeks' notice if they are to be

considered for re-employment at a future date. Resignations must be in writing and submitted to the employee's immediate supervisor.

G. Defacto Resignation:

An employee who is absent from work for three (3) consecutive work days and capable of giving proper notifications but does not inform the supervisor, shall be deemed to have resigned and shall be informed of the same in writing by the department manager.

H. Reinstatement/Rehire:

Former employees, who left voluntarily, and in good standing, may be reinstated to a vacant position only when their qualifications and ability indicate a potential for performance which would clearly exceed expected performance of current, and promotable employees. Previous District experience may be taken into consideration in determining placement of the employee on the District's salary schedule and accrual of benefits if the rehire or reinstatement occurs within one (1) year from the date of separation. The restatement/rehired employee shall be required to observe the waiting period before being placed on the District's offered insurances. If a reinstated/rehired employee returns to District employment within three (3) months of their separation date, there shall be no change in their vacation accrual date. If the employee returns to work after three (3) months, they shall lose at a minimum one (1) year of accrual for vacation.

I. Transfer:

A transfer is defined as a move from one department to another, and should not be confused with the managerial function or moving personnel from one office to another within the same department by promotion, demotion, or reassignment.

Transfer is also a method of filling a vacant position through transfer of an interested, qualified employee already working for the District. However, employees are encouraged to visit with their department manager before making such application. Transfers must be approved by the General Manager. A transferring employee must qualify for the job to which they are transferring. A transferred employee shall retain all accumulated sick and annual leave. A transferring employee may suffer a loss of base pay due to budget constraints and if, in the opinion of the department manager, the transferring employee lacks job knowledge and/or competency equal to employees in the same job classification, whose pay would be less than that of the transferred employee.

J. Reassignment:

The effective operation of the District requires periodic changes in work assignments to match functional needs with capabilities of District personnel. An employee may be reassigned from one position to a different position within the District. Employees who are reassigned to a position with a higher pay scale shall be moved to the bottom of the new range or receive a six percent (6%) increase, whichever is greater.

If the District reassigns an employee to a position with a lower salary range and the employee's current salary is higher than the maximum, the employee shall have their pay frozen (See Section 15.4). If the reassignment is requested by the employee, that employee, shall suffer a loss of pay consistent with the reduction of responsibility. Employees may request reassignments, but must do so in writing through their department manager and the General Manager.

K. Performance Documentation:

The General Manager, department managers, and immediate supervisors shall in a timely manner, document noteworthy, or significant incident behaviors of employees. Such records may be used to support decisions which affect employee status related to job advancement, rewards, discipline, and discharge.

1. Timing & Purpose of Evaluations: Annual employee evaluations for all full-time and part-time employees shall be conducted by the department manager, supervisor, or General Manager, in December of each year, and shall be used as the basis for the following:
 - a. To assure that employees are fully aware of performance standards which apply to their jobs;
 - b. To allow employees to express ambitions, desires, and set goals;
 - c. To determine training needs;
 - d. To transfer and reassign employees for better use of skills and abilities;
 - e. To make appraisals for promotions;
 - f. To discharge incompetent employees; and
 - g. To identify employees to be separated for reduction-in-force.

15.8 COMPENSATION

A. Equability

Compensation for District employees shall be equitable and competitive with the market place. The assignment of employees to positions and pay rates shall be consistent with the formal classification plan.

B. General Wage/Salary Adjustments:

It is the intent of the District to consider prevailing practices related to cost of living and market trends in establishing wages and salaries. The General Manager shall consider annually, during the budgeting process, the amount of cost of living money available. All cost of living increases and salary adjustments are subject to the sole discretion (and the availability of budgeted funds) of the General Manager. This shall be communicated to department managers as a percentage of the departmental salary budget for the ensuing year. Where general, across the board raises are awarded, the raise will be effective on a date determined and approved by the General Manager.

1. Cost of Living vs. Market: Adjustments to the salary schedule shall be determined through analysis of market trends in comparison to cost of living. This shall be done once per year and the District will utilize market survey results and cost of living index data. All employees, regardless of employment status (for exception, see Section 15.8.K following- Salary Adjustments & Red Line Rates), shall receive the benefits of such general adjustments to the payplan.
2. In determining the total compensation value of the position, benefits must be considered. Base salary plus cost of benefits equals' total compensation. In comparing benefit packages provided in the labor market, the District may evaluate both level and cost of benefits or other factors as deemed appropriate.

C. Initial Appointment:

All initial appointments to classes assigned to the wage scale in the compensation plan should be at the range minimum unless:

1. An employee cannot be recruited for the position at the beginning rate, or,
2. The qualifications of the individual selected for the position exceed the minimum requirements and the individual can be expected to perform at a level equal to that of other individuals being paid at the same amount.

D. Hourly Rates

Temporary, part-time, and seasonal employees shall be paid at an hourly rate no higher than that which is established for the position through job classification.

E. New Hire Increases

New employees who successfully complete their orientation period and receive the orientation period increase shall not be eligible for any other merit increase until they have reached their one (1) year anniversary date of employment. All other merit increases shall be conducted and evaluated as provided in this Section.

F. Overtime

Employees covered under the overtime pay provisions of the Fair Labor Standards Act (29 U.S.C. chapter 8 and P.L. 99-150, 1985 as amended), will be credited with overtime for all hours worked over forty (40) in a work week. Two (2) seven (7) day periods will correspond to the District's pay period. Time taken as vacation leave, sick leave, funeral leave, compensation time, holiday leave, etc., shall not be counted as hours worked for the purpose of calculating overtime.

It is the District's policy to discourage the accumulation of overtime. Supervisory personnel should organize their department workload to avoid the need for overtime. Overtime will be permitted where circumstances allow no other alternative and should be kept to a minimum. Overtime work must have the prior approval of the General Manager, department manager or immediate supervisor who shall keep complete records concerning overtime and any compensation thereof. Any time worked over forty (40) hours in any defined work week by an FLSA covered employee, which the supervisor has approved of, is aware, or "suffered" to be worked, shall qualify as overtime. The following rules apply to the accumulation and compensation of overtime.

1. Positions defined as FLSA exempt as outlined in Section 15.6.G, are not eligible for overtime.
2. For all non-exempt, FLSA covered employees, overtime shall be paid and/or all comp-time accrued at the rate of time and one half (1 1/2) the regular rate of pay for all hours worked in excess of the forty (40) hour work week. It shall be the regular practice of the District to pay overtime in the pay period in which it is earned. However, if authorized by the General Manager, an employee may be allowed to accumulate up to a maximum of forty (40) hours compensatory time per calendar year.
3. Every department shall be required to request overtime and comp time, during the District's budget session. The District shall then be allowed to utilize overtime and comp time up to the amount approved by the Governing Body in the budgeting process. Records of overtime hours worked shall be maintained by the District for all employees and shall be retained as required bylaw.
4. When call-out occurs, as in the case of emergencies, the District shall pay a minimum of one (1) hour when called out to work other than their regular work schedule.
5. All time spent in training, in conferences, at workshops, meetings, etc., when such attendance is required by the District, shall constitute hours worked and shall be used to calculate overtime eligibility under the FLSA.
6. All comp time shall only be paid out in the final pay period of the year it was accrued.
7. An employee who has accrued comp time shall, upon termination of employment, be paid for all unused comp time.
8. "Compensatory time" and "Compensatory time off" are defined as hours when an employee is not working and which are paid at the employee's regular rate of pay. These hours are not counted as hours worked in the week in which they are paid.
9. Vacation, sick leave, comp time, holiday leave, and funeral leave shall not be used to obtain overtime. Overtime shall only be paid for actual hoursworked.

G. **Separation Pay:**

When employees separate their employment, they shall be required to return all District property and to clear all financial obligations prior to receiving their final pay check. Any obligations not cleared shall be deducted from their final pay check. The District shall issue a final check, which will include all vacation, and all comp time earned, when they actually work their last day for the District.

Only F.I.C.A. tax and retirement benefits will be paid on that check, except retirement is not paid on the vacation payout. The Comptroller shall determine the amount of separation pay to which the employee is entitled. In the event of the death of an employee, final payment shall be made to the employee's beneficiary.

H. **Pay advancement:**

The District will not make pay advances to employees.

I. **Severance Pay:**

When a full-time employee is separated from District employment due to a reduction-in-force through no fault of the employee, and when such a separation requires immediate action thereby not permitting a two (2) week notice, the employee shall be paid two (2) weeks' severance pay in lieu of the two (2) weeks' notice. Employees terminated for cause shall not be eligible for severance pay.

J. **Payroll Deductions/Withholdings:**

Payroll deductions other than FICA, State and Federal Income Tax Withholdings and Garnishments, can only be made with the approval of the General Manager or their designee and Human Resource Director on a program by program basis.

K. **Salary Adjustment & Red Line Rates:**

When the rate of pay of an employee is lower than the minimum prescribed for their classification in the compensation plan, the wage shall be increased to that minimum. When an employee's pay rate falls above the established pay range, that employee's pay shall be frozen for a period not to exceed two (2) years. During the freeze period the employee shall not be entitled to any general pay increases or cost of living increases until such adjustments bring the individual pay back into the range. If after two (2) years, the pay still falls above the established pay range, the pay of the individual shall be reduced to the maximum of the pay range of the job classification to which they are assigned.

L. **Out of Classification Assignments:**

Employees required to perform in higher level positions due to illness, vacation schedules or understaffing of their offices may, at the discretion of the General Manager, and upon recommendation of the department manager, receive a temporary increase in compensation which is consistent with the level of the temporary assignment. The out of class assignments must exceed a thirty (30) day period in order to be considered for a temporary increase. Normally, out of class duties shall not be allowed to continue beyond a six (6) month period. If the need continues beyond six (6) months, the department manager shall treat the situation as a job vacancy and utilize the promotion or transfer policies to remedy the situation. If no internal remedy is achievable, an outside recruitment shall be undertaken.

M. Additional Assignment:

Employees assigned to perform an additional assignment beyond the scope of their job description shall receive a temporary increase to their base pay between 2% and 5%. This additional pay increase shall not be bound by the employee's assigned pay scale. The additional assignment must exceed a thirty-day period in order to be considered for this temporary increase and be approved by the General Manager. This is not to be confused with Out of Classification Assignments (Section 15.8.L).

N. Pay Progression:

Progression through the various pay grades within the salary and wage scale shall be based upon the recommendation of the department manager and General Manager, with the approval of the Human Resource Director. In making recommendations for pay progression, the department manager and General Manager shall adhere to District policies and procedures, performance, level of competence, and job knowledge. Such pay progression shall be accomplished within the current budget as approved by the Board.

Salary increases shall be limited to cost of living, merit, market adjustments, and progression from one District position to another. Salary increases are not a vested right of any employee.

Upon achieving the maximum of the pay range, the employee shall still be eligible for Cost of Living increases, market adjustments to the pay plan, and consideration for performance incentives.

O. Performance/Incentive Awards & Bonuses:

In order to promote exceptional or outstanding services and recognize those occasions where services are rendered, emergencies responded to, or proficiencies demonstrated which are beyond the normal expectation of the job; it is the position of the District to reward such individual or group contributions. These awards shall be a one-time recognition, in that they are not added to the regular pay of the recipient.

No performance/incentive award or bonus shall be given for job expectations, i.e., coming to work on time, not using sick leave, keeping a clean environment or returning telephone calls.

1. **Meritorious Bonus:** In addition to an annual merit increase in salary, a Department Manager or supervisor may nominate one or more of their employees for a meritorious bonus.

- a. If approved in the budget, District employees may be granted a discretionary merit bonus not to exceed five percent (5%) in total per year.
- b. District managers and supervisors shall recommend to the General Manager any proposed merit bonus for individual staff members within their department.
- c. A merit bonus is independent from District salary schedule and is not carried over from year to year.
- d. These bonuses shall be awarded in December of each year and may be awarded for:
 - i. Exemplary performance on special projects. An employee may be given a special project. A great deal of effort and research may go into the project. The project shall benefit the District in some way.
 - ii. The exercise of leadership and/or initiative beyond that normally expected in the individual's regular assignments. An employee may be required to meet unusual

deadlines or perform in emergency situations. An employee may demonstrate a willingness to accept and perform new assignments on a short-term basis.

- iii. Actions which avert legal actions by or against the District.
 - iv. Independent research and analysis initiated by an employee resulting in a contribution to the specific objectives or improved methods for delivering District services or conducting District operations.
 - e. The supervisor shall submit a written letter detailing the actions of the District employee to the General Manager.
 - f. The General Manager shall either approve or deny the request.
2. **Instant Bonus Program:** A District employee, supervisor, or manager may nominate a part-time or seasonal District employee for a bonus up to fifty dollars (\$50) for actions which bring favorable attention or recognition to the District.
- a. The nomination shall be written in memo form. Nominations must involve a detailed description of the project or act and the nominated employee's involvement in the act. If money is awarded to the District employee, the award shall run through the payroll process.
 - b. The nomination shall be forwarded to the department manager for approval and to the Comptroller for payment and inclusion in the employee's personnel file. If the employee's supervisor does not approve the nomination, the nominating individual may appeal the decision to the General Manager.
 - c. The General Manager's decision shall stand.
 - d. The bonus money/gift certificate will be given to the nominating individual so he/she can present the award to the recognized employee.
 - e. In lieu of money, the nominating employee may choose to award the employee a gift certificate up to fifty dollars (\$50) in value.
3. **Award Restrictions on Merit Bonuses:**
- a. The most recent performance evaluation must be at least above the District average in order for the employee to be considered for a merit bonus.
 - b. More than one incentive award of different sizes may be given to the same employee, providing that the performance qualifies.
 - c. No more than one incentive award may be given for the same or substantially similar act. However, case by case consideration shall be given.
 - d. Awards may be shared by a team of employees, provided all of the employees contribute to the project or act.
 - e. Employees shall not be considered for an incentive award for performance which is routinely expected for any duty or responsibility.

P. Pay Day

District employees will be paid biweekly on Friday. Pay stubs shall be delivered electronically. If a pay day falls on a weekend or holiday, employees will be paid on the previous workday.

15.9 FRINGE BENEFITS

A. Qualifying Employees:

As used in this Section, Qualifying Employees are defined as “all full-time and part-time employees working more than 1560 hours annually.” Seasonal full-time employees may be offered health care if such employee works in excess of 130 hours per month during the measurement period (defined as a look-back period of twelve (12) months).

B. Group Health Insurance:

The District may pay a premium for health insurance, for Qualifying Employees and their dependents.

The District may pay a premium for dental, long-term disability, life insurance and accidental death and dismemberment, up to a maximum amount designated by the General Manager for full-time annual employees.

Non-qualifying part-time employees, temporary, and seasonal employees, contractors and volunteers are not eligible for any benefits, except those required by law.

C. Continuation of Benefits:

The District recognizes and follows the Consolidated Omnibus Budget Reconciliation Act (COBRA) regulations for insurance coverage after employment by the District for all Qualifying Employees. Qualifying Employees separating from District employment will be allowed to continue group medical and dental insurance coverage at cost to the employee for up to eighteen (18) months from the date of separation (except when terminated for cause). The District assesses up to a minimum of two percent (2%) of the premium as an administrative fee. (see Utah Code §31A-22-714). Employees and/or dependents shall be notified within thirty (30) days from date of separation regarding extension and conversion privileges and must reply in writing within sixty (60) days of notice or forfeit their extension right. Payment must be made within forty-five (45) days of acceptance of COBRA benefits or benefits will be canceled.

1. Dependents of employees are eligible to continue insurance at their cost for up to thirty-six (36) months upon the occurrence of the following:

- a. Upon legal separation or divorce from the covered employee;
- b. The death of the covered employee;
- c. When dependents cease to be dependent under the definition of the policy;
- d. When Medicare eligible employees cease participation in employer sponsored plans.

2. Insurance cannot be continued beyond any of the following:

- a. The date the premium is not paid;

- b. The date when the individual becomes covered under any other group health plan or is entitled to Medicare benefits;
- c. In the case of a spouse, when the spouse remarries or becomes covered under another group health plan; and
- d. On the date when the employer ceases to provide any group plan, except the District would be obligated to allow employees or dependents to continue coverage under any replacing group policy or policies.

D. General Group Insurance Programs:

Family & Medical Leave without pay shall run concurrently and shall begin the first day the employee is not able to work. In the event of long-term disability, health, dental, and life insurance premium payments will be paid by the District for a period of six (6) months from date of inception of the disability. An employee returning to work after disability leave shall provide a return to work release from their physician listing accommodations, if any. The District may restrict the employee's return to work if the accommodations preclude the employee from fully performing the essential functions of their job. An employee who cannot return to their regular work responsibilities after this six (6) month period shall be separated from employment with the District.

E. Leave Status:

Vacation, sick or funeral leave shall not be used to create overtime. The purpose of leave is to supplement the full-time annual employee's forty (40) hour workweek.

F. Vacation:

- 1. The District believes that a reasonable period of time away from the job encourages good health and the well-being of employees. This is a benefit to the District, as well as the employee. Therefore, it is the policy of the District to grant paid vacations to full-time annual employees.
- 2. All full-time annual employees are eligible for vacation as accrued upon completion of six (6) months of full-time service. Years of District service, for establishing vacation accrual rates, shall be the employee's full-time hiredate.
- 3. Beginning March 1, 2021, accumulation of vacation shall be based upon the following schedule:

DISTRICT SERVICE	MONTHLY/ANNUAL ACCRUAL
0 – 5 years	8 hours/96 hours
6 - 10 years	10 hours/120 hours
11 - 15 years	12 hours/144 hours
16 – 20 years	14 hours/168 hours

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4. Former employees who are re-hired with reinstatement rights following military service shall be entitled to assume the same eligibility for vacation as enjoyed as outlined in Section 15.7.
 5. Employees may carry unused vacation leave over to the next anniversary year to a maximum of 100 hours of accrued vacation leave. Any accrued vacation leave in excess of the 100 hours shall be forfeited on their anniversary date following the year in which the leave was accrued.
 6. Vacation leave may not be accrued during a period of time when leave of absence without pay is being granted for reasons other than personal or family related illness or condition as defined by the federal Family & Medical Leave Act (FMLA) and when an employee has announced their resignation or retirement from the District.
 7. Utilization: The employee's supervisor must approve in advance all vacation leave. The supervisor may schedule vacation leave so that District operations are not disrupted.
 8. An authorized holiday which falls within the time period of an employee's scheduled vacation shall not be charged as used vacation.
 9. Vacation Advance. Full-time annual employees may apply for an advance on their vacation accrual. Approval in writing must be granted by both the department manager and General Manager. Vacation advance may not exceed one half (1/2) of the vacation earned in one calendar year and may not have a negative balance at year end (Dec 31) unless approved by the General Manager. Employee is responsible for repaying the advance in total if they separate from the District.
 10. Vacations are to be taken as time off and there will be no pay in lieu of time off.
 11. Resignation: Upon resignation or retirement, an employee who has successfully completed their orientation period may take the cash value of earned vacation leave (carried over and earned), or time off with pay equal to the number of leave hours earned. Vacation leave shall not accrue when an employee has announced their resignation or retirement from the District and are using the time off with pay option. Payments made pursuant to this section shall be at the rate of pay current upon termination. Deductions from termination pay may be made where the terminating employee has outstanding obligations to the District. The District may withhold the payment of termination pay if the employee fails to return District property in their possession.
 12. Record Keeping: The official record of accrued and used vacation is to be kept by the District through a formal leave accounting system. Supervisors shall be provided with leave accounting reports periodically for departmental and employee review. Employees are responsible for reviewing their pay stubs. Any discrepancies shall be reconciled directly through the District Administrative office. If discrepancies are not reported within sixty (60) days, all reports shall be deemed correct.

G. Sick Leave:

Sick leave is allowed for full-time annual employees as a benefit and may be used for personal illness or illness in the immediate family. Sick leave taken in excess of three (3) working days may require a statement from an attending physician. The General Manager and/or department managers must use discretion in approving sick leave, while insisting that seriously ill employees stay off the job. Accrued sick leave is a District-owned benefit afforded to those District employees who become ill or injured and cannot perform their normal duties.

1. Sick leave shall be earned at the rate of 3.69 hours per pay period of full-time employment and may be used as earned. Sick leave shall not be granted beyond that earned by any employee.
2. Full-time employees may accrue up to 720 hours of sick leave. Employees who have 720 hours of sick leave may not accrue additional sick leave until their sick leave bank drops below the 720 hour level.
3. Sick leave shall not accrue during a period where a leave of absence without pay is being granted for reasons other than personal or family related illness or condition as defined by the Family & Medical Leave Act (FMLA). Sick leave shall not accrue when an employee has announced their resignation or retirement from the District and is using the time off with payoption.
4. Notification to the employee's immediate supervisor for the use of sick leave shall be made no later than one (1) hour after the employee's regular reporting time.
5. Saturdays, Sundays, and District designated holidays occurring while an employee is ill shall be deducted from their compensated illness leave credit if the employee is scheduled to work and elects to use sickleave.
6. Supervisors are charged with the responsibility to approve or disapprove leave requests, and may require the employee to provide evidence of illness or injury.
7. The official record of accrued and used sick leave is to be kept by the District through a formal leave accounting system. Supervisors shall be provided with leave accounting reports periodically for departmental and employee review. Any discrepancies shall be reconciled directly through the District Administrative office. If discrepancies are not reported within sixty (60) days, all reports shall be deemed correct.
8. Workers Compensation: In the event an employee is injured on the job, they must apply for workers compensation. The employee may additionally utilize compensated sick leave in accordance with the following formula: "Gross monthly compensation minus industrial compensation equals total compensation subject to sick leave utilization. The number of hours to be charged shall be determined by dividing the total amount subject to use by the appropriate hourly compensation rate." This shall not be construed as allowing a gross income, inclusive of industrial compensation, in excess of the employee's regular monthly salary or earnings.
9. Insurance benefits may be provided for more serious or longer-term illness or accidents. While insurance policies pay 67% of the normal wage, sick leave time and vacation time may be used on a pro-rata basis to maintain normal income. The employee may supplement the disability benefit with accrued vacation and sick leave to receive 33% of their normal wage. If no sick leave or vacation time is available, normal insurance proceeds only arepayable.

H. Funeral Leave:

1. Funeral leave with pay, not to exceed three (3) days (24 hours), may be allowed for full-time annual employees in the loss of the following:
 - a. Spouses, Adult Designee (as noted for health insurance), Son, Daughter, Mother, Father, Grandson, Granddaughter, Stepmother, Stepfather, Stepson, Stepdaughter, Son-in-law, Daughter-in-law, Grandparents, Grandparents-in-law, Sister, Brother, Father-in-law, Mother-in-law, Sister-in-law, and Brother-in-law.
2. Employees desiring extended funeral leave may request to use comp time, vacation or leave without pay. Leave without pay may be used only if the employee has no accrued comp time or vacation. Funerals which occur during use of vacation shall be treated as described in this paragraph and not be charged to vacation.
3. If a funeral is attended or death occurs while an employee is on leave of absence, there will be no time off with pay forthcoming.

I. Holiday Leave (with the exception of paragraph 5 below, this section applies only to full-time annual employees):

1. The following days have been designated by the District to be paid holidays:

New Year's Day	January 1 st
Martin Luther King Jr. Day	3 rd Monday in January
Day	3 rd Monday in February
Memorial Day	Last Monday of May
Independence Day	July 4 th
Labor Day	1 st Monday in September
Columbus Day	2 nd Monday in October
Veteran's Day	November 11 th
Thanksgiving Day	4 th Thursday of November
Day after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24 th (1/2 day)
Christmas Day	December 25 th

2. When any of the above holidays fall on a Sunday, the following Monday shall be observed as the holiday. When any of the above holidays fall on a Saturday, the preceding Friday shall be observed as the holiday.
3. Should a holiday occur while an employee is on vacation, the employee will not be charged with vacation the day of the holiday.
4. Holiday Leave Pay: Full-time annual employees who are required to work on a designated holiday will receive eight (8) hours of holiday pay at their regular rate as well as compensation at their regular rate for all hours worked on the holiday. Employees may, with the approval of their Supervisor, request an alternative day off as a holiday so long as it is taken within the same pay period.
5. The following shift adjustment compensation shall apply to part-time non-benefited, seasonal, and temporary employees if they are scheduled to work on any of the following holidays:

New Year's Day	January 1 st
Memorial Day	Last Monday in May
Independence Day	July 4 th
Labor Day	1 st Monday in September
Thanksgiving Day	4 th Thursday in November
Christmas Day	December 25 th

- a. If a part-time non-benefited, seasonal or temporary employee works on a qualified holiday, he/she will receive compensation at the rate of two (2) times the employee's regular hourly rate for the number of hours worked on that day.
 - b. Part-time non-benefited, seasonal or temporary positions will not be compensated for the holidays listed above if they do not work on that holiday.
6. Individual employee birthdays will be observed as a day off, or used as a floating holiday.
 7. Individual employees are entitled to one additional floating holiday per year in lieu of Pioneer Day.

J. Court or Jury Leave:

Each full-time annual employee entitled to paid leave under these rules shall, during regularly scheduled work time only, be entitled to leave of absence with full pay for such period of required absence when, in obedience to a subpoena or direction by proper authority, the employee is to appear as a witness in a case involving the federal government, the State of Utah, or a political subdivision thereof, to serve on a jury or as a witness in a grievance/hearing. Witness or jurors fees paid to employees on leave with pay status shall be returned to the District for deposit in the general fund. Per diem and witness or juror fees may be retained by an employee who elects to use vacation leave while on jury duty or acting as a witness. Absence due to litigation not required by the employee's position, but as an individual, shall be taken as vacation leave, comp time, or leave without pay.

K. Parental Leave:

Parental leave is leave associated with the birth of an employee's own child or the placement of a child with the employee in connection with an adoption. The amount of leave under this policy is four (4) weeks. This leave does not supersede other laws that apply to the birth or adoption of a child.

1. Merit employees may receive up to four (4) weeks of paid, job protected, leave during the first twelve (12) weeks following birth or adoption.
 - a. Notice & Verification: The employee must:
 1. Provide to his/her department manager and the General Manager thirty (30) days' written notice of the requested leave (or as much notice as practicable if the leave is not foreseeable),
 2. Complete the necessary forms at the time of the leave, and
 3. File the documents with the Administration Department.

2. Parental Leave is a benefit of employment and its use will not be considered as a negative factor in employment actions, such as hiring, promotions, or disciplinary actions under attendance policies.
3. Upon receiving notice of an employee's need for Parental Leave, the District shall provide the employee with a detailed notice specifying the employee's rights under District policy and explain any consequences of a failure to meet these obligations. The notice shall include:
 - a. Any requirements for the employee to make or participate in the payment of insurance premiums, and the methods for doing so. The employee's potential liability for health insurance premiums paid by the District during the leave if the employee does not return to work;
 - b. The employee's reinstatement rights to the same or equivalent job, unless the employee is defined a key employee under FMLA.
4. Method of Leave Usage:
 - a. Birth of the parent's own child: Parental Leave, if taken, shall be used anytime during the first twelve (12) weeks after the birth of the child. Parental Leave shall not extend beyond the end of the twelve (12) week date from the birth of the child.
 - b. Adoption of a child:
 1. The parents of an adopted child shall receive Parental Leave after the child(ren) has been placed in their home.
 2. Parental Leave, if taken, shall be used anytime during the first twelve (12) weeks after the placement of the child(ren). Parental Leave shall not extend beyond the end of the twelve (12) week date from the placement of the child(ren).
 3. To qualify for Parental Leave the adopted child(ren) shall be under eighteen (18) years of age.
 - c. All leave shall be used in one (1) block of time.
 - d. Parental Leave shall run concurrently with FMLA, if applicable.
5. Parental Leave will be paid at one hundred percent (100%) of an Eligible Employee's straight-time, regular pay for the specified amount of time outlined in this policy.
 - a. Sick leave and vacation accrual shall be allowed in accordance with the District's FMLA policy.
6. The fact that a multiple birth or adoption occurs (for example, the birth or adoption of twins) does not increase the length of Parental Leave granted for that event.
7. If both parents are employed by the District, each parent shall receive up to four (4) weeks Parental Leave.

L. Military Leave:

Leave shall be granted to full-time annual employees for a period of active military service. Extended military leave is six (6) months or more, not to exceed five (5) years unless approved by the District. Short-term military leave is any leave of less than six (6) months in duration, normally not longer than 120 hours.

1. Short-term Military Leave is authorized for employees pursuant to the following conditions:
 - a. Employees are entitled to 120 hours of military leave per year without loss of regular pay or other fringe benefits. The employee shall take military leave when activated. After the employee has exhausted their 120 hours of military leave, they may take unpaid leave.
 - b. Whenever possible, employees who are members of reserve units of the military shall notify the General Manager within one (1) week of receipt of an activation notice, and shall indicate in writing their intention and anticipation with regard to participating in periods of active duty. Such written notification shall be made a part of the individual employee's personnel file.
 - c. Employees requesting short term military leave may go on leave without pay status prior to using accrued vacation and comp time.
 - d. While on short term military leave, none of the employee's benefits shall accrue, except that health, dental, and life insurance benefits will remain in force.
 - e. If the employee does not return to District employment after six (6) months, the District Director may declare the position vacant.
2. Extended Military Leave Without Pay shall be granted to employees who enlist, are drafted, or are recalled to active service in the armed forces of the United States in accordance with the provision of the Universal Military Training and Service Act. Former employees shall be permitted to return to District employment without loss of benefits pursuant to the provisions of the Utah Code §39-3-1. The following conditions shall apply:
 - a. USERRA provides that an individual may serve up to five (5) years in the uniformed services, in a single period of service or in cumulative periods totaling five (5) years and retain the right to re-employment by their pre-service employer (38 USC 4312(c)).
 - b. The employee must have satisfactorily completed the period of active duty and furnish a certificate to that effect.
 - c. The District shall follow USERRA regulations regarding the reinstatement of an employee returning from active military duty. If the employee declines an offer for position vacancy, reinstatement rights may be canceled by the District Director.
 - d. If, due to a service connected disability or for some other reason, an employee is not qualified to perform all the duties of their former position, they will be placed in the closest comparable position for which they are qualified or the employee will be placed on a list of eligibles for consideration for future openings. Under the Americans With Disabilities Act, reasonable accommodation shall be provided unless to do so would prove to be an undue hardship.

M. Administrative Leave:

In cases of training, special educational pursuits, hardships, or other cases not provided for in these policies, upon recommendation of the department supervisor, the General Manager may grant short-term leaves at full pay, partial pay, or without pay to full-time annual employees. The Board shall have the power to grant the same to the General Manager. The approval or denial of such requests is at the discretion of the General Manager and/or Board and is not subject to appeal.

N. Family & Medical Leave Without Pay:

The District will comply with all applicable requirements of the Family & Medical Leave Act of 1993 (FMLA).

1. Eligibility: All employees who have worked for the District for at least twelve (12) months (which need not be a consecutive twelve (12) month period) and have worked for the District at least 1250 hours in the previous consecutive twelve (12) month period qualify for family and medical leave without pay.
2. Eligible employees may receive up to twelve (12) weeks of unpaid, job protected, leave in any twelve (12) month period for the following reasons:
 - a. To care for a child upon birth or upon placement for adoption or foster care;
 - b. To care for a parent, spouse, or child with a serious health condition;
 - c. When an employee is unable to work because of a serious health condition. A serious health condition is defined as "any illness, injury, impairment, or physical or mental condition that involves either inpatient care or continuing treatment by a health care provider" (i.e. doctors, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, nurse practitioners, nurse midwives, and Christian Scientist practitioners). In addition, a single event or occasion, which results in a regimen of continuing treatment under the supervision of the health care provider, such as a regimen of medication or physical therapy, qualifies. Excluded from coverage are voluntary or cosmetic treatments, which are not medically necessary and preventive physical examinations. An employee returning to work after FMLA leave for their own serious health conditions shall provide a return to work release from their physician listing accommodations, if any. The District may restrict the employee's return to work if the accommodations preclude the employee from fully participating in their job responsibilities.
 - D. When a family member is called on active military duty or called to active military duty.
3. Eligible employees may receive up to twenty-six (26) weeks of unpaid, job protected, leave in any twelve (12) month period to care for a family member who sustained an injury or illness in the line of active military duty.
4. Notice & Verification: Employees who want to take FMLA leave ordinarily must provide the District with at least thirty (30) days' notice of the need for leave, if the need for leave is foreseeable. If the need is not foreseeable, the employee should give as much notice as is practicable. The employee notice shall contain the reason for the leave, the anticipated timing of the leave, and the expected duration of the leave. In addition, employees who need leave for their own or a family member's serious health condition must provide medical certification of the serious health condition within fifteen (15) days after the request or as soon thereafter as is reasonably possible. The District may also require a second or third opinion (at the District's expense), periodic recertification of the serious health condition (as frequently as every thirty (30) days), and, when

the leave is a result of the employee's own serious health condition, a fitness for duty report to return to work. The District may deny leave to employees who do not provide proper advance leave notice or medical certification within established time frame.

5. District Communication Requirements: Upon receiving notice of an employee need for FMLA leave, the District must provide the employee with a detailed notice specifying the employee's rights and obligations in connection with the law and District policy and explain any consequences of a failure to meet these obligations. The District notice shall include:
 - a. A statement that the leave will be counted against the employee's annual FMLA leave entitlement;
 - b. Requirements for the employee to furnish medical certification of a serious health condition and the consequences for failing to do so;
 - c. The requirement for the employee to use accrued paid leave,
 - d. Any requirements for the employee to make or participate in the payment of insurance premiums, and the methods for doing so;
 - e. Any requirement of the employee to present a fitness for duty certificate in order to return to work;
 - f. The employee reinstatement rights to the same or equivalent job;
 - g. The employee's status as a "key employee" and the conditions under which reinstatement may be denied, and
 - h. The employee's potential liability for health insurance premiums paid by the District during the leave if the employee does not return to work.
6. Method of Leave Usage: The leave may be taken intermittently or on a reduced leave schedule without the District's approval when medically necessary; therefore department managers shall take an active role in verifying medical necessity, especially in the case of emergencies and short notice situations. FMLA leave may be taken in half-hour, hourly, daily or weekly blocks of time.
7. Employee Entitlements: Employees taking qualified FMLA leave are entitled to receive health benefits during the leave at the same level and terms of coverage as if they had been working throughout the leave. In addition, the District shall reinstate an employee returning from FMLA leave to the same or equivalent position with equivalent pay, benefits, and other employment terms as previously provided. The District's obligation under FMLA to reinstate an employee returning from leave ceases once the employee has used up their 12/26 week entitlement and continues on another form of leave, paid or unpaid. Also, the District may deny reinstatement if it can be demonstrated that the employee would not otherwise have been employed at the time the reinstatement request is made, such as when an employee's position is eliminated due to a layoff.
8. Accrued Benefit Impact: Employees use of FMLA leave will not result in the loss of any employment benefit that accrued prior to the start of the employee's leave. However, before taking unpaid leave, the employee must first use any accrued paid vacation, compensatory time, and sick leave during a FMLA leave. In calculating the number of leave days used as part of the 12/26 week FMLA limit, all paid leave shall be included.
9. Defining 12-month period: The District shall use one (1) of four (4) methods as defined by FMLA,

and may change methods when determined to be in the best interest of the District in terms of administration. However, sixty (60) days' notice must be given to employees of intent to change and employees must retain the full benefit of 12/26 weeks of leave. The District shall use one of the following:

- a. The calendar year;
- b. Any fixed twelve (12) month period, such as a fiscal year, an employee's anniversary date, or a year which is or may be required by state leave law;
- c. The twelve (12) month period measured forward from the date an employee's first FMLA leave begins; or
- d. A rolling twelve (12) month period measured backward from the date an employee uses any FMLA leave.

The District has opted to use item c.: the twelve (12) month period measured forward from the date an employee's first FMLA leave begins.

- 10. Temporary Work Assignments: Where medical necessity dictates the need to use scheduled intermittent leave or a reduced work schedule, the District may require the employee to transfer temporarily to an alternative position that better accommodates recurring periods of leave than the employee's regular position. In addition, the District may transfer an employee to a part-time job with the same hourly rate of pay and benefits as long as the employee is not required to take more leave than is medically necessary.
- 11. Record Keeping Requirements: Records retention for FMLA purposes must be maintained in accord with record keeping requirements of the Fair Labor Standards Act (FLSA). Records must be kept for a minimum of three (3) years, which includes the following information:
 - a. Basic payroll records;
 - b. Dates that FMLA leave is taken;
 - c. Hours of FMLA leave;
 - d. Copies of employee notification given to employer;
 - e. Copies of employer notices regarding employee rights and obligations;
 - f. Copies of District policies and procedures describing benefits and leave provisions;
 - g. Premium payments of employee benefits;
 - h. Documents pertaining to disputes regarding designation of FMLA leave. All records relating to medical information must be kept in separate, confidential medical files.

O. Retirement:

The District is a participant in the public employee retirement programs of the Utah Retirement Systems (URS). The District endorses the concept that performance, not age should be the standard for retaining qualified employees. There shall be no set retirement age from District employment. Contributions into the retirement system shall be made for all employees who otherwise qualify under URS rules.

1. Employees, at their discretion, may choose to retire any time after they are eligible under provisions of the Utah Retirement Act.
2. Employees over retirement age, as defined by the Social Security Administration, can be retained or hired as long as they are physically and mentally able to satisfactorily discharge the duties of the position.
3. The retirement system provides a number of benefits to the employee, including retirement benefits, death benefits, and survivor's allowances. Contributions are made by the employer. All new hires are enrolled into the new non-contributory plan.
4. All employees who have previously participated with URS prior to July 1, 2011 shall be enrolled in the Tier I retirement.
5. Effective July 1, 2011, all existing employees who have not participated and all newly hired employees shall be enrolled with the URS Tier II retirement unless previously enrolled within a URS retirement system.
6. Appointed members of the Board are classified as part-time and do not qualify for membership in URS.
7. Seasonal employees, temporary employees, and part-time non-benefitted employees are not eligible for URS benefits.
8. The District does not maintain any positions eligible for exemption from retirement coverage.

P. Unemployment Insurance:

The District participates in the State Unemployment Insurance Program as a self-insured employer; and each person that terminates will be eligible for unemployment benefits in accordance with the rules and provisions as provided by the State. Employees terminated for cause shall not be eligible for unemployment benefits from the District.

Q. Education Assistance:

When determined by the General Manager that additional training or education is required for the proper performance of a job, the District shall allow rescheduling of work time together with compensation for time spent in training plus associated expenses.

If a merit annual employee desires to enhance their own job skills through training or academic pursuits which are viewed by the General Manager as being directly related to the job or a position to which one may wish to become promoted, and the employee initiates such a request; the District may give consideration in work schedule accommodations and tuition expenses.

Tuition expenses must be budgeted during the District's regular budget process. Employees requesting tuition reimbursement must be employed by the District for a minimum of two (2) years. The District may choose to participate at a rate of fifty percent (50%) of education expenses. Education expenses may be taxable by the IRS. Employees with approved educational assistance must enter into a written agreement that upon termination (voluntary or involuntary, except for reduction in force) they will refund to the District monies received for educational assistance based upon the following schedule:

<u>Time Period Between Date of Termination & Conclusion of Educational Course(s)</u>	<u>Portion of Expenses Refunded to District</u>
Less Than One Year	100%
One Year, But Less than Two Years	75%
Two Years, But Less Than Three Years	50%
Three Years, But Less Than Four Years	25%
Greater Than Four Years	0%

Employees who participate in this benefit shall provide proof of eighty percent (80%) attendance and maintain a C grade or better in all classes at the end of each term or semester.

R. Benefit Limitation:

The benefits described in this section constitute the total and complete benefit package offered and available to all District employees who qualify for participation according to eligibility requirements established by this policy manual.

15.10 REIMBURSEMENT FOR EXPENSE

A. Travel:

Travel expenses associated with authorized trips on District business, for attendance at conventions, conferences, field trips, seminars, educational courses or meetings etc., will be paid by the District. It is the District's policy that the most cost-effective travel and training shall be pursued to accomplish the training goals of the District. Actual costs for materials required for the seminar, training courses, etc., will be paid for or reimbursed by the District.

If the employee expends personal funds required for travel, for reasonable expenses, the employee will provide receipts/ledger of expenses to the District upon completion of the trip, but not later than one (1) week after return to normal duties. For specific policies regarding meal reimbursement see Section 15.10.A.6.

An employee may be accompanied by a spouse or family member on approved District business trips with the understanding that the District will not pay any of the costs incurred by the spouse or be responsible for any liability associated therewith.

The General Manager shall have approval authority for all travel when travel coincides with the employee's professional associations and/or training and has been pre-approved by the Board in the budgeting process. All travel reimbursements shall be signed by the General Manager.

To accomplish the District's goals the following guidelines and procedures shall be followed for expenditure and reimbursement of travel associated expenses:

1. Public Transportation or Car Rental: The most economical available means of transportation shall be used, considering travel time, fares, convenience, and liability. Receipts will be required in the event reimbursement is necessary.
2. Miscellaneous Transportation: Toll charges, parking fees, non-receiptable fares for taxi, buses, etc., shall be reimbursed at actual cost. Fuel, emergency repairs, towing charges, storage fees, etc., for District vehicles will be reimbursed with receipts.
3. If more than one (1) employee from the District is traveling to the same event and/or location by automobile, carpooling in a District vehicle is strongly recommended. If personal transportation is used only one (1) mileage reimbursement per event/location shall be allowed.
4. Lodging: Receipts will be required in the event reimbursement is necessary. If an employee travels and stays with friends or relatives rather than in a hotel/motel the employee may be reimbursed at the rate of forty dollars (\$40.00) per day without receipts, with prior approval of the General Manager.
5. Personal Transportation: Personal vehicles may be used if District vehicles are not available. For travel out-of-state, District vehicles will not be used, unless authorization is obtained from the District Director. Reimbursement for personal car use shall be at the rate as published in I.R.S. Publication 463 and adjusted yearly.
6. When two (2) or more employees travel in a private car, only one (1) employee will be reimbursed for vehicle costs.

7. Damage to a traveler's personal vehicle occurring during the course of conducting official business is the responsibility of the individual.
8. Mileage will be computed using either the state mileage chart, or an online mapping program using the most direct route.
9. Reimbursement will not be allowed for commuting between the traveler's place of residence and the office considered the principal place of assignment or for miles traveled for purposes other than official business.
10. Computation of mileage should commence from the office considered the principal place of assignment to the point of destination unless the distance from the point of origin other than the principal office to the destination is less.

B. Meals: Meals are allowable on a reimbursable basis for department approved travel outside the District. A request shall be submitted to Payroll within two (2) weeks after return from the trip. Use of the per diem rates is the preferred method for meal reimbursement. Meals shall be reimbursed either at actual cost, or at the per diem schedule presented in the most recent edition of the IRS publication 463, whichever is less.

1. A traveler is entitled to meals when not staying overnight when:
 - a. Breakfast - round trip travel is out of District and commences prior to 6:00 a.m.
 - b. Lunch - when the trip meets one of the following conditions:
 - i. The traveler is on an officially approved trip of such duration as to warrant entitlement to breakfast and dinner.
 - ii. The traveler leaves their "home base" before 11:00 a.m. and returns after 2:00 p.m.
 - c. Dinner - round trip travel is out of District and arrival back home is later than 7:00 p.m. If meals are provided by a hotel, motel, and/or association, no reimbursement will be made for that meal.
 - d. Money may be advanced for anticipated expenses.

C. Miscellaneous Expense: Registration fees, incidental supplies, publications, etc., shall be purchased in advance through the District if possible. Receipts will be required for reimbursement of authorized expenses.

15.11 WORK HOURS

A. Normal Work Day

District administrative offices shall be open to the public from 8:30 a.m. through 5:00 p.m. Monday through Friday. The normal work day for administrative personnel will consist of eight (8) hours of work with an unpaid one-half (1/2) hour meal period.

B. Work Week

The work week begins on Monday morning at 12:00 a.m. and ends on Sunday evening at 11:59 p.m.

C. Attendance

An employee unable to report for duty on a work day shall notify their immediate supervisor of the fact no later than one (1) hour after the beginning of work.

D. Show up Pay

An employee who during a normal work day shows up for work and is sent home before any time is earned, will receive a minimum of one (1) hour straight time pay. Any employee who is called to work on a day off and is then sent home before any time is earned will receive a minimum of one (1) hour straight time pay.

E. Meal Periods:

The normal work day shall consist of an unpaid one-half (1/2) hour meal period. Employees may take up to a two (2) hour unpaid meal period upon approval of the department manager. No lunch period shall be used to shorten the work day to something less than eight (8) hours, nor be used to accrue overtime or compensatory time, unless specifically authorized by the department manager and/or General Manager.

F. Rest Periods

Two (2) ten (10) minute rest periods are allowed to employees daily, usually one in the middle of the first four (4) hour block of the work day and the second in the second four (4) hour block, the last half of the work day. The timing of the ten (10) minute rest periods are optional and generally, must be approved by the supervisor. No unused ten (10) minute rest period may be used to shorten the work day.

G. Stand By:

A District employee who is required to remain on call on the District's premises or so close thereto that they cannot use the time effectively for their own purposes is working while "on call". An employee who carries a pager or cell phone and is not required to remain on the District's premises but is merely required to leave word at their home, with the General Manager, department manager or their immediate supervisor where they may be reached is not considered "on call."

H. Call Out

An employee who is called out, will receive a minimum of one (1) hour straight time pay. Any employee who is called to work on a day off will receive a minimum of one (1) hour straight time pay.

15.12 PRODUCTIVE WORK ENVIRONMENT

A. General Conduct

The very nature of governmental service makes public relations one of the most important aspects of the job. The quality of our interactions impacts all employees of the District and the public perception of the District as a whole. Employees are to take every opportunity through the course of performing their job to create "good will" with the public. Employees are required to be courteous and show understanding in spite of the difficulty of situations which may arise. Reports of a negative nature will be investigated by supervisors, and disciplinary actions could result.

1. Employees are expected to apply themselves to their assigned duties during the full schedule for which they are being compensated.
2. Employees are expected to make prudent and frugal use of District funds, equipment, building, and supplies.
3. Employees are expected to observe work place rules.
4. Employees are to report conditions or circumstances that would prevent them from performing their jobs effectively or completing assigned tasks.
5. Employees are expected to practice dress and grooming habits which are consistent with the District's purpose and beneficial in promoting a favorable public image. The General Manager is responsible for determining what creates a professional business environment in the District.
6. The District reserves the right to expect its employees to present a favorable impression during any contact with the public. Employees are expected to maintain a neat and clean personal appearance. Standards of dress shall be appropriate to the job and the tasks to be accomplished. All employees have been issued uniforms to be worn at all times when working or representing the District. If employees have an article of clothing they would like to wear as the uniform and said article is deemed suitable by the General Manager, the District will pay to have the logo embroidered on the article of clothing owned by the employee.

B. Outside Employment

District employment shall be the principal vocation of full-time employees. An employee may engage in outside employment, receive honoraria, or paid expenses, subject to the following conditions:

1. The outside employment must not interfere with efficient performance of the employee's District position. In the event the General Manager determines that the

outside employment is interfering with the employee's District position, the General Manager shall notify the employee in writing that the outside employment must cease.

2. The outside job must not conflict with the interests of the employee's department or the District.
3. The outside employment must not be the type that would reasonably give rise to conflicting interests or duties.
4. The employee is required to sign a statement concerning outside employment, notify the General Manager, and gain approval for acceptable outside employment annually.
5. If the General Manager determines that either the employment or payment could reasonably present a real or potential conflict of interest, the General Manager shall deny permission. The General Manager's decision may not be grieved. Failure to notify the employer and to gain approval is grounds for disciplinary action. Employees may jeopardize their employment with the District through unsatisfactory performance reviews affected by outside employment.

C. Conflict of Interest

Employees shall not use their District positions or any influence, power, authority, confidential information derived there from, or District time, equipment, property, or supplies for private gain. Employees shall not receive outside compensation for their performance of District duties except in cases of:

1. Awards for meritorious public contribution publicly awarded.
2. Receipt of honoraria or expenses paid for papers, speeches, or appearances made by employees with the approval of the department manager, or on their own time for which they are not compensated by the District, nor prohibited by these rules.
3. Receipt of usual social amenities, ceremonial gifts, or insubstantial advertising gifts as established by state law (See Section 15.17). When an employee's responsibilities require an action or a decision which could be interpreted as a conflict of interest, the employee shall declare the potential conflict. The General Manager may then determine and notify the employee of the status of the potential conflict, either approving of the activity or listing the objections of the District.

D. Non-competition

The District has an interest in preserving the integrity of information created, received or kept as part of its governmental business and processes. As a result, any employee who is separated from the District shall be prohibited from using information classified as private, controlled or protected, and gained during their employment, in any manner which may be contrary to law or adverse to the District when representing their private interests after separation. Further, in order to protect the integrity of the process and to ensure equitable treatment to all persons dealing with the District, former employees who, as part of their District duties, worked with or assisted any group, individual or entity in achieving benefits from the District, shall not privately

represent or assist those same groups, individuals or entities, in District matters, for a period of at least six (6) months after separation from the District.

E. Political Activity

Except as otherwise provided by law or by rules and regulations promulgated by the State of Utah or the federal government for federally aided programs, District employees may voluntarily participate in political activity subject to the following provisions:

1. No person shall be denied the opportunity to become an applicant for a position by virtue of political opinion or affiliation.
2. No person employed by the District may be dismissed from service as a result of political opinion or affiliation.
3. An employee may voluntarily contribute funds to political groups and become a candidate for public office. The intent of this provision is to allow the individual freedom of political expression, and to allow employees to serve as county party officers and as state or county delegates.
4. No employee may directly or indirectly coerce, command, advise or solicit any employee covered under the personnel system to pay, lend, or contribute part of their salary or compensation or anything else of value to any party, committee, organization, agency or person for political purposes. No supervisor, department manager, employee or the General Manager, whether elected or appointed, may attempt to make any officer's or employee's employment status dependent upon the employee's support or lack of support for any political party, committee, organization, agency, or person engaged in a political activity.
5. No employee may engage in any political activity during the hours of employment nor shall any person solicit political contributions from District employees during hours of employment. Nothing in this section shall preclude voluntary contributions by a District employee to the party or candidate of the employee's choice.
6. Nothing contained in this section shall be construed to permit partisan political activity by any District employee who is prevented or restricted from engaging in such political activity by the provisions of the Federal Hatch Act.

F. Discrimination Based on Protected Categories

1. Discrimination in any form is a serious offense which will not be tolerated.
2. Employees may use the HOTLINE AT 435- [REDACTED] for any complaints. If this method is used, the caller must be specific as to who is involved, the date and time of the occurrence(s). Please see Section 15.12.F.5.
3. Discrimination based on a protected class is defined as discrimination of any person because of race, color, religious creed, sex, national origin, age, military status, disability

(including breast feeding and/or pregnancy), sexual orientation, gender identification or any other factor protected by law.

- a. Examples of discrimination may include but are not limited to:
 - i. Using racial and ethnic slurs or offensive stereotypes and making jokes about these characteristics,
 - ii. Recruiting or hiring practices,
 - iii. Promotion opportunities, and
 - iv. Adverse employee actions.

4. Discrimination may result in disciplinary action up to and including termination of employment.

- a. Employees or officials who willfully report a false claim may be subject to disciplinary action.

5. Reporting and Investigating Claims:

- a. If an employee believes they have been subjected to discrimination, they should:
 - i. Make a written record of the date, time and nature of the incident, and the names of any witnesses,
 - ii. Report the incident immediately to any of the following: a supervisor in the employee's chain of command, the General Manager, the Human Resource Director, or the General Counsel.
 - iii. All incidents must be reported regardless of their seriousness. There shall be no retaliation against an employee who in good faith reports an incident of discrimination or against anyone who provides information about violations. Complaints may be submitted by any individual irrespective of whether the complainant was personally subjected to the offending behavior.
- b. Supervisors who knowingly allow or tolerate any discrimination are in violation of this policy and are subject to disciplinary action up to and including termination of employment. Supervisors must deal quickly and fairly with

allegations of discrimination whether or not there has been a formal complaint. They are responsible to:

- i. Make sure the District's policy is communicated to employees; and
 - ii. Any complaint shall be immediately reported to the General Manager and Human Resource Director so that the matter can be investigated.
- c. The Human Resource Director, or their designee, will conduct a fair and impartial review of the discrimination complaint. All such complaints will be handled with as much confidentiality as possible in order to encourage reporting and to protect the privacy of the parties.
 - d. An employee accused of discrimination and facing disciplinary action shall be entitled to receive notice of charges, the evidence to be used against them, and an opportunity to respond before disciplinary action may be taken.
6. Resolution.
- a. The complainant shall be notified if any disciplinary action has been taken or not taken as a result of the official complaint. If either party to the complaint is not satisfied with the action taken or not taken, they may file a written appeal with the Board through the Human Resource Director within ten (10) working days of receiving official notification of the case resolution from the General Manager Director or Human Resource Director.
 - b. If the complainant is not satisfied with the Board's decision, they have a statutory right to request an investigation by the Utah Division of Antidiscrimination and Labor.

G. Sexual Harassment:

The giving or withholding of job benefits based on the granting of sexual favors and any behavior or conduct of a sexual or gender-based nature which is demeaning, ridiculing or derisive and

results in a hostile, abusive, or unwelcome work environment constitutes sexual harassment. (See Section 15.12.G.7.)

Employees may use the HOTLINE AT 435- [REDACTED] for any complaints. If this method is used, the caller must be specific as to who is involved, the date and time of the occurrence(s).

It is the Policy of the District that:

1. Unlawful discrimination/harassment of coworkers of any type, on or off duty, based on sex/gender, subtle or otherwise, shall not be tolerated and violators will be subject to disciplinary action up to and including termination.
2. Retaliation or reprisals are prohibited against any employee who opposes a forbidden practice, has filed a charge, testified, assisted or participated in any manner in an investigation proceeding or hearing under this policy.
3. False or bad faith claims regarding sexual harassment shall result in disciplinary action against the accuser.
4. An employee accused of sexual harassment and facing disciplinary action shall be entitled to receive notice of charges, the evidence to be used against them, and an opportunity to respond before disciplinary action may be taken.
5. Records and proceedings of sexual harassment claims, investigations, or resolutions are confidential and shall be maintained separate and apart from the employee's personnel file.
6. All employees, supervisors and management personnel shall receive training on the sexual/gender harassment policy and grievances procedures during orientation and annually during in service training.
7. Prohibited Conduct: Any deliberate, unwanted, or unwelcome behavior of a sex/gender-based nature, whether verbal, non-verbal, or physical is prohibited. There are two major categories of sexual/gender harassment:
 - a. Quid Pro Quo: the granting or conditioning of tangible job benefits on the grant of sexual favors, and
 - b. Creating a hostile or unwelcome work environment: creation of a hostile work environment can occur through any or all of the following general means:
 - i. Level One: Sex Role Stereotyping
 - (a) Assignments made or denied solely on the traditional historic perceptions regarding the types of jobs that specific gender may/should perform.
 - (b) Comments or written material reinforcing traditional historic perception regarding gender.

- ii. Level Two: Gender Harassment/Discrimination
 - (a) Intentional or unintentional behavior/conduct of a visual, verbal, nature directed at a specific gender which is demeaning, ridiculing or derisive of that gender.
 - (b) Creating an environment that demonstrates a demeaning, ridiculing or derisive attitude toward a specific gender.
 - iii. Level Three: Targeted or Individual Harassment
 - (a) Intentional behavior predicated on gender or expressing sexuality which is directed at a specific group or individual.
 - (b) Offensive conduct may be verbal, visual or physical and includes unwanted physical touching.
 - iv. Level Four: Criminal Touching
 - (a) The intentional unwanted touching of the breasts, buttocks, or genitals of another.
 - (b) Forcible sexual abuse.
8. Any employee who is being sexually harassed or who has personal knowledge of clearly offensive conduct may address the issue either through the formal or informal processes described herein.
- a. Informal Process: Employees who are experiencing an unwelcome or hostile work environment at levels 1-3 as described above may, if they so desire, choose to address that unwelcome behavior/conduct informally by notifying the individual responsible for the behavior that the behavior is objectionable, that the conduct/behavior is unwelcome and that future similar behavior will result in a formal complaint.
 - b. Employees experiencing sexual harassment at this level are not required to use the informal process and may file a formal complaint if they so desire.
 - i. This notification may be: orally in person; in writing signed or unsigned; through a supervisor either orally or in writing.
 - ii. The victim may ask the supervisor for assistance in determining what to say and how to approach the offending employee; request the supervisor to accompany the victim when the victim gives the offending employee notice; ask the supervisor to give notice to the offending employee, accompanied by the victim; or ask the supervisor alone to provide notice to the offending employee.
 - iii. If circumstances involve the immediate supervisor, the employee shall seek assistance through the General Manager, Human Resource Director or the General Counsel.

- c. Formal Process: Employees who are experiencing an unwelcome or hostile work environment which is clearly offensive or at Level 4 as described above, or who have been subjected to quid pro quo type sexual harassment, should address that unwelcome behavior/conduct through the formal remedial process.
 - i. Complaints shall be in writing and specify the identity of the victim; the identity of the offending employee; the offensive behavior that the offender engaged in; the frequency of the offensive behavior; damage the victim suffered as a result of the offensive behavior; how the victim would like the matter settled; and what the victim would like to see happen.
 - ii. The victim will be allowed a reasonable amount of time during work hours to prepare a formal complaint. The victim should submit formal written complaints to any of the following:
 - (a) The General Manager;
 - (b) The Human Resources Director; or
 - (c) General Counsel.
- d. Remedies: Employees found guilty of sexual harassment shall face disciplinary action ranging from a letter of reprimand to termination based on all the circumstances of the case, as well as the offending employee's work history. Information contained in the complaint files shall be released only with the written authorization of the victim and the Human Resources Director.
- e. Records: Information related to any sexual harassment complaint, proceeding, or resolution shall be maintained in separate and confidential sexual harassment complaint files. This information shall not be placed or maintained in any employee's personnel file.
- f. Victim Protection: Individual complaints, either verbal or written, are confidential. Victims of alleged sexual harassment shall not be required to confront the accused outside of a formal proceeding. Retaliation or reprisals are prohibited against any employee who opposed a practice forbidden under this policy, or who has filed a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing. Any employee engaging in prohibited retaliatory activities shall be subject to disciplinary action up to and including termination. Retaliation is an additional and separate disciplinary offense. Retaliation may consist of, but is not limited to:
 - i. Open hostility;
 - ii. Exclusion or ostracism;
 - iii. Special or more closely monitored attention to work performance;
 - iv. Assignment to demeaning duties not otherwise performed during the regular course of the employee's duties.

H. Drug Free Work Place:

A healthy and productive work force, safe working conditions free from the effects of drugs and alcohol is essential to the maintenance of quality operations and all services provided to the public. It is the policy of the District that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance and/or alcoholic beverage in the workplace is expressly prohibited. All processes, procedures, actions, and requirements undertaken or imposed by the District shall be in conformance with Utah Code §34-41-101 *et seq.* Drug and Alcohol Testing and the Omnibus Transportation Employee Testing Act of 1991, revised as of February 15, 1994. In order to achieve a drug-free work place employees shall be required to participate in controlled substances testing as set forth below:

1. Testing

- a. All employees shall be required to participate in controlled substances testing under the following circumstances:
 - i. When there is a reasonable suspicion to believe that an employee is in an impaired state;
 - ii. When an employee has been involved in an on duty accident and directed by their supervisor and/or the District Director;
 - iii. Return to duty testing;
 - iv. Follow up testing.
- b. In addition, employees in Safety Sensitive Positions shall be required to participate in controlled substances testing as outlined in Section 15.12.H.1.a as well as:
 - i. When an applicant has been extended a conditional offer of employment but before beginning work;
 - ii. On a random basis.

2. Definitions:

- a. Alcohol - Alcohol is defined as an intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols in methyl and isopropyl alcohol no matter how packaged or in what form the alcohol is stored, utilized or found.
- b. Controlled Substance - Controlled substances are defined as marijuana (THC), cocaine, phencyclidine (PCP), opiates, and amphetamines (including methamphetamine) or any other substances which are included in Title 58, Chapter 37, Utah Controlled Substances Act.
- c. Drug - Any substance recognized as a drug in the United States Pharmacopeia or other drug compendia, including Title 58, Chapter 37 Utah Controlled Substances Act, or supplement to any of those compendia.

- d. Drug Testing - The scientific analysis for the presence of drugs or their metabolites in the human body in accordance with the definitions and terms of this policy.
 - e. Random Testing - The unannounced drug testing of an employee in a Safety Sensitive Position who was selected for testing by using a method uninfluenced by any personal characteristics other than job category.
 - f. Reasonable Suspicion - Knowledge sufficient to induce an ordinarily prudent and cautious individual under the circumstances to believe that a prohibited activity is occurring.
 - g. Reasonable Suspicion Testing - An articulated belief based on recorded specific facts and reasonable inferences drawn from those facts that an employee or volunteer is in violation of this drug-free workplace policy.
 - h. Positive test - Any test result showing a blood alcohol content of 0.02% or greater or the presence of any controlled substance, its metabolites in the test subject or a sample that has been tampered with.
 - i. Refusal to Submit to Testing - Failure to provide adequate breath or urine sample without a valid or verified medical explanation, after the employee has received notice they are being tested and a breath or urine sample is required, or engages in conduct that clearly obstructs the testing process.
 - j. Safety Sensitive Position - Any position which requires an employee to operate a vehicle or equipment.
 - k. Return to duty testing - The drug/alcohol testing, with a verified negative test result for controlled substances or their metabolites, of an employee who has been released back to work after seeking help from a rehabilitation program.
 - l. Follow-up testing - The drug/alcohol testing of an employee who has sought professional help from a rehabilitation program. The employee shall be tested monthly while under the care of the Substance Abuse Professional and upon release from a rehabilitation program. The employee shall be tested a minimum of six (6) times in the following twelve (12) months following their return to duty. Employees may be subjected to follow up drug/alcohol testing for a period not to exceed sixty (60) months.
 - i. Follow-up testing beyond one (1) year shall be based on a need assessment provided by a substance abuse professional.
3. If the employee seeks help prior to discovery, then confidentiality, job security, and promotional opportunities will be protected. But if the employee does not attempt to seek help and the problem comes to the attention of the District, the employee will be terminated. Discovery begins with the notification when an employee has been notified of a random drug test.
 4. The extent of District assistance, if an employee comes forward prior to discovery, shall be limited to referral to a community resource program with financial limitations as provided in the District health and medical insurance plan.

5. If an employee is under treatment with a drug that alters their ability to perform the essential functions of a specific position, the employee shall be reassigned if a current job opening exists for which the employee is qualified.
6. Employees shall not use, be under the influence of, or be in possession of alcohol while on duty, on District premises or while in District vehicles. District premises include buildings, parking lots, grounds, and vehicles owned by District or personal vehicles while being used for District business. Under the influence is defined as having blood alcohol content in excess of 0.02%. This provision does not apply to employees attending events on District property during their private (non-working) time where alcohol may be permitted.
7. If an employee in a safety sensitive position is called to work outside the regularly scheduled work period, the employee has the right to refuse to go to work if the employee has used alcohol and feels that they may be impaired. The employee must notify their supervisor if they have consumed any alcohol in the last four (4) hours prior to being called in. Employees exercising this option shall have job security and promotional opportunities protected.
8. Employees trafficking, selling, using, possessing or being at the work place under the influence of alcohol, illegal or illegally obtained controlled substances shall be subject to immediate suspension and such conduct may be grounds for termination of employment.
9. When a supervisor makes a determination that there is a reasonable suspicion to believe that an employee is under the influence of, or is in possession of alcohol or controlled substances, the employee shall be subject to drug/alcohol testing.
10. Employees performing in safety sensitive positions are subject to random drug/ alcohol tests.
11. The District maintains the right to conduct unannounced inspections of District owned property, vehicles, work stations, equipment, desks, cabinets, etc.
12. The District maintains the right to utilize detection methods necessary for the enforcement of this policy including blood, urine, or other tests, and the use of electronic detection equipment and trained animals.
13. Failure to cooperate with these detection methods or inspections is grounds for termination of employment.
14. Upon required testing due to an accident or reasonable suspicion, the employee tested shall not engage in the operation of any District equipment or engage in any employment related duties, which their supervisor deems dangerous to themselves or others until the results of the tests are received and the employee is released back to work by the District.
15. If any alcohol test result shows a blood alcohol content of 0.04% or greater, the employee shall be terminated.
16. If an employee test result shows an alcohol concentration of greater than 0.02% but less than 0.04%, the employee shall not be permitted to perform in a safety sensitive position for at least twenty-four (24) hours.

17. If a drug test result shows that the employee has tested positive for a controlled substance, the employee shall be terminated.
18. If an employee tests positive for a controlled substance or the test results show a blood alcohol content of 0.04% or greater, the employee may be referred to a Substance Abuse Professional who shall perform an evaluation at the District's expense, to determine whether the employee has a drug/alcohol problem. This employee may also be provided with information about drug or alcohol treatment programs in the area. The District shall have no obligation or duty to pay for or provide financial assistance for a drug/alcohol treatment program. Referral to treatment creates no protections from other disciplinary actions.
19. The District shall require a final applicant selected for a Safety Sensitive position with the District to undergo a drug screen test to detect the presence of illegal drugs, controlled substances or their metabolites in the body. Refusal to take such a test shall be grounds for denial of employment. An applicant, who tests positive for a controlled substance or its metabolites, as defined in the definitions of this policy, shall be denied employment with the District.
20. Employees may direct any questions regarding this policy to the General Manager and/or Human Resources Director.

I. Nonsmoking Policy:

It is the policy of the District to comply with all applicable federal, state, and local regulations regarding smoking and the use of tobacco products (including e-cigarettes or vaporless cigarettes) in the work place and to provide a work environment that promotes productivity and the well-being of its employees.

1. The District recognizes that smoking in the work place can adversely affect employees. Accordingly, smoking is restricted at all District facilities.
2. Smoking is prohibited inside all District facilities and vehicles. The General Manager Director or their designee is responsible for implementing and monitoring smoking regulations, and supervisors/department managers are expected to enforce such regulations. The smoking policy applies to employees during working time and to customers and visitors while on District premises.
3. Employees who wish to smoke may do so outside of District facilities and vehicles, as long as, they are at least 25' from any entry way, exit, open or closed window or air intake.
4. Employees are expected to exercise common courtesy and to respect the needs and sensitivities of coworkers as regards the smoking policy. However, smokers have a special obligation not to abuse break and work rules. Complaints about smoking issues should be resolved at the lowest level possible, but may be processed through the District's grievance procedure. Employees who violate the policy will be subject to disciplinary action.
5. The District does not discriminate against individuals on the basis of their use of legal products, such as tobacco, if the use occurs during non-working time or off of the District's premises.

J. Serious & Communicable Diseases:

It is the policy of the District that employees with infectious, long-term, life threatening, or other serious diseases may work as long as they are physically and mentally able to perform the duties of their job without undue risk to their own health or that of other employees or customers of District services.

1. Serious diseases for the purposes of this policy include, but are not limited to, cancer, heart disease, multiple sclerosis, hepatitis, tuberculosis, drug resistant tuberculosis, chronic fatigue syndrome, human immune deficiency virus (HIV), and acquired immune deficiency syndrome (AIDS).
2. The District will support, where feasible and practical, educational programs to enhance employee awareness and understanding of serious diseases.
3. Employees afflicted with a serious disease are to be treated no differently than any other employee. However, if the serious disease affects their ability to perform assigned duties, such employees are to be treated like other employees who have disabilities that limit their job performance and will be provided reasonable accommodation as long as there is no undue hardship on District operations.
4. Employees who are diagnosed as having a serious disease and who want an accommodation shall inform their supervisor, the General Manager or the Human Resources Director of their condition as soon as possible. Anyone receiving such a report shall respond with compassion and understanding. In addition, they shall review with the employee District policy on such issues as employee assistance, leaves and disability, infection control, requesting and granting accommodations, the District's continuing expectation regarding the employee's performance and attendance, and available benefits.
5. Employees who have a serious disease and who want an accommodation shall provide the General Manager with any pertinent medical records needed to make decisions regarding job assignments, ability to continue working, or ability to return to work. The District may also require a doctor's certification of an employee's ability to perform job duties safely. Additionally, the District may request that an employee submit to a medical examination if it believes the employee is a health or safety threat to themselves or others.
6. The District will maintain the confidentiality of the diagnosis and medical records of employees with serious diseases, unless otherwise required by law. Information relating to an employee's serious disease will not be disclosed to other employees unless the information is, in the opinion of the General Manager, necessary to protect the health or safety of the employee, coworkers, or others.
7. The District will comply with applicable occupational safety regulations concerning employees exposed to blood or other potentially infectious materials. Universal precautions, engineering and work practice controls, and personal protective equipment will be utilized to limit the spread of diseases in the work place.
8. Employees concerned about being infected with a communicable disease by a coworker, customer, or other person shall convey this concern to their supervisor, the General Manager or the Human Resources Director. Employees who refuse to work with or perform services for a person known or suspected to have a serious disease, without first

discussing their concern with a supervisor, will be subject to discipline, up to and including termination. In addition, where there is little or no evidence of risk of infection to the concerned employee, that employee may be assigned to work with or perform services for any other employee or customer as required by the District.

15.13 DISCIPLINARY PROCEDURES

A. Disciplinary Action

PROGRESSIVE DISCIPLINE IS NOT REQUIRED. The disciplinary action taken shall be that deemed appropriate by the employee's department manager or the General Manager ("Supervisor(s)"). It is the responsibility of all employees to observe regulations necessary for the proper operation of District government functions. Administrative procedures have been established for the handling of disciplinary measures such as reprimand, suspension, demotion, and discharge. The Supervisor, Human Resources Director or representative of the District, shall be present when the charges are presented to the employee. All such measures which affect employment status or compensation of an employee shall follow the presentation of charges to the employee and an opportunity for the employee to be heard. Charges and causes for action shall include, but not be limited to those listed below:

1. Refusal to comply with a lawful instruction unless such instruction is injurious to health or safety;
2. Insubordination;
3. Conviction of a felony while an employee of the District;
4. Indulging in offensive conduct or using offensive language towards the public or in public toward District officers or employees during the performance of their duties;
5. Deliberate or careless conduct endangering the safety of the employee, other employees, or the general public. Horseplay is explicitly prohibited;
6. Intentionally inducing or attempting to induce any employee in the service of the District, to commit an unlawful act, violation of District regulations, official policy, or departmental orders;
7. Using, threatening or attempting to use, personal or political influence in an effort to secure special consideration as a District employee;
8. Incompetency and inefficiency in the performance of job duties;
9. Carelessness or negligence with District monies, equipment, or property;
10. Theft or intentional destruction of District property;
11. Intentional falsification of personnel records, time reports, or other District records;
12. Being under the influence of intoxicants or drugs while on duty;
13. Sleeping on duty except as provided for in official regulations; and
14. Improper use of District equipment including the violation of Communication policy. See Section 15.18.

For violation of any of the preceding rules and regulations, the employee may be subject to immediate suspension without pay or other disciplinary action.

B. Process

All care and consideration to the employee shall be given prior to imposing discipline. When an allegation or observation is made regarding an employee's conduct which may trigger a disciplinary action, Supervisors shall ensure the employee is given notice of the allegation, an opportunity to respond to the allegation and be heard on the matter, and notice of a final disciplinary decision. To achieve these goals, for discipline other than Verbal Warnings, Supervisors, should:

1. Inform the Human Resources Director and the General Counsel of the allegations(s) prior to any action or any disciplinary decision being made.
2. Where necessary, suspend the employee with pay pending an investigation.
3. Conduct an internal investigation into the allegations to ascertain any and all evidence in support of or relevant to the allegation.
4. Upon completion of the investigation, prepare a written letter addressed to the employee outlining all allegations and the evidence in support of the allegations. The letter shall be approved by the Human Resources Director and the General Counsel prior to dissemination.
5. Provide the employee with the written letter and set a date to have the employee meet with the Supervisor to discuss and respond to the allegations. The meeting time shall be set so as to provide the employee sufficient time to thoroughly review the allegations and consult with representation prior to the meeting.
6. Meet with the employee and allow the employee to respond to all allegations verbally or in writing. Supervisors shall take the employee's responses into consideration prior to making any final disciplinary determination.
7. After meeting with the employee, if any follow up investigation is required or necessary to confirm or corroborate information, the Supervisor shall finalize the investigation.
8. Once finalized, the Supervisor shall again contact the Human Resources Director and General Counsel notifying them of the contemplated disciplinary decision and shall receive their approval prior to imposing the discipline, if any.
9. The disciplinary decision shall be presented to the employee in person and in written form, with a copy given to the employee and the Human Resources Director.

C. Types of Discipline

1. Verbal Warning:

Whenever grounds for disciplinary action exist, and the Supervisor determines that more severe action is not immediately necessary, they should orally communicate to the employee the Supervisor's observations of the deficiency demonstrated at the time of the action and document the event with Supervisor's notes. All such notes shall be maintained in the Supervisor's personal employee file for future reference. If corrective action is utilized, see Section 15.13.E.

2. Written Reprimand:

Supervisors may reprimand an employee in writing when, in the judgment of the Supervisor, the employee violates these policies, terms or conditions of employment or reasonable employer expectations. Any Supervisor writing a letter of reprimand shall have the letter reviewed by the Human Resources Director and the General Counsel. Signed copies will be provided to the Supervisor, the Human Resources Director, and to the employee. One copy will become a part of the employee's personnel file. Such reprimands must be communicated person to person, discussed and a remedy clearly expressed between the Supervisor and employee. If corrective action is required by the Supervisor, *see* Corrective Action, Section 15.13.E.

3. Suspensions:

- a. With Pay. Suspensions with pay shall be issued only prior to a disciplinary decision being made, not as a form of discipline. Employees alleged to have engaged in conduct which warrants discipline may be suspended with pay pending an investigation into the allegations and final disciplinary decision. In the event the suspension is to last for more than three (3) days, the employee shall be notified of the suspension in writing and shall immediately cease all work for the District until notified otherwise. Suspension with pay should not exceed thirty (30) calendar days.
- b. Without Pay. Suspensions without pay may be issued as a disciplinary measure for employees who engage in wrongful conduct. Suspensions may be up to thirty (30) calendar days for each disciplinary action. Supervisors contemplating such action must first consult with the Human Resources Director and the General Counsel and provide the employee an opportunity to be heard. The employee shall be furnished with a written copy of the reasons for and term of the suspension.

4. Demotion:

The General Manager may, after consulting with the Human Resources Director and General Counsel, demote and/or reduce in grade, with loss of compensation, any employee in the District for the good of the District or as a disciplinary measure for cause.

5. Discharge:

The General Manager may, after consulting with the Human Resources Director and General Counsel, discharge for cause any regular employee in the District by delivering a written statement of reasons for discharge to the employee concerned with a copy to be placed in the employee's personnel file. No discharge shall be administered without a suspension and a formal investigation.

All discipline shall be administered on a case-by-case basis with the most severe penalty being discharge from District employment. No employee may be discharged from employment as a result of a change in the appointed administration of the District (Board), except, where specifically provided by statute, contract or terms of formal agreement provide as a condition of employment. Neither shall any employee be removed from employment by means of job reclassification or transfer of job function when the evident purpose of the action was primarily for the purpose of terminating

the employment relationship.

D. Appeal

Any employee subject to disciplinary action or discharge under the provisions of the above policies may appeal through formal grievance procedures as prescribed in Section 15.14.

E. Corrective Action

When an employee's performance does not meet established standards for reasons other than willful misconduct, appropriate corrective action shall be taken in accordance with the following rules:

1. The Supervisor shall discuss the substandard performance with the employee in an attempt to discover the reasons for such performance and to plan an appropriate solution.
2. Appropriate corrective actions include but are not limited to: a period of probation during which closer supervision and training are present; a referral for personal counseling; reassignment; transfer; use of appropriate leave, or career counseling.
3. During the implementation of a corrective action plan, the Supervisor, shall frequently evaluate and document the employee's progress under the imposed plan.
4. At the conclusion of the corrective action or probationary period, the Supervisor, shall notify the Human Resources Director in writing, of the conclusion and the employee's success or failure.

15.14 GRIEVANCE & APPEAL PROCEDURE

A. General Statement:

Pursuant to Utah Code §§17B-1—801 and 803, it shall be the policy of the District to adopt a Merit system and comply with Utah Code §17-33-1 *et. seq.*, as amended, and to address grievances of employees in a prompt, forthright, and professional manner. A grievance may exist when an employee is dissatisfied with some condition or aspect of employment over which they have no control but desires remedial action and is desirous of filing an appeal for relief of that condition. Employees who have grievances created by work situations shall have the right to submit their grievances for orderly disposition according to the procedures as outlined in this section. The employee having the grievance shall have responsibility to carry on the grievance process as far as necessary to reach a satisfactory solution. The Human Resources Director shall ensure that the General Manager and all supervisors and department managers respond affirmatively to this policy and procedure and expedite the resolution or processing of any grievance which may be received without the presence of discrimination, coercion, restraint or reprisal.

B. Grievance Appeal Bodies:

1. Personnel Committee: A three (3) member Personnel Committee (PC) shall be appointed by the Board as set forth in Section 15.3.B. The PC shall hear appeals not resolved at lower levels in the cases of employees suspended, transferred, demoted, or dismissed as well in the cases of other grievances not resolved by the grievance procedure.
 - a. The PC shall review written appeals in cases of applicants rejected for examination, and shall report final binding appeals decisions, in writing, to the Board.
2. Career Service Council: Pursuant to Utah Code §17-33-4, a three (3) member bipartisan Career Service Council (“CSC”) shall be appointed by the Board. The Board may appoint as the District CSC, the same CSC used and established by Summit County. The Board may appoint alternate members of the CSC to hear appeals that one or more regular CSC members are unable to hear. The CSC shall hear appeals not resolved at lower levels in the cases of employees suspended, transferred, demoted, or dismissed as well in the cases of other grievances not resolved by the grievance procedure.
 - a. All appeals from the PC shall be in writing and shall be heard by the CSC of the District. The CSC may request the assistance of a hearing officer or an administrative law judge (ALJ) to conduct the hearings before them. The hearing before the CSC shall be recorded and shall be the final hearing of record. The decision of the CSC shall be issued in writing and shall be the final and binding decision of the District.
 - b. All appeals from the CSC shall be with the District Court. A right of appeal to the District Court under the provisions of the Utah Rules of Civil Procedure shall not be abridged. However, an appeal to the District Court is barred unless it is filed within thirty (30) calendar days after the CSC issues its written decision. If there is a record of the CSC’s proceedings, the District Court

review shall be limited to the record provided by the CSC. In reviewing a decision of the CSC, the District Court shall presume that the decision is valid and may determine only whether the decision is arbitrary, capricious or illegal.

- c. Each CSC member shall serve a term of three (3) years to expire on June 30, three (3) years after the date of their appointment, except that the original appointees' terms shall be staggered so that each expires on a different year some of which may not be a full three (3) year term. Successors of original CSC members shall be chosen for three (3) year terms. An appointment to fill a vacancy on the CSC shall be for only the unexpired term of the appointee's successor. The term for an alternate member of the CSC may not exceed one (1) year. Each member of the board shall hold office until their successor is appointed and confirmed. A member of the CSC may be removed by the Board for cause, after having been given a copy of the charges against them and an opportunity to be heard publicly on the charges before the Board. Adequate annual appropriations shall be made available to enable the CSC effectively to carry out its duties under this law.
- d. Members and alternates of the CSC shall be United States citizens and be actual and bona fide residents of the State of Utah and Summit County for a period of not less than one (1) year preceding the date of appointment and a member may not hold another government office or be employed by Summit County or the District.
- e. The CSC shall elect one (1) of its members as chairperson and two (2) or more members of the CSC shall constitute a quorum necessary for carrying on the business and activity of the CSC.
- f. The CSC shall have subpoena power to compel attendance of witnesses, and to authorize witness fees where it deems appropriate, to be paid at the same rate as in Justice Courts.
- g. CSC members and alternates shall receive compensation for each day or part thereof they are in session at a rate determined by the General Manager.

C. Administrative Law Judge:

The Career Service Council may refer an appeal to an ALJ for a recommendation. Upon the recommendation of the CSC, the General Manager may appoint one (1) or more ALJs on an ad hoc basis to hear appeals referred by the CSC.

- 1. Each ALJ shall be licensed and in good standing with the Utah Bar, and trained and experienced in personnel matters.
- 2. If the CSC determines that it is in the District's best interest, it may initially refer an appeal to an ALJ.

3. After holding a hearing, the ALJ shall make findings of fact and a recommendation to the CSC.
4. After receiving the ALJ's recommendation, the CSC may request the ALJ to hold a further factual hearing before the CSC's decision
5. The CSC may adopt or reject an ALJ's recommendation, whether before or after a further hearing.

D. Grievable & Non-Grievable Issues:

All claims of prohibited employment practices and discrimination may be grieved and claims of disciplinary or adverse employment actions by non-orientation employees may be grieved. Claims dealing with verbal reprimands, wages, salaries, benefits, job classification, budget items or other financial matters may not be grieved except as they relate to a grievable claim. Only the written grievance presented originally shall be considered on appeal as the process progresses. To insure this limitation, a copy of the original grievance shall be filed with the Human Resources Director.

E. Multiple Grievances:

Similar grievances may be consolidated and processed together as a single issue. Every effort shall be made by the involved parties to resolve grievances at the lowest possible level.

F. Employee Rights:

An employee is entitled to:

1. Assistance by a representative of the employee's choice to act as an advocate at any level of the procedure;
2. A reasonable amount of time during work hours to confer with the representative and to prepare the grievance;
3. Freedom from reprisals for use of the procedures; and
4. Call other employees as witnesses at an appeal hearing and such employees shall be allowed to attend and testify at the hearing if reasonable advance notice is given to the witnesses' immediate supervisor(s).

G. Automatic Step Processing & Waivers:

Failure to answer an employee's appeal within the time specified automatically grants the aggrieved employee the right to process the appeal to the next step. Any appeal step, or any time limits specified at any step, may be waived or extended by mutual agreement, in writing, between the aggrieved employee and the person to whom the appeal is directed. Failure by the aggrieved employee to process an appeal from one step to the next, within the time specified or time period mutually agreed to, is deemed a waiver by the employee of any right to process the appeal further or to appeal any level (if failure to process was not due to circumstances outside the control of the employee).

H. Stipulations:

No employee may submit an appeal more than thirty (30) calendar days after the event giving rise to the appeal, nor does any person who has voluntarily terminated their employment with

the District have any standing thereafter to submit an appeal. All grievances, with exception of involuntary termination, discrimination, and sexual harassment, shall be handled as set forth in Section 15.14.I.1. All grievances regarding involuntary termination, discrimination, and sexual harassment shall be handled as set forth in Section 15.14.I.2.

I. Grievance Procedure Steps:

1. For all grievances except terminations, discrimination, and sexual harassment claims the following procedure shall apply:
 - a. Employees shall first attempt to resolve problems among themselves through direct communication with affected parties. If this does not resolve the issue, then an employee may proceed to the next step as long as it is within the thirty (30) calendar days referred to in Section 15.14.H.
 - b. The employee with a complaint or grievance shall file the grievance in writing with their department manager or the General Manager or Human Resources Director as may be appropriate. Upon receipt of any written grievance, the department manager or General Manager shall immediately notify the Human Resources Director of the grievance. The department manager or General Manager will issue a written response within five (5) working days after the receipt of the grievance.
 - c. If no mutually agreeable settlement is reached under section 15.14.I.1.b, then within five (5) working days after the receipt of the written decision of the department manager or General Manager, the affected employee may file a copy of the original written grievance, including supporting documentation, with the Human Resources Director to be referred to the PC. The PC shall consider the schedules of all parties and shall convene as soon as practicable to hear the matter referred and shall issue a written response within ten (10) working days after hearing the grievance. The Human Resources Director shall act as the chair of the PC and shall not vote on any grievance decision unless necessary to break a tie vote.
 - d. If no mutually agreeable settlement is reached under Section 15.14.I.1.c, those involved may appeal to the CSC through the Human Resources Director. This appeal must be filed within five (5) working days of the receipt of the PC's written decision. The requested appeal must be in writing and must be accompanied by the original written grievance. The CSC may affirm, modify, vacate or set aside an order for disciplinary action. The decision of the CSC shall be final.
2. All grievances pertaining to termination of non-orientation employees, discrimination, and/or sexual harassment claims, shall be handled in the following manner:
 - a. The appeal shall be taken by filing written notice of the appeal with the department manager, General Manager or Human Resources Director as may be appropriate within ten (10) calendar days after the event giving rise to the grievance. Upon the filing of the appeal, the General Manager or department manager shall submit a copy to the Human Resources Director for referral to

the PC. Upon receipt of the referral from the Human Resources Director, the PC shall consider the schedules of all parties and convene as soon as practicable to consider the appeal and to ensure a full hearing of all relevant evidence related to the discharge. Any member of the PC shall recuse themselves in the event of a conflict of interest.

- b. The employee shall be entitled to appear before the PC in person and to be represented by counsel, to confront the witnesses whose testimony is to be considered, and to examine the evidence to be considered by the PC.
 - c. The PC shall render a decision in writing within ten (10) working days of the hearing before them.
 - d. The employee or department manager or General Manager may appeal the decision of the PC within fourteen (14) working days of the written decision. The appeal shall be with the CSC and must be filed with the Human Resources Director in writing and accompanied by the original written grievance. The CSC may affirm, modify, vacate or set aside an order for disciplinary action. The decision of the CSC shall be final.
 - e. The decision of the CSC shall be in writing, and shall be transmitted to the Human Resources Director within fifteen (15) working days from the date the matter is heard before the CSC.
 - f. Appeals from the CSC are to the District Court. In the event that the CSC does not uphold any involuntary termination, the Human Resources Director shall report the decision to the affected employee and the General Manager, who must reinstate the employee unless the matter is appealed to the District Court. Reinstated employees will be placed back at their previous position and grade unless other disciplinary action is assessed as part of a decision.
- J.** All grievances pertaining to disciplinary action taken pursuant to Utah Code §17- 53-106, shall be directly appealed to the PC.
- K.** If any employee is denied the opportunity to present a grievance as prescribed by this Section, or if the employee is threatened or subjected to duress when presenting the grievance, the employee may notify the Human Resources Director in writing. The Human Resources Director shall take the necessary actions including authorization of an investigation of such complaints.
- L.** Discrimination and sexual harassment complaints shall be addressed according to the procedures defined and set forth in Section 15.12.G.
- M.** **Career Service Council Hearing:**
The following procedures are intended to serve as a guide to assure orderly hearing processes before the CSC and facilitate the bringing out of all relevant and material facts. Deviation from these processes may occur upon mutual agreement of all parties concerned.

1. The grievant may present their case personally or through a representative of their choosing.
2. The hearing shall not be bound either by legal procedures or by legal rules of evidence.
3. An audio recording and/or written transcription shall be kept of the proceedings of any hearing before the CSC. A video recording may be allowed with the consent of the CSC and all parties. At the request of either party, all witnesses shall be excluded from the hearing room until such time as they are called upon to testify.

N. Hearing Procedures for all appeals:

1. The District and employee's representatives may briefly summarize their cases in an opening statement.
2. At the conclusion of the opening statements, witnesses or material evidence may be introduced in support of the District position.
3. The grievant and then the hearing officer may ask questions of each witness of the District after said witness has testified.
4. The grievant presents material evidence, calls witnesses, etc. following the same processes as previously mentioned.
5. After presentation of the grievant's case, the District shall be allowed to present rebuttal evidence.
6. Before closing the hearing, the hearing officer(s) shall allow the grievant and the District in turn to make closing statements.

15.15 GARNISHMENTS

The District is opposed to an employee's earnings being garnished. Employees of the District, as public employees, are required to maintain their private life in a manner that will reflect credit upon the District. Failure to pay legal debts in accordance with the terms of indebtedness could result in a legal garnishment of wages. Utah Code §70C-7-104 states that no employee may be discharged "by reasons of the fact that their earnings have been subjected to garnishment for any one judgment." Multiple garnishments arising from more than one judgment will justify the District in taking disciplinary measures not contrary to Utah Code, §70C-7-103. The District may charge the employee an administrative fee for processing a garnishment action.

15.16 OCCUPATIONAL LAWS

A. Occupational Health & Safety:

It is the intent of the District to comply with all applicable rules and regulations pertaining to the Occupation Safety and Health Act as established under Federal Law or Utah State Law. No job is so important and no service so urgent that time cannot be taken to perform work safely. Equipment, materials, and operations must be understood before they are utilized. Unsafe conditions and circumstances involving accidents or the potential for accidents shall be reported immediately to the supervisor and the compliance officer.

1. The General Manager shall appoint a compliance/safety officer.
2. The District shall furnish each of its employees a work environment free from recognized hazards that are causing or are likely to cause death or physical harm to such employees and does hereby require that each employee comply with the occupational safety and health standards, orders, rules, and regulations promulgated under the Occupation Safety and Health Act. Compliance with this Act shall be accomplished through the establishment of an occupational safety and health program as outlined herein.
3. All employees are covered under the Worker's Compensation Act (Utah Code §34A-2-101 *et. seq.*) for any injury sustained during the performance of their job. Compensation will be received for any loss sustained on account of such injury or death, and for medical and hospital services, medicines, and funeral expenses. No compensation shall be allowed for the first three (3) days after the injury, except for authorized medical, nurse and hospital services, and for medicines, and funeral expenses. However, if the temporary disability lasts more than fourteen (14) days, compensation shall then be payable for the first three (3) days.
4. In accordance with law, the General Manager and the compliance/safety officer shall inspect District facilities semi-annually at a minimum for unsafe conditions and practices, defective equipment, and materials, and where such conditions are found, to take appropriate action to correct such conditions immediately. The compliance/safety officer in conjunction with department managers shall enforce safety regulations and issue such rules as may be necessary to safeguard the health and lives of employees and the public. They shall warn all employees of any known dangerous conditions.
5. An accurate record shall be kept of all accidents involving an injury to an employee while on duty, whether or not time is lost. These records shall at all reasonable times be

available to the Industrial Commission or its representatives upon request. Other records shall be kept as requested by the Industrial Commission.

6. The compliance/safety officer shall post, in conspicuous places, a listing of telephone numbers or addresses as may be applicable so that necessary help can be obtained in case of an emergency.
7. Supervisors and employees shall be required to insure clean work areas. An excessively littered or dirty work area constitutes an unsafe, hazardous condition of employment and should be remedied within a reasonable amount of time.
8. A report of any on-the-job injury shall be submitted to the General Manager or designee, who shall notify the Workers Compensation carrier who shall notify the Industrial Commission and the affected employee within seven (7) calendar days on a "First Report of Injury" form. Should any sudden or unusual occurrence or change of conditions occur (such as the appearance of toxic or unusual fumes or gases, major equipment failure, explosions, fires, etc.) that might affect the safety or health of District employees or tend to increase the hazards thereof, the compliance officer or other designated authority shall notify the Industrial Commission of Utah at once. Such notification must be made whether or not any actual injuries result from the above occurrences or changes of conditions.
9. No person shall remove, displace, destroy, or carry away any safety device or safeguard provided for use in any place of District employment or interfere with the use of any method or process adopted for the protection of employees. No employees shall refuse or neglect to follow and obey reasonable orders that are issued for the protection of health, life, safety, or welfare of employees. Willful violation of these rules is grounds for disciplinary action or dismissal.
10. Additional information relative to the Occupational Safety and Health Act can be obtained from the Utah State Industrial Commission.

B. Worker's Compensation

The District operates under the provisions of the Utah State Worker's Compensation Act. Utah Code §34A-2-401 *et. seq.*, as amended, provides that any employee "... who is injured, and the dependents of each such employee who is killed, by accident arising out of and in the course of the employee's employment, wherever such injury occurred, if the accident was not purposely self-inflicted, shall be paid: (a) compensation for loss sustained on account of the injury or death; [and] (b) the amount ... for medical, nurse and hospital services and medicines, and, in case of death, the amount of funeral expenses". According to state law, Workers Compensation benefits are provided to all District employees who become injured or contract occupational diseases on the job and cannot perform their normal duties. Under the ADA, reasonable accommodation will be made in all return-to-work situations, if doing so will not produce undue hardship. Eligible workers may receive benefits in various areas which include: hospitalization, medical, disability, permanent loss of body functions, prosthetic devices, and death/burial benefits. The amount and conditions of any such compensation shall be based on applicable provisions of the Worker's Compensation Act. Any injury occurring on the job must be reported to the supervisor and the General Manager immediately. Forms prescribed by the State Industrial Commission must be completed by the General Manager within seven (7) days of injury. An employee returning to work after a Worker's Compensation leave shall provide a return to work release from their physician listing accommodations, if any. The District may restrict the employee's return to work

if the accommodations preclude the employee from fully participating in their job responsibilities. Refer to the Workers Compensation section of the District's Policies and Procedures for additional information.

C. Coordination of Social Security Benefits

All employees of the District contribute to the Social Security program, as administered by the Federal Government. The system is based on employer and employee contributions as determined by Congress. Benefits include four (4) general areas: Retirement Insurance, Survivors Insurance, Disability Insurance, and Hospital and Medical Insurance (Medicare). Employees who are eligible for both workers compensation and social security will receive less social security payments but will not receive reduced workers compensation benefits.

D. Unemployment Insurance

The unemployment insurance program at Workforce Services requires a person to make a declaration of physical ability to work and availability to work if physically able. Employees would not be eligible for unemployment insurance benefits if they are receiving workers compensation benefits.

15.17 MISCELLANEOUS

A. Uniform & Equipment Allowance:

If the District desires to utilize allowances for uniform purchase and maintenance or for non-issued equipment, such expenditures must go through the budget process to assure availability of funds. Such allowances shall apply to entire job classifications.

B. Gratuities:

Accepting gifts, compensation, or loans -- prohibited.

1. Prohibited actions include:
 - a. Receiving a loan at an interest rate that is substantially lower than the commercial rate then currently prevalent for similar loans; and
 - b. Receiving compensation for private services rendered at a rate substantially exceeding the fair market value of the services.
2. Employees who knowingly receive, accept, take, seek, or solicit, directly or indirectly for themselves or another, a gift exceeding fifty dollars (\$50) in value may be disciplined if:
 - a. The gift would tend to improperly influence an employee to depart from the faithful and impartial discharge of the employee's public duties;
 - b. The employee knows or that a reasonable person in that position should know under the circumstances that the gift is primarily for the purpose of rewarding the employee for official action taken; or
 - c. An employee recently has been, is now, or in the near future may be involved in any governmental action directly affecting the donor or lender, unless a disclosure of the gift, compensation, or loan and other relevant information has been made.
3. Section 15.17.B.2 does not apply to:
 - a. An award publicly presented in recognition of public services;
 - b. A bona fide loan made in the ordinary course of business; or
 - c. A political campaign contribution.

15.18 COMMUNICATIONS

A. Introduction

The District is committed to implementing new technologies for communication and information exchange when such will make the District's employees more productive and increase the District's capacity to better serve the residents of the District. Electronic communication access is provided by the District and is considered District property, its purpose is to facilitate District business, and usage is subject to District control. This policy applies to all electronic communication devices and services which are accessed on or from District premises, are accessed from remote locations using District computer equipment or via District paid access methods. Electronic communication usage includes, but is not limited to: telephones, cell phones, pagers, the Internet, social media, radio transmissions, fax transmissions, or email.

1. Communication plays an essential role in the conduct of District business. How employees communicate with the public and with co-workers not only reflects on them individually, but also on the District as an organization. The District has invested substantially in information technology and communications systems which enable employees to work more efficiently and employees are expected to use them responsibly and in a manner consistent with these policies.
2. Electronic communications shall not be used for knowingly transmitting, receiving, retrieving, or storing any communications which are derogatory to any individual or group, are pornographic, lewd, indecent, of a sexual nature, or are of a defamatory or threatening nature. Electronic communications shall not be used in a manner which could be construed as discriminatory based on race, color, religious creed national origin, sex, age, military status, disability (including breast feeding and/or pregnancy), sexual orientation, or gender identification. Electronic communications shall not be used for communication of chain letters, or for any purpose which is illegal, against District policy, or contrary to the District's lawful interests.
3. Although the detailed discussion is generally directed to use of email and internet facilities, the general principles underlying all parts of this policy also apply to telephone communications, fax machines, copiers, and scanners.

B. General Principles

1. Employees must use the District's information technology and communications equipment sensibly, professionally, lawfully, and consistently with their assigned duties. Employees must show respect for colleagues and for the public and in accordance with these policies and other departmental rules and procedures.
2. With the exception of GRAMA-classified protected and private records, all information relating to District operations is generally public and must be maintained as such.
3. Many aspects of communication are protected by intellectual property rights which are infringed by copying. Downloading, uploading, posting, copying, possessing, processing,

and distributing material from the internet may be an infringement of copyright or of other intellectual property rights.

4. Particular care must be taken when using District email, social media, blogs or internal message boards as a means of communication because all expressions of fact, intention, and opinion in an email may bind the employee, and/or the District and can be produced in court in the same way as other kinds of written statements.
5. The advantage of the internet and email is that they are extremely easy and informal ways of accessing and disseminating information, but this means that it is also easy to send out ill-considered statements. All messages sent on email systems or via the internet should demonstrate the same professionalism as that which would be taken when writing a letter. Employees must not use these media to do or say anything which would be subject to disciplinary or legal action in any other context such as sending any discriminatory (as defined by these policies), defamatory, or other unlawful material. If an employee has any question about the appropriateness of any content, they should contact their supervisor for approval.
6. Any messages or information sent via electronic communication, including bulletin board and online services, are statements identifiable and attributable to the District. Use of personal disclaimers with electronic communications will not relieve any user under this policy and users shall be held responsible for any communication initiated by them. All communications sent via a network must comply with this and other District policies and shall not disclose any confidential or proprietary District information.
7. No email or other communications shall be sent which attempts to hide the identity of the sender which may conceal information which is subject to GRAMA or misrepresent the sender.
8. Users shall not reveal their passwords or other proprietary information, i.e. IP addresses, server names, etc. without a business necessity.

C. Use of Telephones

All District owned telephones, including cell phones shall be considered electronic communication. Personal long distance/toll calls should not be charged to the District at any time.

D. Social Media:

Departments and/or employees that use social media for official District purposes are responsible for complying with applicable federal, state, and local laws, regulations, and policies, including these Personnel Policies. Use of social media shall follow any guidelines established by the District. No employee shall use personal social media in a manner which implies official

District participation, uses documents or images obtained as part of their employment, or in a manner which is illegal, violates District policies or is contrary to the District's lawful interests.

E. Use of Electronic Mail

1. General

- a. Do not amend any messages received and, except where specifically authorized by the other person, do not access any other person's in-box or other email folders nor send any email purporting to come from another person.
- b. It is good practice to re-read and check an email before sending, including using a spell checking or grammatical checking program.

2. Business use

- a. Each District email should be sent using the District email system and server and not from any personal account.
- b. If the email message or attachment contains information which is time-critical, bear in mind that an email is not necessarily an instant communication and consider whether it is the most appropriate means of communication.
- c. It may be appropriate to file a hard copy of any email (including any attachments) sent to or received, to a paper file for use and viewing by others. The same applies to all internal email transmissions concerning District matters. Each Department manager may determine the appropriateness of this action.
- d. All email shall be retained pursuant to the State of Utah retention schedule found at: <http://archives.utah.gov/recordsmanagement/erm/email-guidelines.pdf>

3. Personal Use

- a. Electronic communication has been established for District business use and should not be used for personal, outside business or employment, or non-District related purposes. However, limited, occasional, or incidental use of electronic communications for personal, non-District purposes, is acceptable insofar that the use complies with District policy, does not interfere with the

District's business activities, and as long as such use does not involve any of the following:

- i. Interference with existing District rules or policies;
 - ii. Disrupt or distract from the conduct of District business;
 - iii. Solicitation;
 - iv. A for profit personal business activity;
 - v. Potential to harm the District;
 - vi. Illegal activities; or
 - vii. The display, storage or recording any kind of nude, obscene, pornographic, sexually explicit or other image or document intended to appeal to a prurient interest in sex.
- b. Personal email sent by employees using District email systems shall be retained in a separate email folder marked "Personal" should the employee wish to retain it after reading. Contact the IT provider if you need guidance on how to set up and use a personal folder. All email contained in your inbox and your sent items box is deemed to be business communications.

Employees must ensure that personal email use:

- a. Does not interfere with the performance of assigned duties;
 - b. Does not take priority over assigned work responsibilities;
 - c. Is minimal and limited to taking place substantially outside of normal working hours (i.e. during any breaks which the employee may be entitled to or before or after normal hours of work);
 - d. Does not cause unwarranted expense or liability to be incurred by the District;
 - e. Does not have a negative impact on the District in anyway; and
 - f. Is lawful and complies with this policy.
- c. Employees may delete personal email from the email system and are not required to follow any retention schedule. However, employees should know that backups may exist on the server and as such will be retained by the District.
- d. Employees shall be responsible for any charges arising from personal use of electronic communication services. Employees are expected to act responsibly and shall be subject to disciplinary action if this privilege is abused. By making personal use of District email systems, employees agree to abide by the conditions imposed for their use.

F. Use of Internet and Intranet:

1. Employees shall not attempt to circumvent any filtering or content control of the internet and acknowledge that when visiting a website, information identifying your personal computer may be logged.
2. The internet and/or intranet shall be used for legitimate District purposes. Limited personal use is permitted subject to the same rules as are set out for personal email use in Section 15.18.E. If personal use requires additional software to be installed onto your PC or other device, employees should submit a request to appropriate IT staff and receive approval before installing or connecting the device to District networks. This policy would carry over to any contract employee of the District which uses personal equipment while on District sites or connected to District resources.
3. Employees should not use their District email address when using public websites for non-District purposes, such as online shopping.
4. Any employee who may require access to websites generally blocked by the District as part of their duties shall make the request to the IT provider and shall have the express consent of the General Manager.

Employees shall not:

- a. Introduce packet-sniffing or password-detecting software;
- b. Seek to gain access to restricted areas of the District's network or access files for which they are not authorized;
- c. Access or try to access data which the employee knows or should know is confidential;
- d. Intentionally or recklessly introduce any form of spyware, computer virus or other potentially malicious software;
- e. Carry out any hacking activities; nor
- f. Participate in any internet chat room or post messages on any external website, including any message board or blog.

G. Misuse of District Equipment and Systems

1. Misuse of District equipment and systems, including its telephone, email, and internet systems, in breach of this policy will be treated seriously. In particular, viewing, accessing, transmitting, posting, downloading or uploading any of the following materials in the following ways, or inappropriate use of any of District equipment may subject the offending employee to discipline up to and including termination:
 - a. Material which is sexist, racist, homophobic, xenophobic, pornographic, pedophilic or similarly discriminatory and/or offensive;

- b. Offensive, obscene, derogatory or criminal material or material which is liable to cause embarrassment to the District or bring the reputation of the District and any of its elected officials or staff into disrepute;
- c. Any defamatory material about any person or organization or material which includes statements which are untrue or of a deceptive nature;
- d. Any material which, by intent or otherwise, harasses the recipient;
- e. Any other statement which is designed to cause annoyance, inconvenience or anxiety to anyone;
- f. Any material which violates the privacy of others or unfairly criticizes or misrepresents others;
- g. Confidential information about an employee of the District;
- h. Any other intentional statement which is likely to create any liability (whether criminal or civil) for the District;
- i. Material in breach of copyright and/or other intellectual property rights;
- j. Any subversive statement or activity which seeks to undermine the authority or purpose of the District or any other federal, state or local governmental entity;
- k. Online gambling; or
- l. Unsolicited commercial or advertising material, chain letters or other junk mail of any kind.

H. System Security

1. Security of District systems is of paramount importance. As a governmental entity, the District owes a duty to the public to ensure that all transactions are kept confidential where required and free of outside interference. If, at any time, the District needs to rely in court on any information which has been stored or processed using District IT systems, it is essential to demonstrate the integrity of those systems. Employees using the system take responsibility for the security implications surrounding their acts.
2. District systems or equipment must not be used in any way which may cause damage, or overloading or which may affect its performance or that of the internal or external network.
3. Keep all confidential information secure, use it only for the purposes intended and do not disclose it to any unauthorized third party.
4. Employees should keep system passwords safe. Do not disclose them to anyone. In the event assistance from the IT provider is needed, a password change will be required.
5. Employees should not download or install software from external sources without having first received the necessary authorization from the IT provider.

6. Employees should always exercise caution when opening emails from unknown external sources or where, for any reason, an email appears suspicious. The IT provider should be informed immediately in such circumstances.

I. Working Remotely

This policy applies to the use of District systems, on District owned laptops, tablets or other devices as well as employee owned computer equipment or other computer equipment whenever employees may use them when working on District business away from the regular office environment (workingremotely). Any remote work unrelated to travel must be agreed to by the Department Manager. An employee injury or illness is compensable under workers' compensation if it arises out of and in the course of employment, regardless of the location the injury occurs.

1. Employees who may work remotely must:
 - a. Password protect any work which relates to District business so that no other person can access the employee's work;
 - b. Position themselves so that work cannot be seen by any other person;
 - c. Take reasonable precautions to safeguard the security of District equipment, and keep passwords secret;
 - d. Inform law enforcement and the IT provider (as appropriate) as soon as possible, but in any event no later than 24 hours after the fact, if any District owned equipment, has been lost or stolen; and
 - e. Ensure that any work done remotely is saved on the District system or is transferred to the District system as soon as reasonably practicable.
 - f. Maintain a safe and ergonomically sound work environment, report work-related injuries to the supervisor at the earliest opportunity, and hold the District harmless for injury to others at the remote location.
2. Pocket computers, mobile phones and similar hand-held devices, external storage devices, and any internet-based storage (cloud) are easily lost, stolen, or compromised, so employees must password-protect access to any such devices or services used by the employee.
 - a. Employees should not be in the practice of storing information produced as a District employee on a personal device or internet storage without giving access to the employee's supervisor, District Attorney, or the IT provider.

J. Personal Social Media, Blogs and Websites

1. This part of the policy and procedures in it apply to personal, non-District content published on the internet even if created, updated, modified or contributed to outside of working hours or when using personal IT systems.
2. The District recognizes that employees may wish to publish content on the internet on their private time. Those activities should remain in the realm of private time and should not be done during regular working hours.

3. Employees who post any content to the internet, written, vocal or visual, which identifies, or could identify, them as a member of District staff and/or who discuss District work or anything related to the District or its business, elected officials or staff shall be expected, at all times, to conduct themselves appropriately and in a manner which is consistent with the District's Personnel Policies and Procedures. It should be noted that simply revealing name or a visual image of the employee could be sufficient to identify them as an individual who works for the District.
4. If an internet posting clearly identifies that the employee works for the District and expresses any idea or opinion which is not authorized by the District, then a disclaimer such as "these are my own personal views and not those of the Snyderville Basin Special Recreation District" must be added.
5. The following matters shall be treated as gross misconduct capable of resulting in immediate termination.
6. Revealing confidential information obtained through employment with the District that would be considered protected or private as defined by the GRAMA statutes.
7. Revealing information which would be considered criminal whether or not formal charges are filed.
8. Revealing any information, photos or writing in which the District is identified and which is pornographic or obscene in nature.
9. Online publications which do not identify the author as an employee of the District and do not mention the District and are purely concerned with personal matters will normally fall outside the scope of this communications policy.

K. Privacy and Monitoring of Communications

1. Electronic information created and/or communicated using e-mail, word processing, utility programs, spreadsheets, voice mail, telephones, fax machines, electronic communication access, etc. is randomly monitored by the District. District personnel are on notice of the following:
 - a. The District routinely monitors usage patterns for both voice and data communications for cost analysis and electronic communication management (i.e., number called or site accessed, call length, call frequency, etc.)
 - b. All electronic information on District owned equipment is the property of the District, and users shall not have an expectation of privacy in this regard. This includes but is not limited to data, facsimiles, texts, pictures, e-mail, and voice mail files. Employees should not assume electronic communications are private and confidential and should transmit private and sensitive information in other ways.
 - c. The display of any kind of image or document on any District system which is sexually explicit, obscene, and pornographic or which is designed to appeal to the prurient interest in sex is a violation of the District's policy on sexual harassment. In addition, sexually explicit material shall not be archived, stored, distributed, edited or recorded using the District's network or computing resources.

- d. The District reserves the right, at its discretion, to review any user's electronic files/messages and usage to the extent necessary to ensure that electronic communication devices and services are being used in compliance with the law and District policy and may disclose the contents of any user's electronic files/messages and usage of electronic media and services for a business or legal purpose.
- e. The District may use independently supplied software and data to identify inappropriate or sexually explicit electronic communication sites. The District may block access from its networks to all such sites that it knows of. If an employee becomes connected accidentally to a site that contains sexually explicit or offensive material, the employee must disconnect from that site immediately, regardless of whether that site had been previously deemed acceptable by any screening or rating program. The employee must also report that connection to the District Director who shall keep a list of such reports.
- f. The District's electronic communication facilities and computing resources may not be used to knowingly violate the laws and regulations of the United States or the laws and regulations of any state, District, city or other local jurisdiction in any material way. Use of any District resources for illegal activity is grounds for immediate dismissal and the District will cooperate with any legitimate law enforcement agency.
- g. The District may restrict a user's time allotment for using electronic communication devices for business purposes should such use be excessive or extravagant.
- h. Anyone obtaining electronic access to other organizations' or individuals' material must respect all applicable laws and shall not copy, retrieve, modify, or forward copyrighted materials except as expressly permitted by the copyright owner.
- i. Electronic communication access and usage by a District employee will be allowed only upon the approval of the employee's department manager.

L. Compliance with this Policy

The provision of electronic communication devices and services are at the discretion of the District and are a revocable privilege. Any District employee found to be abusing the privilege of District facilitated access to electronic communication devices or services shall be subject to disciplinary action up to and including dismissal.

ADDENDUM

The following additional definitions shall apply throughout these Personnel Policies, unless context clearly requires another meaning.

ALLOCATION (OF POSITION): The official establishment of a position by the District, to hire an individual to perform a specified job as defined by a job description and assigned to an established payrange.

APPOINTING AUTHORITY: The General Manager of the High Valley Transit District.

CLASSIFICATION OR CLASS: A group of positions sufficiently similar in respect to duties performed, degree of supervision exercised or required, minimum requirements of training, experience, or skill, and other such inherent characteristics, that the same title and the same tests of fitness may be applied to each position in the group.

CLASSIFICATION PLAN: A plan for the internal valuation of all positions in the District with an appropriate title, pay grade and pay range.

CLASS SPECIFICATION: (also- Job Description), A description of the duties and responsibilities of each class of position within the District, and minimum qualifications required for the class of position including training and experience and other qualifications.

COMPENSATION PLAN: An approved salary scale for the District, including initial, intervening, and maximum rates of pay for each class of position.

COMPTIME: Time off of work awarded in-lieu of cash for hours worked in excess of the forty (40) hour work week. See overtime provisions of these personnel policies and procedures.

DEMOTION: A reduction in grade of an employee, for cause such as inefficiency, or for disciplinary reasons, from one position to another, either within the same class or to a different class having a lower entrance salary with a corresponding lowering of the employee's salary.

DEPARTMENT: A service area or function of the District which comes under the direct authority and supervision of the General Manager.

DEPARTMENT MANAGER: An appointed position of the District to plan, organize, direct, and manage a service or function established by the District which comes under the direct authority and supervision of the District Director.

DISCRIMINATION: Action taken against an employee because of political or religious opinions or affiliations or because of race, color, religious creed, sex, national origin, age, military status, disability (including breast feeding and/or pregnancy), sexual orientation, gender identification and without proper regard for constitutional rights.

DISMISSAL: The termination of employment of an employee.

DISTRICT: The High Valley Transit District.

ELIGIBLE: An individual who is qualified for a position, benefits or privileges in the District under the provision of these policies and procedures.

FURLOUGH: An uncompensated and undetermined period of time required of seasonal employees to be off the job between seasonal "high need" work periods.

GENERAL MANAGER: The appointed chief executive officer of the District.

HUMAN RESOURCES DIRECTOR: The person designated by the General Manager to maintain appropriate personnel records, review personnel policy, negotiate insurance, review wage scale and job descriptions, and handle general personnel problems.

IMMEDIATE FAMILY: For purposes of Section 15.9.G., Sick Time, a spouse, adult designee as noted for health insurance, child and/or step-child, parent or step parent.

JOB DESCRIPTION: A written statement describing the duties of a particular position within an office/department and the minimum requirements needed to perform them.

MERIT EXEMPT: An employee not afforded protection by these personnel policies and procedures. Employees hired to fill exempt positions serve "at (the) will" of the General Manager and may be terminated with or without cause at any time during the duration of their employment.

MERIT EMPLOYEE: Any person in the employ of the District who is hired in accordance with the provisions of these policies and procedures, and whose status cannot be affected except for cause or reduction-in-force after achieving regular status and are covered under the Fair Labor Standards Act.

MINIMUM QUALIFICATIONS: The requirements for training and experience, and other qualifications, to be measured by written and/or oral examinations, or by performance tests and prescribed for a given class in the job specifications. Applicants with fewer than stated minimum qualifications are deemed ineligible or unqualified.

ORIENTATION PERIOD: An "at will" period of at least six (6) months of regular employment or equivalent beginning with the date of appointment. The orientation period is considered the final step in the selection process prior to achieving regular employment status.

PERSONNEL COMMITTEE: Standing committee established by policy to participate in the maintenance of quality personnel management problem solving and decision-making processes related to selection, job classification, grievance review, and policy revisions.

POSITION: An office or employment in the District (whether part-time or full-time, temporary or regular, occupied or vacant) composed of specific duties. For purposes of this definition, Board members are specifically excluded.

PROMOTION: A change in status of an employee from a position in one class to a position in another class having a higher entrance salary or paygrade.

QUALIFYING (QUALIFIED) EMPLOYEE: all full-time and part-time employees working more than 1560 hours annually. Seasonal full-time employees may be offered health care if such employee works in excess of 130 hours per month during the measurement period (defined as a look-back period of twelve (12) months).

REASSIGNMENT: Means a change in classification of an employee, for administrative or other reasons not included in the definition of "Demotion," from a position in one class to a position in another class normally having a lower entrance salary which could result in a reduction in salary.

RECLASSIFICATION: Means a change from one classification to another classification (either higher or lower) having a different job specification without a change in salary.

REDUCTION-IN-FORCE: Any separation of an employee because of inadequate funds, change of workload, or lack of work, in which the District discontinues the use of the identifiable position occupied by such employee either by discontinuing the performance of the duties of such position or by distributing such duties among other existing positions.

REGULAR EMPLOYEE: An employee whose continued retention has been approved by the General Manager at the completion of an orientation period; either as a full-time or part-time employee.

REHIRE: The return to employment of a former employee who has resigned while in good standing, or who has been separated from the District without prejudice or cause.

REINSTATEMENT: The resumption of employment of an employee who has been on leave of absence with or without pay.

RESIGNATION: The termination of employment at the request of the employee.

SALARY ADJUSTMENT: A change in the rate of pay for an employee to conform with the approved classification or compensation plan.

SALARY INCREASE: An increase in salary within the applicable range of the compensation plan.

SUSPENSION: A forced leave of absence without pay for a period not to exceed 60 calendar days in any one year.

TEMPORARY EMPLOYEE: Shall not work in excess of 29 hours per week, or 320 hours in succession. Temporary employees cannot work in excess of 29 hours per week or 320 hours in succession without a 90 day rest period.

TRANSFER: (Interdepartmental) Defined as a move from one District department to another and should not be confused with managerial functions of moving personnel from one section to another within the same department by promotion, demotion or reassignment.

SECTION 16.0 ANNEXATIONS

16.1 PREREQUISITES TO ANNEXATION. Prior to the Board considering for approval an annexation of property, including a MIDA project area, into the District, a petitioning county, municipality or MIDA shall do the following:

- A. Enact a resolution petitioning the District for annexation in accordance with Utah Code §17B-1-403 or successor law.
- B. Pay an administrative fee to cover the costs associated with any public noticing, public hearing, or election.
- C. If applicable, impose the Utah sales and use taxes identified in Summit County Ordinance No. 917, Article 12.
- D. Enter into an interlocal agreement with the District which contains the following:
 - 1. Remittance of the applicable transit related sales and use taxes imposed, as set forth in Article 12, to the District. In the case of MIDA, pay an equivalent amount from its sales and use taxes imposed within the project area to the District.
 - 2. Where the petitioner has an existing transit system, the petitioner shall either transfer or provide a long-term license/lease of transit related assets and facilities to the District at no cost to the District. To the extent that the petitioner has existing transit related employees, a transitional employment plan in accordance with Utah Code §17B-2a-813(3) shall be required.
 - 3. An agreement to use eminent domain powers for the benefit of the District in accordance with Utah Code §17B-2a-820.
 - 4. Any special conditions, considerations, or circumstances pertaining to the District's transit service within the geographical boundaries of the member jurisdiction.

SECTION 17.0 STATE & FEDERAL GRANTS

17.1 STATE MANAGEMENT PLAN

A. The District incorporates by reference the Utah Department of Transportation's (UDOT) State Management Plan (SMP), as amended, which describes UDOT's policies and procedures for administering the state-managed portions of the Federal Transit Administration's (FTA) programs:

1. 5304 – Metropolitan and Statewide Planning
2. 5310 – Enhanced Mobility of Seniors and Persons with Disabilities
3. 5311 – Formula Grants for Rural Areas
4. 5316 – Job Access Reverse Commute
5. 5317 – New Freedom
6. 5329 – State Safety Oversight
7. 5339 – Bus and Bus Facilities

B. Roles and Responsibilities

1. FTA

The federal government, through FTA, provides financial assistance to develop new transit systems and improve, maintain, and operate existing systems. FTA provides overall policy and guidance for funds, which it apportions annually to state and local transit providers, primarily through its 10 regional offices.

Utah is one of six states overseen by the FTA Region VIII office. Region VIII also includes Colorado, Montana, North Dakota, South Dakota, and Wyoming (see Figure 17.1).

Figure 13.1: FTA Region VIII



The regional office is based in Denver, Colorado, and is responsible for ensuring that direct recipients follow federal mandates along with statutory and administrative requirements. The responsibilities of the regional office include: reviewing and approving state grant applications, obligating funds, managing grants, overseeing implementation of the annual Program of Projects (POP) for each state, receiving state certifications, reviewing SMPs, providing technical assistance and advice to the states as needed, and performing state management reviews.

2. Utah Transportation Commission

Utah's transportation commissioners are appointed by the governor and serve as part of an independent advisory committee. In general, the Utah Transportation Commission prioritizes projects, decides how transportation funding is allocated, and gives final approval of projects. Relating to the PTT, the commission reviews and gives final approval of the funding for each project. See the following website for project prioritization and for updates to the member district map: <http://www.udot.utah.gov/main/uconowner.gf?n=4868503227088517>.

3. UDOT

UDOT is a state agency that plans, develops, and maintains the statewide transportation network in Utah. Pursuant to 49 USC 5301 et seq., UDOT is the designated recipient and the agency responsible for administering the Section 5304, 5310, 5311, 5316, 5317, 5329, and 5339 formula grant programs.

4. UDOT Planning and Investment

UDOT's Planning and Investment division supports UDOT's overall efforts through four major business areas, one of which is to identify transportation needs. Identifying transportation needs is conducted through the long-range planning process and forms the basis for development of the long-range transportation plan, pursuant to the statewide and metropolitan planning requirements. For a copy of UDOT's organizational charts, contact the PTT group.

5. Public Transit Team (PTT)

The PTT is the unit within UDOT's Program Development division responsible for administering and managing the Section 5304, 5310, 5311, 5316, 5317, 5329, and 5339 formula grant programs. The PTT also administers the Section 5304 Statewide Planning Program that is part of the Consolidated Planning Grant transferred from FTA to the Federal Highway Administration (FHWA). The PTT is responsible for developing and maintaining the SMP; ensuring the fair and equitable distribution of federal funds within the state; announcing the program and availability of funds; developing a process to solicit, review, and approve eligible funding sources; providing management and technical assistance to applicants; administering and monitoring contracts; and ensuring compliance with federal requirements by all subrecipients. The PTT functions with support from the following UDOT departments: Civil Rights, Procurement, Consultant Services, Legal, and the Comptroller's Office.

6. High Valley Transit

The District will serve as a subrecipient of FTA grants awarded through UDOT and administrated by the PTT.

17.2 FEDERAL LEGISLATION

Federal legislation directly affects the District and is implemented through FTA guidance/circulars. This section does not include an exhaustive list and description of federal legislation; rather, it describes legislation that is sometimes less known or legislation for which UDOT has more stringent policies.

A. *Civil Rights*

The District adheres to federal civil rights requirements through monitoring, administration and compliance with UDOT FHWA and FTA Title VI plans.

1. High Valley Transit Monitoring and Administration

The District has complied with the requirements of the Civil Rights Act by filing an assurance with UDOT in agreement form. The assurances in the agreement are written as follows:

“As a condition of receiving Federal financial assistance under the UMTA *Urban Mass Transportation Administration] Mass Transportation Act of 1964, as amended, it will ensure that:

- a. No person on the basis of race, color, or national origin will be subjected to discrimination in the level and quality of transportation services and transit-related benefits.
- b. High Valley Transit will compile, maintain, and submit in a timely manner Title VI information required by UMTA Circular 4702.1 and in compliance with the Department of Transportation’s Title VI regulation, 49 CFR Part 21.9.
- c. High Valley Transit will make it known to the public that those person or persons of transportation services and transit-related benefits may file a complaint with the Federal Transit Administration and/or the U.S. Department of Transportation.”

2. Title VI Program

- a. As required by FTA Circular 4702.1B, the District is in compliance with UDOT’s coordinated plan under Title VI of the Civil Rights Act of 1964.
- b. The District has a UDOT approved Title VI plan.
- c. The District submits to UDOT documentation of the public process involved in creating any proposed project/service. The public process includes documentation of the District’s public involvement efforts to provide early and continuous opportunities for the public to be involved in the planning process. The District;s public participation strategy offers early and continuous opportunities for the public to be involved in the identification of social, economic, and environmental impacts of proposed transportation decisions. These efforts include:
 - Providing notice to the public that the District is committed to providing non-discriminatory service and providing direction on how an individual may file a

discrimination report.

- Coordinating with individuals, institutions, or organizations, and implementing community- based public involvement strategies to reach out to members in the affected minority and/or low-income communities.
- Providing opportunities for public participation through means other than written communication, such as personal interviews or use of audio or video recording devices to capture verbal comments.
- Using locations, facilities, and meeting times that are convenient and accessible to low-income and minority communities
- Tailoring communications to a particular community or population by using different meeting sizes or formats, or varying the type and number of news media used to announce public participation opportunities.
- Implementing USDOT's policy guidance concerning recipients' responsibilities to LEP persons to overcome barriers to public participation.

d. District employees receive training from UDOT on Title VI compliance to ensure equal opportunity for low-income and minority populations. The District's planners incorporate the outreach and local involvement in local plans to update any gaps and needs of the local area, and then report those changes to UDOT, as needed. Through public outreach, UDOT and the District encourage applications from agencies serving predominantly minority and low-income populations. This process may include:

- Posting on the PTT and the District's websites.
- Based on data, reaching out to identified agencies currently serving predominant minorities or low-income populations.
- Notifying and inviting identified agencies to local and regional coordination and public process opportunities.

e. Program Administration

For all FTA and UDOT grants under the Enhanced Mobility of Seniors and Individuals with Disabilities (5310), Formula Grants for Rural Areas (5311), Job Access Reverse Commute (JARC), New Freedom, and Bus and Bus Facility (5339) grant programs, the District provides transit services without regard to race, color, or national origin. In addition, High Valley Transit documents its efforts to ensure minority populations are not being denied benefits or excluded from participation in these programs.

3. Equal Employment Opportunity (EEO)

Federal transit laws (49 USC 5332(b)) provide that "no person in the United States shall on the grounds of race, color, religion, national origin, sex, or age be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any project, program or activity funded in whole or in part through financial assistance under this Act." This applies to employment and business opportunities and is considered to be in addition to the provisions of Title VI of the Civil Rights Act of 1964.

The District complies with the EEO program requirements of FTA Circular C4704.1. Construction projects over \$10,000 are also subject to EEO requirements. While Executive Order 11246 does

not require construction contractors to develop written affirmative action programs, the regulations do require and specify good faith steps that must be taken by construction contractors to increase utilization of minorities and women in skilled trades.

4. Disadvantaged Business Enterprise Program (DBE)

The District complies with the USDOT DBE program and submits an overall DBE goal, pursuant to 49 CFR 26.49, to PTT for FTA planning, capital, and/or operating assistance (exclusive of transit vehicle purchases and transit vehicle manufacturers). The District uses only those transit vehicle manufacturers listed on FTA's certified list of Transit Vehicle Manufacturers, or that have submitted a goal methodology to FTA that has been approved or has not been disapproved, at the time of solicitation are eligible to bid. A TVM's failure to implement the DBE Program in the manner prescribed by 49 C.F.R. 26 may result in removal from FTA's certified TVM list and the inability to bid on future FTA-assisted vehicle procurements.

2014 DBE regulation updates now require UDOT to report transit vehicle procurement awards. Effective November 2014, FTA recipients are required to submit, within 30 days of making an award, the name of the successful bidder and the total dollar value of the contract. Remember, only eligible TVMs may bid on FTA-assisted transit vehicle procurements. In the case of a multi-year (no specific dollar amount) contract, recipients are required to report each order (ex. UDOT orders 10 vehicles off its contract, UDOT is required to report the total dollar amount and manufacturer).

FTA has developed an online Transit Vehicle Award Reporting Form for recipients to report the required information on transit vehicle procurement awards.

<https://www.surveymonkey.com/r/vehicleawardreportsurvey> . The District will ensure that either itself or UDOT utilizes such online reporting and adequately documents such.

Previously, FTA had been collecting this information via agency letterhead; however, paper forms will no longer be accepted. For more information on the TVM program requirements, refer to the TVM webpage: <https://www.transit.dot.gov> . The link to the electronic reporting form may also be found on the list of eligible TVMs: <https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/eligible-transit-vehicle-manufacturers>.

District shall periodically set its three-year DBE goal in accordance with UDOT's SMP.

5. Section 504 and the ADA

Vehicles

Titles II and III of the ADA provide that no entity shall discriminate against an individual with a disability in connection with the provision of transportation service. The law sets specific requirements for vehicle and facility accessibility and the provision of service, including complementary paratransit service.

The District complies with Section 504 of the Rehabilitation Act of 1973 and the ADA by assuring that no individual is discriminated against in connection with the provision of

transportation service. Complaints are handled according to the program complaint procedures described herein. In the ADA, 49 CFR 37 and 38 contain accessibility standards and specific requirements for the acquisition of accessible vehicles for public and private entities. The District prohibits the purchase with federal funds of any vehicles that do not comply with ADA. Regardless of service type or whether the vehicle is new or used, all vehicles purchased must be ADA accessible. The District prohibits the conversion of ADA-specific vehicles— purchased for 5310, 5311, 5316, 5317 and 5339 uses—to be used as general-purpose vehicles. When purchasing a vehicle through Section 5310, 5311 or 5339, strict adherence to the ADA is followed in specifications and procurement of equipment.

Facilities

The District shall comply with ADA requirements when constructing or altering a facility. Any new facility to be used in providing public transportation services must be ADA accessible. If the District alters an existing facility to be used to provide public transportation, the altered portions of the facility must be accessible. When the nature of an existing facility makes it impossible to comply fully with accessibility standards, the alterations must be made accessible to the extent feasible.

The District shall retain documentation sufficient to support that it has made the facility accessible to the maximum extent feasible or that alterations required to increase feasibility were disproportionate to the level of the alteration.

Complementary Paratransit

The ADA requires public transit agencies that provide fixed-route service to provide “complementary paratransit” services to people with disabilities who cannot use the fixed-route bus or rail service because of a disability. The ADA regulations specifically define a population of customers who are entitled to this service as a civil right. The regulations also define minimum service characteristics that must be met for this service to be considered equivalent to the fixed-route service it is intended to complement.

In general, ADA complementary paratransit service must be provided within three-quarters of a mile of a bus route or rail station, at the same hours and days, for no more than twice the regular fixed- route fare.

While the District is required to provide paratransit for trips with origins and destinations within three-quarters of a mile of a route/station, paratransit-eligible customers who are outside the service area could still use the service if they are able to get themselves into the service area.

Demand-Responsive Service

Demand-response transit service is comprised of vehicles operating in response to calls from passengers or their agents to the transit operator, who then dispatches a vehicle to pick up the passengers and transport them to their destinations. A demand-response

operation is characterized by the following:

- The vehicles do not operate over a fixed route or on a fixed schedule, except, perhaps, on a temporary basis to satisfy a special need.
- Typically, the vehicle may be dispatched to pick up several passengers at different pick-up points before taking them to their respective destinations and may even be interrupted in route to these destinations to pick up other passengers.

Route deviation and point deviation systems are defined as demand-response systems, which do not require ADA complementary transit. One key factor to consider in determining if a transit system is fixed route or demand responsive is if an individual has to request the service. To be considered demand responsive, the service must deviate for the general public as well as those with disabilities. The District shall ensure that deviated fixed-route service has the characteristics of demand-responsive service.

Reasonable Modification of Policies and Practices

FTA ADA Circular C4710 (November 4, 2015) requires public transportation providers to make reasonable modifications to their policies, practices, and procedures to avoid discrimination and ensure programs and services are accessible to individuals with disabilities. It applies to public entities providing fixed route, demand-response (dial-a-ride), and complementary paratransit services. It establishes that an individual's disability cannot preclude a public transportation entity from providing full access to its service, except when it would fundamentally alter the service.

The responsibility of entities to make requested reasonable modifications is not without some limitations. There are four classes of situations in which a request may legitimately be denied:

1. The request would fundamentally alter the entity's services, programs, or activities.
2. The request would create a direct threat to the health or safety of others.
3. Without the requested modification, the individual with a disability is able to fully use the entity's services, programs, or activities for their intended purpose.
4. The request would cause an undue financial and administrative burden.

Examples of an eligible and ineligible reasonable modification may include:

- ***Snow and ice*** - passenger's request for a paratransit driver to walk over a pathway that has not been fully cleared of snow and ice should be granted so that the driver can help the passenger with a disability navigate the pathway.
- ***Pick up and drop off*** - the paratransit operator should pick up and drop off the passenger at the entrance requested by the passenger, rather than meet them in a location that has been predetermined by the transportation agency, assuming that doing so does not involve a direct threat.
- ***Private Property*** - The paratransit operator should make every reasonable effort to gain access to private property (e.g., work with the passenger to get the permission of the property owner to permit access for the paratransit vehicle).

- **Obstructions** - A passenger's request for a driver to position the vehicle to avoid obstructions to the passenger's ability to enter or leave the vehicle at a designated stop location, such as parked cars, snow banks, and construction, should be granted so long as positioning the vehicle to avoid the obstruction does not pose a direct threat.
- **Fare Handling** - A passenger's request for transit personnel (e.g., the driver, station attendant) to handle the fare media when the passenger with a disability cannot pay the fare by the generally established means should be granted on fixed route or paratransit service (e.g., in a situation where a bus passenger cannot reach or insert a fare into the farebox).
- **Eating and Drinking** - If a passenger with diabetes or another medical condition requests to eat or drink aboard a vehicle or in a transit facility in order to avoid adverse health consequences, the request should be granted, even if the transportation provider has a policy that prohibits eating or drinking.
- **Medicine** - passenger's request to take medication while aboard a fixed route or paratransit vehicle or in a transit facility should be granted. For example, transit agencies should modify their policies to allow individuals to administer insulin injections and conduct finger stick blood glucose testing.
- **Boarding Separately From Wheelchair** - A wheelchair user's request to board a fixed route or paratransit vehicle separately from his or her device when the occupied weight of the device exceeds the design load of the vehicle lift should generally be granted.
- **Dedicated Vehicles or Special Equipment in a Vehicle** - A request for special equipment (e.g., the installation of specific hand rails or a front seat in a vehicle for the passenger to avoid nausea or back pain) can be denied so long as the requested equipment is not required by the Americans with Disabilities Act or the Department's rules.
- **Outside of the Service Area or Operating Hours** - A person's request for fixed route or paratransit service may be denied when honoring the request would require the transportation provider to travel outside of its service area or to operate outside of its operating hours. This request would not be a reasonable modification because it would constitute a fundamental alteration of the entity's service.
- **Exposing Vehicle to Hazards** - If the passenger requests that a vehicle follow a path to a pick up or drop off point that would expose the vehicle and its occupants to hazards, such as running off the road, getting stuck, striking overhead objects, or reversing the vehicle down a narrow alley, the request can be denied as creating a direct threat.
- **Intermediate Stops** - The PTT views granting a paratransit passenger's request for a driver to make an intermediate stop, where the driver would be required to wait, as optional.
- **Personal Care Attendant (PCA)** - A personal care attendant (PCA) is, "someone designated or employed specifically to help the eligible individual meet his or her personal needs." A PCA typically assists with one or more daily life activities such as providing personal care, performing manual tasks, or providing assistance with mobility or communication. PCA assistance is not always needed during a complementary paratransit trip itself; because of the nature of typical PCA functions, it is most likely the services provided by a PCA would be required throughout the day at the passenger's destination. PCA's are sometimes family members or friends. In some instances, PCA's are other

individuals with a disability. This might be an individual with a physical disability who assists someone with a vision disability or who accompanies an individual with an intellectual disability who cannot travel independently.

- **Caring for Service Animal** - A paratransit or fixed route passenger's request that the driver take charge of a service animal may be denied. Caring for a service animal is the responsibility of the passenger or a PCA.
- **Opening Building Doors** - For paratransit services, a passenger's request for the driver to open an exterior entry door to a building to provide boarding and/or alighting assistance to a passenger with a disability should generally be granted as long as providing this assistance would not pose a direct threat, or leave the vehicle unattended or out of visual observation for a lengthy period of time.

B. *Omnibus Transportation Employee Testing Act*

The Omnibus Transportation Employee Testing Act of 1991 mandated the Secretary of Transportation to issue regulations to combat prohibited drug and alcohol misuse in the transportation industry. These rules are encompassed in 49 CFR 655, Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations.

C. *Clean Air and Clean Water Acts*

For contracts over \$100,000, clauses are included in each contract requiring adherence to the Clean Air and Clean Water Acts.

D. *Labor Protections*

FTA includes labor protection clauses in contracts relating to operations, rolling stock procurement, and construction.

E. *Buy America*

It is important to note there are differences between the Buy America Act and the Buy American Act. The Buy America Act does not recognize trade agreements and is more stringent than the latter. For FTA-funded projects, the Buy America regulations apply not only to steel and iron, but also to manufactured products.

Buy America regulations require that all steel, iron and manufactured products used in the project are produced in the United States. Solicitations for steel, iron and manufactured products must contain a Buy America certification unless the procurement is subject to a general waiver or is below the small purchase threshold of \$150,000. The Buy America Statute applies to:

1. All purchases of steel, iron and manufactured products greater than \$150,000, regardless of whether they involve capital, operating or planning funds.
2. Contractors and subcontractors if the contract or subcontracts is more than \$150,000.
3. Purchases made using intergovernmental agreements or jointly purchased products.
4. Purchases of used items.

F. *Pre-Award and Post-Delivery Audits*

As a condition of receiving FTA funds for the purchase of rolling stock, UDOT must certify compliance with Buy-America and the pre-award and post-delivery audit requirements. The District shall submit to UDOT for approval all pre and post-delivery documentation prior to reimbursement. For additional

information see:

1. UDOT Procurement Guide: <http://www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:3209>
2. Conducting Pre-Award and Post Delivery Audits for Rolling Stock Procurements (FTA): <https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/regulations-and-guidance/buy-america/58191/buy-america-handbook-rpt0106.pdf>

The District shall keep on file its certification that it received a copy of the manufacturer's self-certification information that the vehicle complies with the relevant FMVSS or a copy of the manufacturer's self-certification that the vehicle is not subject to the FMVSS.

G. Charter and School Bus Service

The District prohibits the use of federally funded equipment for charter or school bus service. Exceptions to the federal regulations are not recognized and may not be used to permit service.

H. Drug and Alcohol Testing

The District requires drug and alcohol testing for all of its employees.

I. Restrictions on Lobbying

For all contracts over \$100,000, the District shall sign and submit to UDOT the Certification Regarding Lobbying.

J. Government-wide Debarment and Suspension

The District shall verify that any contractor or subcontractor used by the District is not excluded or disqualified. The District shall submit a certification to UDOT stating that its contractors or subcontractors are not disqualified.

K. Pre-Award Authority

Pre-award authority means authority given under specific and limited circumstances to incur costs for eligible project activities (before the Federal Award Date), without prejudice, to possible federal participation in the cost of those project activities. The District shall comply with all applicable federal requirements. Failure to comply with applicable state and Federal requirements will render those project costs or, in certain cases, the project in its entirety, to be ineligible for FTA assistance.

L. Federal Motor Carrier Safety Regulations (FMCSR)

The District is aware that Federal Motor Carrier Safety Regulations (FMCSR) apply to a wide spectrum of vehicles, not only vehicles carrying cargo across state lines. The State of Utah has adopted the FMCSR and the District shall comply with such regulations. If a vehicle has a GVWR over 10,000 pounds or carries 16 or more passengers including the driver, a Class C Commercial Driver's License (CDL) is required and FMCSR likely applies. The District is required to obtain a USDOT number if it has a vehicle that:

1. Has a gross vehicle weight rating or gross combination weight of 10,001 pounds or more.
2. Is designed or used to transport more than eight passengers (including the driver) for compensation.
3. Is designed or used to transport more than 15 passengers, including the driver, and is used to carry passengers not for compensation.

FTA Certifications and Assurances

The District is required to submit Certifications and Assurances on an annual basis, including those with vehicles whose liens have not been released. The PTT submits Certifications and Assurances to FTA annually and these are incorporated into the contract agreements with the District by reference. Therefore, the District is responsible for complying with the requirements of these Certifications and Assurances and must be familiar with them.

M. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

The OMB Circular No. A-133, retitled Audits of States, Local Governments, and Non-Profit Organizations, establishes uniform audit requirements for non-federal entities that administer federal awards and implements the Single Audit Act Amendments of 1996, which were signed into law on July 5, 1996 (Public Law 104-156). OMB Circular No. A-128, Audits of States and Local Governments, issued in 1985, is rescinded, as a result of the consolidation of audit requirements under Circular No. A-133.

17.3 Coordinated Local Plans

The District shall work with UDOT to develop a coordinated local plan as contemplated in UDOT's SMP.

17.4 Project Development Process

- A. As a pass-through of FTA funds, the PTT manages a multi-step process that ranges from the announcement of funds to contracting with the District. This process includes the following steps:
1. Announcement of funds
 2. Applicant letter of intent (LOI)
 3. Application process
 4. Project award
 5. Development of a Program of Projects
 6. Contract agreements

17.5 Grant Applications and Contracts

The District shall make grant applications, execute FTA grant contracts with UDOT, and provide the local match in accordance with UDOT's SMP. By signing a contract with PTT, the District has agreed to issue an annual list of Certifications and Assurances for FTA grants.

17.6 Accounting Procedures and Audits

While the recipient of Section 5304, 5310, 5311, 5316, 5317, or 5339 funds is not required to adopt any particular accounting method, the District does have a fiscal management system in place that meets the requirements of 49 CFR 18.20. Additionally, the District has accounting systems that translate to the accrual method of accounting and the Uniform System of Accounts, as required by the reporting requirements specified in 49 USC 5335(b).

The District shall demonstrate acceptable accounting procedures through PTT's local match source and verification process. As required in the Office of Management and Budget (OMB) *Uniform Administrative*

Requirements, Cost Principles, and Audit Requirements for Federal Awards, the District will submit an A-133 Audit and findings.

17.7 Force Account

In accordance with federal regulations, if the District's employees perform work on capital projects other than grant administration, this work is considered force account work. This work includes, but is not limited to, design, construction, refurbishment, inspection, incremental labor, and construction management activities. If the cost of force account work is \$100,000 or more, the District must have a force account plan and justification. This plan must be maintained by the District in its files and available to the PTT upon request. The full cost of the project is considered when determining if the District meets the threshold. Force account work is similar to sole source procurements; therefore, justification of the force account plan is required. Justification may be on the basis of cost, exclusive expertise, safety, efficiency of operations, or union agreement.

17.8 Indirect Costs

Non-federal entities (except those governmental departments or agency units that receive more than \$35 million in direct Federal funding) that have never received a negotiated indirect rate have the opportunity to indefinitely elect a de minimis indirect cost rate of 10% of modified total direct costs. The District has elected this option.

17.9 Procurement Management – Grant Funds

A. The District complies with the Utah Procurement Act, as modified in the High Valley Transit Procurement Code.

With respect to procurements involving any FTA grant funds, the District also complies with procurement processes (solicitation, award, and administration) as set forth in 48 CFR 18, otherwise known as the Common Grant Rule, and FTA Circular 4220.1F (updated March 18, 2013), the Third-Party Contracting Requirements.

1. The District uses the FTA's *Best Practices Procurement Manual*, found at: <https://www.transit.dot.gov/funding/procurement/third-party-procurement/best-practices-procurement-manual>.
2. In accordance with 49 USC 5325(a), the District agrees to conduct all procurement transactions in a manner that provides full and open competition.
3. The District also uses the PTT Procurement Guide. The procurement guide can be found at: <http://www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:3209>. This guide is provided as a resource, but should not be interpreted as exhaustive. It does not address every question that may arise, nor does it address every procurement scenario. The District shall be familiar with FTA third-party contracting regulations and references listed throughout the guide.
 - a. The PTT has divided its subrecipients into two groups: unauthorized entities and authorized entities. The PTT Procurement Guide provides definitions and detailed information on the two groups. In general, unauthorized entities are not permitted to conduct their own procurements if federal funds are included when the purchase is expected to exceed \$5,000. In this case, procurement will be handled through UDOT's Procurement office.
 - b. The District shall submit procurement documentation for procurements exceeding the micro-purchase threshold for review and approval by the PTT prior to solicitation and prior to awarding of a contract. All

contract files must be properly maintained for auditing purposes, and the District must be prepared to submit these documents to the PTT at any time during the procurement process (see Appendix B of the PTT Procurement Guide, Public Solicitation Checklist). The District must also ensure bidder compliance with applicable federal guidelines. The District is required to generate a written record of procurement history to include procurement planning, specifications, and pre-award and post-delivery audit requirements under FTA and state procurement regulations.

4. All contract awards will only be made to responsible contractors. UDOT expects prospective contractors to demonstrate that they qualify as responsible and that their proposed subcontractors also qualify as responsible. A responsible contractor is defined in FTA Circular 4220.1F as one who fulfills the following conditions:
 - a. **Integrity and Ethics:** Has a satisfactory record of integrity and business ethics, in compliance with 49 USC 5325(j)(2)(A).
 - b. **Debarment and Suspension:** Is neither debarred nor suspended from federal programs under the U.S. Department of Transportation's (USDOT) regulations, *Nonprocurement Suspension and Debarment*, codified at 2 Code of Federal Regulations (CFR) 180 and 1200, or under the FAR at 48 CFR Chapter 1, Part 9.4. Access the System for Award Management at www.sam.gov to see if a contractor is debarred or suspended on the federal list.
 - c. **Affirmative Action and Disadvantaged Business Enterprise (DBE):** Is in compliance with the Common Grant Rule's affirmative action and DOT's DBE requirements (49 CFR 26).
 - d. **Public Policy:** Is in compliance with the public policies of the federal government, as required by 49 USC 5325(j)(2)(B).
 - e. **Administrative and Technical Capacity:** Has the necessary organization, experience, accounting, and operational controls, and technical skills, or the ability to obtain them, in compliance with 49 USC 5325(j)(2)(D).
 - f. **Licensing and Taxes:** Is in compliance with applicable licensing and tax laws and regulations.
 - g. **Financial Resources:** Has or can obtain sufficient financial resources to perform the contract, as required by 49 USC 5325(j)(2)(D).
 - h. **Production Capability:** Has or can obtain the necessary production, construction, and technical equipment and facilities.
 - i. **Timeliness:** Is able to comply with the required delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments.
 - j. **Performance Record:** Is able to provide a satisfactory current and past performance record.
5. **Real Property.** Prior to engaging in a real property procurement with FTA grant funds, the District shall inform the PTT of the potential procurement. Real property is land and anything permanently affixed to the land, such as buildings, fences, and those things attached to the buildings that, if removed, would deface the structure or

integrity of the building, such as plumbing, heating fixtures, etc. Real property acquisition is addressed in DOT regulations, “Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs,” 49 CFR Part 24, implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. Sections 4601 et seq., which provide protections for owners and lessees of real property to be acquired as part of an FTA assisted project.

The objective of the Uniform Act is to ensure equitable treatment of property owners of real property to be acquired under the federally-assisted Award; that people displaced by a federally assisted Award be treated fairly, consistently, and equitably; and that acquiring agencies implement the regulations in a manner that is efficient and cost effective.

An appraisers report is required on all property acquired with federal funds. Property appraisals must be completed by a certified UDOT appraiser. FTA must review and concur with appraisals for acquisitions and dispositions of more than \$500,000. Federal assistance may be awarded before the appraisal is completed. The District will not purchase property (or make a binding offer to purchase it) before completing NEPA, unless the provisions under 771.113(d) or FTA’s Corridor Preservation guidance apply. The PTT should coordinate closely with FTA throughout the Real Property procurement process.

6. *Rolling Stock Procurements.* Rolling stock (buses, vans) is the PTT’s largest procurement type. In an effort to obtain the best deal possible for all of its subrecipients, the PTT contracts with a bus vendor for a three- to five-year term. To contract with a vendor, the Section 5310 Program Manager must complete the following process. Additional information is found in the PTT Procurement Guide at: www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:3417:
 - a. The District writes (or has a contractor write) detailed vehicle specifications for a public bid, including seat configurations, color schemes, etc.
 - b. The District works with UDOT Procurement to identify a list of potential vendors that may want to submit a bid.
 - c. The District, together with the UDOT Program Manager, submits the details of the procurement and vehicle specifications in the Procurement Services Online system <https://app.udot.utah.gov/procurement/psa/f?p=126:1>, or however UDOT Procurement would like to receive the details.
 - d. The District, together with the UDOT Program Manager, ensures that all federal clauses and certifications are included (see PTT’s Procurement Guide).
 - e. The District, together with the UDOT Program Manager, works with UDOT Procurement to answer any bid questions received.
 - f. UDOT Procurement submits the bid on BidSync (or chosen site).
 - g. The District, together with the UDOT Program Manager, checks www.sam.gov to verify that the apparent successful bidder is not on the excluded parties listing.
 - h. The District, together with the UDOT Program Manager, collects and reviews required documentation and complete the pre-award audit and certifications. The District will use the most current New Vehicle Information form, which includes the pre-award certifications.

- i. The District, together with the UDOT Program Manager, submits the Vehicle Award Report information to FTA Civil Rights within 30 days of vendor award or order (if a multi-year contract). Submitted via - <https://www.surveymonkey.com/r/vehicleawardreportsurvey>
 - j. The chosen vendor works with the District to identify the most efficient system of placing the District's orders.
 - k. The District identifies seat configuration and colors, restraint type/location, etc., for order. The District shall sign a master sheet with configuration and color schemes and deliver such to UDOT Procurement.
 - l. UDOT's Financial Program Manager executes the contracts with the District (must have contract prior to submitting an order). The District, together with the UDOT Program Manager, completes the procurement review checklist before executing a contract. The review document must be filed with the procurement documentation for that contract.
 - m. The District, together with the UDOT Program Manager, submits all orders to the vendor. Unless a change has occurred in the floor plan or vehicle configurations, the pre-award audit and certifications done before contract award with the vendor will be sufficient as pre-award documentation. If there is a change in configuration for a particular vehicle order, pre-award audits and certifications will be completed before the order is officially placed.
 - n. Before the PTT accepts vehicles and the District picks them up, the UDOT Compliance Officer performs a detailed post-delivery audit for purchaser requirements, Buy America, if applicable, and Federal Motor Vehicle Safety Standards (FMVSS). The PTT has developed checklists based on the vehicle specifications. Once the audit is complete and the PTT has determined the vehicles are compliant, the post-delivery certifications are completed and filed with the vehicle's title and registration information according to the current filing system.
 - o. Each vendor handles vehicle pick-up, temporary tags, and registration differently. The District, together with the UDOT Program Manager or Compliance Officer, must work closely with the vendor to identify the most efficient system to ensure a seamless delivery. (Note that buses are typically manufactured on demand, thus taking three to four months for delivery).
7. *Vehicle Contracts.* Although the PTT has a contract with a rolling stock vendor, the District is required to sign a contract with the PTT for the anticipated federal funds. The contract should include the chosen specifications or a copy of the signed master sheet. Contracts must be signed prior to placement of a vehicle order.
8. *Pre-Award / Post-Delivery Audits.* Agencies procuring rolling stock with FTA funds are required to perform and document pre-award and post-delivery audit procedures and results in order to ensure compliance with all pertinent federal regulations. The PTT is responsible for all procurements completed through UDOT Procurement. The pre-award audit is performed once the low bidder has been identified and before any contract is awarded. The post-delivery audit occurs after the vehicle has been delivered and verifies that the contractor met all the necessary requirements. By signing the FTA Master Agreement, the District has certified that it will conduct pre-award and post-delivery audits as necessary.
9. *Pre-Award Audit.* Prior to awarding the contract to a supplier, the party performing the procurement is responsible for ensuring a pre-award audit is completed. This audit is required prior to contract execution with the supplier. The audit includes a certification that both Buy America and the purchaser's requirements are satisfied. The certifications must be completed by the party performing the procurement. The purchaser should not pay 100 percent of the vehicle purchase price until they are certain the vehicle meets their specified

requirements.

- a. *Buy America Certification.* Prior to signing a contract, the District and UDOT Program Manager must have a certification on file from the manufacturer verifying that the rolling stock will contain a minimum of 60 percent domestic products by cost and that final assembly will take place in the United States. Beginning in FY 2018, components and subcomponents produced in the US must be more than 65 percent, and increases to 70% in 2020.

FTA may waive the requirement in the interest of public interest, products are not readily available or of a high quality, or the inclusion of certification increases the cost of the project by more 25 percent for rolling stock. An exemption certification indicating that UDOT has a letter from FTA granting a waiver from the Buy America requirement is needed. This certification may be obtained from the broker to whom the rolling stock contract may be given. The broker will obtain the certification from the manufacturer identified in their contract. Buy America requirements only apply to the District where it receives more than \$150,000 through one application.

- b. *Purchaser Requirement.* Prior to signing a contract, the District and UDOT Program Manager or Compliance Officer must complete a pre-award purchaser's certification verifying that the manufacturer's bid specifications comply with the PTT's solicitation requirements and that the proposed manufacturer is capable of building the rolling stock to the solicitation requirements.
- c. *FMVSS Certification.* Prior to signing a contract, the PTT must receive certification that the rolling stock will comply with the relevant FMVSS issued by the National Highway Traffic Safety Administration.

10. *Post-Delivery Audit.* Prior to transferring the title to the District, multiple steps must be completed. The party performing the procurement must complete the audit and complete certifications for Buy America, purchaser requirements, and FMVSS. If the District performed the procurement, the District is required to complete these steps. Copies of certifications must be submitted to UDOT.

- a. *Buy America Certification.* The District, together with the UDOT Project Manager or Compliance Officer, must obtain proper documentation for the certification, which includes disclosure by the manufacturer of the final assembly location; a listing of the component and subcomponent parts; the cost (actual or percent of total) of such components and subcomponents and the country of origin; a description of final assembly activities; and the cost of final assembly. Final assembly costs are not to be included when calculating the percent domestic content of the vehicle. The direct recipient or an independent third party must conduct the Buy America audits. The audit may be based on information provided by the manufacturer; however, certification by the manufacturer is not adequate.
- b. *Purchaser Requirement.* Once the vehicles arrive on-site to the broker, the District, together with the UDOT Program Manager or Compliance Officer, must complete a post-delivery purchaser's requirement certification verifying that buses meet the contract specifications. The District, together with the UDOT Program Manager or Compliance Officer, will complete a thorough visual inspection of all major components, including:

- i. All auxiliary components, such as wheelchair lifts/securements and air conditioners, are on the vehicle and working properly.
- ii. The seating configuration is as specified, including designated mobility-aid seating.
- iii. All chassis components are as specified.
- iv. The vehicle is properly undercoated and rust-proofed.
- v. All manuals and warranty information are included.
- vi. The vehicle meets all ADA requirements.
- vii. A certification is required from the party performing the procurement certifying the audit was performed and meets minimum requirements. Audit documentation must be maintained with the certification.

The PTT has developed a checklist of specifications for each vehicle procurement it performs to assist in the purchaser requirement audit. A field test will be completed during the District's vehicle pick-up.

- c. *FMVSS Certification.* The District, together with the UDOT Program Manager or Compliance Officer, must certify that they received a copy of the manufacturer's self-certification that the rolling stock complies with FMVSS standards. The District, together with the UDOT Program Manager or Compliance Officer, will ensure during the visual inspection that the required FMVSS sticker is in place on the driver-side door.

Additional details regarding the FMVSS pre-award and post-delivery rules are found on the FTA website at: <https://www.transit.dot.gov/regulations-and-guidance/buy-america/post-delivery-review-requirements>. In addition, Appendix E of the PTT Procurement Guide has copies of all required pre-award and post-delivery certifications.

- d. *District Vehicle Pick-Up.* Upon vehicle inspection approval, the District will attend a New Vehicle Training (conducted by the UDOT Compliance Officer) and vehicle pick-up at the vendor's facility. Items addressed at the meeting will include reporting/compliance requirements.

The District is required to bring the following items to the New Vehicle Training:

- i. 20 percent local match check
- ii. Insurance verification
- iii. Copy(ies) of registration (to be provided to the PTT once the vehicle is registered)

The Compliance Officer enters the following vehicle information into PTTonline:

- i. Start date
- ii. License plate number
- iii. Vehicle start date, which begins the useful life period

11. *Lien Release.* The District will include UDOT as a lien holder when completing registration, insurance, and other forms. The lien or covenant will be released when the useful life and disposition standards have been met and any non-compliance findings are resolved. The federal interest expires when the property reaches its useful life and the vehicle value is less than \$5,000. These requirements exist to protect the federal interest and to maintain continuing control over property. The lien release process includes:
 - a. Review PTT online and vehicle information in June and December of each year to identify vehicles ready to be released.
 - b. Send a copy of a promissory note to the subrecipient to sign, date, and return to the PTT.
 - i. Promissory notes state that if the vehicle is sold, all proceeds will go back into public transportation-related services.
 - c. Pull the title (the title is in the UDOT Compliance Officer's files) and have the UDOT Comptroller or designee sign the title release; make front and back copies of title.
 - d. Mail title and lien release letter to the District. The District will take this information to the DMV to obtain a new title.
 - e. Update PTT online to reflect the lien release and deactivate it in the system.
 - f. All vehicle information will be filed electronically for a minimum of three years.
 - g. The District must also retain files for a minimum of three years.

17.10 Asset Management

- A. *Use.* Federally funded property must be used by the District in the program or project for which it was acquired, and the use must meet the definition of public transportation as defined in UDOT's SMP. Property should first be utilized to meet the needs under the program for which it was acquired. However, the PTT encourages maximum use of property funded under its programs. The PTT encourages the coordination of vehicles or other equipment as long as it does not disrupt the original intended use. PTT requires the District to maintain continuing control of its assets. PTT policy requires the District to notify the PTT immediately if property is not used in the approved program or project or if it is used in a manner substantially different from that described in the project scope. The PTT will provide guidance and assist the District in approving alternative uses or disposing of the property.

If property use is not as approved or intended or property is no longer needed, the PTT will consider several options. First and foremost, the PTT and the District should consider ways to increase usage within the approved project and program. As long as the original intended use is not disrupted and receives priority, the property may be used for other public transportation services that are allowed and in compliance with federal regulations. For instance, a vehicle purchased with Section 5310 funds may be considered for service to the general public in addition to service for senior individuals and individuals with disabilities, provided the latter remain the priority.

- B. *Transfer of Property to Eligible Subrecipients.* Property can be transferred to any eligible subrecipient if the property will continue to be used in accordance with the requirements of the project proposal and grant program. The subrecipient receiving the property must comply with all applicable state and federal requirements. The names of the entities involved in the transfer of property, as well as a description of the property transferred, should be included in a new or revised POP. The transfer may be shown in the POP for any active grant. It does not have to be in the grant under which the property was originally funded. For any transfer of property for which a federal interest remains, the new owner must reimburse the original subrecipient the prorated value of the local match calculated using straight line depreciation.

For example, if a vehicle with five years of useful life is transferred after four years, the new owner must reimburse the original owner in an amount equal to 40 percent of the original local match. The reimbursement value will be calculated based on the total match, the useful life, and the total months the bus has been in service (see the example below):

$$\text{Local Match} - ((\text{Local Match}/\text{Useful Life in Months}) \times \text{Total Months in Service}) = \text{Reimbursement Value}$$

- C. *Transfer of Property to another FTA Program.* Property, including land, that is no longer needed for the purpose for which it was acquired can be transferred to a local governmental authority to be used for a public purpose other than transportation with no further obligation to the federal government, if authorized by the PTT, who will secure authorization from the FTA. If the property cannot be used within the applicable grant program, the PTT may consider transferring the property to another FTA grant program.

If no additional use can be found for the property, it will be disposed of according to PTT policy. For any transfer of property for which a federal interest remains, the new owner must reimburse the original subrecipient the prorated value of the local match calculated using the straight-line depreciation method outlined above.

The District is required to maintain satisfactory records regarding the use of the property. All vehicle usage and accidents must be reported by the District in the PTT online system. Facility use documentation must be available at any time to the PTT. The District is also required to submit an annual report to the PTT proving assurance that project property exists and is being used and maintained in accordance with the project proposal filed by the District with the PTT.

- D. *Incidental Use.* The PTT encourages the District to look for incidental use opportunities so long as the incidental use does not interfere with the original property use. PTT policy requires the District to receive PTT approval prior to allowing incidental use. PTT policy also requires the District to document incidental use and revenues once the use has been approved. In addition to not interfering with the original project and program use, several requirements for incidental use must be met:

1. The District must maintain continuing control over the property. Incidental use agreements must contain appropriate provisions maintaining the District's control.
2. The District must fully recapture all costs related to the incidental use from the non-transit public or private entity, including all applicable excise taxes on fuel for fueling facilities and wear and tear to capital improvements.
3. The District must use revenues received from the incidental use for capital and/or operating expenses that were or will be incurred to provide the public transportation.
4. Private entities must pay all applicable excise taxes on fuel.

- E. *Leasing.* Leasing is currently not permitted by the PTT.

- F. *Asset Maintenance.* Federally funded assets must remain in good operating order at a high level of cleanliness and safety. PTT policy requires a written maintenance plan to be in place and approved prior to asset use. These plans should cover all assets including vehicles, facilities, ADA features, and equipment, and should describe a system of periodic inspections and preventive maintenance to be

performed at certain defined intervals. Plans must include pre-trip inspection, surveillance inspection, and preventive maintenance inspection requirements. These three inspection types are the minimum requirements; additional inspections may be required. The PTT will either provide a maintenance plan based on manufacturer's recommendations or the District can submit its own plan for approval. If the District opts to use its own plan, the District will be responsible for submitting all manufacturer requirements to the PTT for plan development. All plans must meet the minimum manufacturer requirements for maintenance.

PTT policy requires the District have a system in place to track asset warranties, identify warranty claims, record claims, and enforce warranty claims against the manufacturer. The District is responsible for ensuring that maintenance costs covered by warranties are recovered from the manufacturer and are not submitted for reimbursement.

The District is required to maintain satisfactory records regarding the maintenance of assets, including warranty claims. All vehicle maintenance inspections and services must be reported by the District in the PTT online system. Facility and equipment maintenance documentation must be available at any time to the PTT.

The District may have facility audits completed on a regular schedule. Audits generally include all components of the facility, maintenance schedule, needs, etc. If an audit is completed, PTT should have an approved/final copy.

G. *Rehabilitated Vehicles.* The PTT does not allow for the procurement of rehabilitated vehicles.

H. *Facilities.* With regular maintenance, assets will operate at the same level on first and last day of service, throughout their useful life. In general, assets within their useful life are considered to be in a state of good repair. The FTA website includes the following information regarding state of good repair: "State of good repair is the condition where all assets perform their assigned functions without limitation." The District must apply the following useful life standards to facilities funded through the PTT:

1. Passenger shelters such as pre-fabricated metal, glass, plexi-glass, and stick-frame structures: Useful life of 20 years.
2. Bus barns such as site-built "pole barns" or other stick-frame barns: Useful life of 40 years.
3. Administration and maintenance buildings (including additions): Useful life of 40 years.
4. Concrete pavement infrastructure: Useful life of 20 years.
5. Fencing: Useful life of 20 years
6. Office furniture: Useful life of 10 years

I. *Other Equipment.* For other equipment with an acquisition value greater than \$5,000, the PTT determines useful life standards on a case-by-case basis that reflects the manufacturer's estimated useful life. The District should propose a useful life in its project proposal.

J. *Property Title and Lien.* The PTT does not hold titles/deeds, nor does it secure property liens or restrictive covenants on real property. For vehicles, the PTT requires the District to relinquish physical possession of the title to the PTT for the length of time there is an active federal interest in the vehicle. The District must include UDOT as a lien holder when completing registration, insurance, and other forms. The lien or covenant will be released when the useful life benchmark (ULB) or disposition standards have been met and any non-compliance findings are resolved. The federal interest expires when the property reaches its useful life benchmark or the vehicle

value is less than \$5,000. These requirements exist to protect the federal interest and to maintain continuing control over property.

- K. *Useful Life Benchmark (ULB).* The Useful Life Benchmark (ULB) is the expected lifecycle or accepted period of use for a capital asset. The PTT utilizes FTA's default ULB to assist in managing its FTA funded assets. FTA defines the ULB as the expected lifecycle of a capital asset and still be in a good state of repair. The ULB for each vehicle class is found in Table 13.10.2 below. The ULB refers to total time in revenue service, not time spent stockpiled or otherwise unavailable for regular transit use. The PTT ULB policy revisions will be effective upon document approval.

PTT, at its discretion, may extend the ULB of capital purchases. Situations, including non-compliance of Federal and/or PTT regulations and contracts, non-use of equipment, low vehicle miles and inconsistent maintenance, are examples of where by PTT may extend the ULB.

- L. *Disposal.* UDOT will release the lien on rolling stock and support vehicles when either the useful life mileage has been exceeded, the ULB age has been met, or the vehicle's value is less than \$5,000. These requirements exist to protect the federal interest and to maintain continuing control over property. If a vehicle needs to be sold prior to these disposal conditions being met and the market value of the vehicle is \$5,000 or more, the PTT requires reimbursement of the proportionate share (80% Fed/20% Local) of the net proceeds from the sale. The PTT can apply a straight-line depreciation to determine the value of the vehicle or the District may choose to sell via adequate e-commerce procedures to obtain the highest return. The federal reimbursement will be based on whichever method yields the highest return.

The District may choose to allocate these funds towards its transportation program and not return the funds. However, if the funding is not prioritized for public transportation related purposes, the funding is required to be returned and the proceeds will go back into the grant program from which the vehicle funds were utilized. The funds will be held in a non-interest-bearing account and will be eligible for future grant applications. The PTT can apply a straight-line depreciation formula to vehicles to determine the depreciated value of federally funded vehicles. See Table 13.10.1 Straight-line Depreciation below.

Table 17.10.1: PTT Straight-line Depreciation

Example Straight-line Depreciation				
Cost (purchase price)		\$48,000		
Salvage (estimated value)*		\$5,000		
Life (years in service)		7		
Depreciation ((cost-salvage)/life)		\$6,143.00		
yr	vehicle value	vehicle depreciation	depreciated value	
1	\$48,000	\$6,143	\$41,857	
2	\$41,857	\$6,143	\$35,714	
3	\$35,714	\$6,143	\$29,571	
4	\$29,571	\$6,143	\$23,428	
5	\$23,428	\$6,143	\$17,285	
6	\$17,285	\$6,143	\$11,142	
7	\$11,142	\$6,143	\$4,999	
*based on estimated value - commercialtrucktrader.com				

If the District receives insurance proceeds when the property has been lost or damaged by fire, casualty, or natural disaster, the District must apply those proceeds to the cost of replacing the property or return to the PTT an amount equal to the remaining federal interest in the property.

Table 17.10.2: Vehicle Types and Useful Life Benchmark and Useful Life

Vehicle Class	Photo	Approx. GVWR	Seat #	Length	Useful Life Benchmark (age) / useful life (mileage)
A: Large, Heavy-Duty Transit Buses, Articulated Buses and Electric Buses		33,001 – 40,000 lbs.	35 – 40+	36 – 40 ft. or greater	14 years/ 500,000 miles
B: Medium-Size, Heavy-Duty Transit Buses and Electric Buses		26,001 – 33,000 lbs.	25 – 35	31 – 35 ft.	12 years/ 350,00 miles
C: Medium-Size, Medium-Duty Transit Bus & Truck Chassis Cutaway Bus		10,000 - 26,000 lbs.	16 – 30	26 – 30 ft.	10 years/ 200,000 miles
D: Medium-Size, Light-Duty Bus & Van Chassis Cutaway Bus		10,000 – 16,000 lbs.	12 – 16	20 – 25 ft.	10 years/ 150,000 miles

E-1: Small, Light-Duty Bus E-2: Modified Vans E-3: Vans E-4: Minivans E-5: Station Wagons E-6: Sedans		6,000 – 14,000 lbs	3 – 14	E-1: 20-22 ft. E-2: < 20 ft. E-3: < 20 ft. E-4 through E-6: < 20 ft.	8 years/ 100,00 miles
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17.11 Site Visits and Inspections

- A. The District will make available to the PTT its facilities and Buses for regular biennial site visits and inspections, or other site visits and inspections as required by UDOT.
- B. The PTT shall conduct periodic audits to ensure compliance with all reporting and financial management requirements of UDOT and FTA. The District will be given an opportunity to comment on any draft final report and has the right to receive a copy of the final report.
 - 1. In the event of an issue of non-compliance, the following process for notification and action is required:
 - a. After 10 days, the UDOT Compliance Officer sends an informal e-mail to the District with documentation of the delinquency.
 - b. After 20 days with no resolution, the UDOT Program Manager sends a formal letter to the District and the letter is included in UDOT's official file on the District.
 - c. After 30 days with no resolution, the PTT Director sends a formal letter to the District, which includes possible repercussions to the District:
 - i. Probation
 - (a) The District may have to do additional reporting.
 - (b) PTT may hold title beyond projected release date until the District maintains compliance for a specified period of time.
 - (c) The District's ability to receive future funding may be affected.
 - ii. Confiscation of vehicle
 - iii. PTT reserves the right to use all means necessary to ensure compliance, including exclusion from future funding opportunities or current funding obligations.
- C. The PTT will conduct a biennial Title VI compliance review of the District. The District shall ensure the following:
 - Clearly display Title VI posters with the required information (in vehicles and in public spaces):
 - o Description of Title VI
 - o Explanation of how to obtain Title VI information
 - o Explanation of how to file a complaint
 - o Available complaint forms
 - o Current file containing complaints

17.12 UDOT Technical Assistance and Training

- A. The PTT provides technical assistance and training to the District with emphasis on maximizing resources, developing competent transit management, and improving the effectiveness of transit operations.
- B. The PTT is available for various forms of technical assistance upon request, such as: project planning, program and management development, coordination of public and private transportation programs, and vehicle and equipment procurement. The PTT also offers ongoing PTT online training to the District and is available to provide technical

assistance on an as-needed basis for new regulations and policy revisions and upon request.

- C. The PTT also provides technical assistance to the District prior to or immediately after taking possession of the asset. This training provides a one-on-one opportunity for the District to ask questions and the PTT to provide information on requirements for reporting, procurement, grant administration, project management, financial management, asset management, civil rights and Title VI, ADA, and other federal and state requirements.
- D. The District will assign the appropriate personnel to attend the following PTT provided trainings:
- Application Requirements (5310, 5311, 5339)
 - Reporting and Invoicing in the PTT online System (5304, 5310, 5311, 5339)
 - Vehicle Procurement Procedures (5310, 5311, 5339)
 - Civil Rights Requirements (ADA, Title VI, DBE, EEO) (5310, 5311, 5339)
 - Drug and Alcohol Requirements (5311 & 5339)
 - NTD Reporting (5310, 5311, 5339)
 - Annual Financial Reporting (5311)
 - Complementary Paratransit (5311)
 - Surveillance Reporting (5310, 5311, 5339)
 - Quarterly Reporting (5304, 5310, 5311, 5339)
 - Procurement Procedures (5304, 5310, 5311, 5339)
 - FTA Financial Requirements (5304, 5310, 5311, 5316, 5317, 5339)
 - FTA Milestone submittal (5310, 5311, 5316, 5317, 5339)
- E. The District will also assign to appropriate personnel the UDOT tools to assist with compliance:
- State Management Plan
 - Procurement Guide
 - Procurement reviews and assistance
 - 5310 Program Compliance Manual
 - 5311 Program Compliance Manual
 - 5339 Program Compliance Manual
 - Title VI Checklist
 - Complementary Paratransit Checklist
 - Application training
 - PTT online training

17.13 National Transit Database (NTD)

The District will participate in the NTD.

17.14 Transit Asset Management (TAM)

The District participates in TAM through UDOT.

17.15 Reporting Requirements

The District will comply with the following quarterly reporting requirements.

- A. Section 5304 Program per the contract.

B. Section 5310 Enhanced Mobility for Seniors and Individuals with Disabilities

1. *Quarterly Report Schedule*

Quarter #	Date	Report Due Date
Quarter 1	October 1 – December 31	January 15
Quarter 2	January 1 – March 31	April 15
Quarter 3	April 1 – June 30	July 15
Quarter 4	July 1 – September 30	October 15

The report, generated via PTT online, includes the following:

- Number of days out of the quarter the vehicle(s) was in service
- Total hours driven
- Number of requests for services denied
- Number of one-way trips (each time a passenger boards) for seniors and/or individuals with disabilities over 65 years of age
- Number of one-way trips for individuals with disabilities under 65 years of age
- End of quarter odometer reading

For contracts other than for vehicles, performance measures may be included in the contract. Reporting for these measures would be required quarterly as well.

2. *Surveillance Report*

The surveillance report requires the District to thoroughly review the vehicle(s) and all accessories (lifts, signage, securements, etc.). The report is generated via PTT online and must be completed and sent to the UDOT Compliance Officer twice a year, by April 15 and October 15.

Report	Report Due Date
Surveillance Report #1	April 15
Surveillance Report #2	October 15

All items must be inspected. If an item is not applicable, the District must enter N/A. If an item is not in good working order, "F" (fail) must be selected. If an item is working appropriately, "P" (pass) must be selected. The # (number) indicates the number of days that the subrecipient has to respond/fix an issue. If a "0" is selected, the issue must be fixed immediately and the vehicle must not be used until the problem is fixed.

VEHICLE SURVEILLANCE INSPECTION

DATE: _____

TRANSPORTATION PROVIDER NAME: _____

Make	Vehicle Year	V.I.N. (last 4 digits)	Plate Number	Odometer
Documents kept in vehicle (please check if present) *Registration ☐ *Insurance Card ☐ *DMV Inspection Sticker ☐				

All items must be inspected. If an item is not applicable to this vehicle, place "N/A" in the adjacent box.
Check "✓" appropriate box P = Pass F = Fail # = number of days to correct failure

EXTERIOR	P	F	#	SAFETY EQUIPMENT	P	F	#	INTERIOR	P	F	#
Body damage			-	Triangles (3)			1	Mirrors			2
Windows			2	First Aid Kit			2	Lights			3
*2 Outside Mirrors			0	Blood Borne Pathogen Kit			3	Horn			2
Reflector/marker/clearance			2	Seat Belt Cutter			5	Seats			2
*Turn Signals			0	Fire Extinguisher			2	*Seat Belts			0
*Four Way Flashers			0	Rear Door Buzzer			3	AC/Heat/Defroster			2
*Tires front 4/32 rear 2/32			0	Exit Windows/Buzzers			3	*Wipers			0
*Headlights high and low			0	Roof Hatch			3	Gauges and Indicators			2
*Parking lights			0					*Brakes (Foot/Parking)			0
*Brake lights			0					Cleanliness			2
Cleanliness			2								

SIGNAGE	P	F	#	LIFT	P	F	#	SECUREMENTS	P	F	#
Buckle Up (or equivalent)			5	*Interlocks			0	*Belt (4 or 8 floor)			0
Emergency Exits			3	Level Platform			3	*Lap Belt			0
Lift Operating Instructions			5	Lift Light			1	*Shoulder Belt			0
Vehicle Height			5	*Electric Wires (cut, frayed)			0				
Title VI Poster				*Hand Pump			0				
LEP Information Available				Hand Rails on Lift (2)			1				
				Lift Cycle Counter Value =							

Comments and Observations of Inspector:

Items that are *bolded may be placed out of service for failing inspection. The vehicle may not be returned to service until defect is repaired and the Agency Administrator is notified of the repairs. Body damage depending on severity should be repaired as soon as possible.

Agency Administrator:

Inspector:

Name: _____

Name: _____

Signature: _____

Signature: _____

This document can be completed by agency personnel and is a tool for you to monitor the maintenance source you are using. For questions, please contact Raymond Earl, PTT Program Compliance Manager, 385-209-3776. Inspections are to be performed on April 1 and October 1 and the completed inspection entered into PTT Online at:

<https://www.udot.utah.gov/public/ptt/f?p=131:101:1166169282072515>

3. *Preventative Maintenance*

PTT policy requires preventive maintenance to be performed at the intervals shown in the approved maintenance plan. Whenever preventive maintenance is performed, the District will complete the preventive maintenance report in PTT online. The report includes entering the date and mileage when the maintenance was done. PTT online compares the mileage to the scheduled mileage and provides PTT staff notification if requirements are not met.

4. *Annual Reports*

a. Federal Financial Report (FFR)

The purpose of the FFR is to provide a current, complete, and accurate financial picture of the grant. It is prepared on the accrual basis of accounting. It contains financial facts, financial data, and is based on required supporting documentation.

b. Milestone Progress Report (MPR)

The MPR is the primary written communication between UDOT and FTA. It is used to track progress at the budget level. The MPR is initially based on the milestone schedule completed when the application is first created, submitted, and approved. The electronic grants system also allows for milestones to be added at the project and scope levels.

c. Ride Report

This report consists of service information and operating costs. The following items are included for the District: vehicle count, titles released for that year, number of days, hours, and miles of service provided, total number of passenger trips broken out by type, service denials, and total operating costs for the year. This is the "Performance Measures" report on the "Reports" tab in PTT online.

d. Gaps in Service Report

This report contains the subrecipient address, counties served, the number of people (population) eligible for Section 5310 service, and the total number of trips provided for the year. Population data is added from the most recent census. Estimated trips are added by appending the data from the Ride Report.

5. *Accident/Incident Alerts*

a. Minor Accidents/Incidents

The District will enter information into PTT online and an e-mail alert is sent to the UDOT Compliance Officer.

b. Serious Accidents/Incidents

The definition of a serious accident as outlined by FTA includes but is not limited to those involving a fatality or any accident that results in serious injury, damaged transit equipment and/or facilities or suspension of regularly scheduled transit service caused by a natural disaster. In the case of a serious accident and/or incident, the District will contact the PTT Director or any other PTT staff immediately. An accident reporting form should be available in each vehicle. The form should be filled out at the scene and given to the District's risk manager. Accident/incident information includes:

- Date of occurrence
- Time of occurrence

- Location of occurrence
- Description of occurrence
- Copies of witness reports
- Number of fatalities
- Number of persons injured
- Extent of injuries
- Extent of damages
- Photographs of damage
- Copy of police report
- Copy of insurance information
- Drug and alcohol test report
- In case of incident if any assistance is required from UDOT

C. Section 5311 Formula Grants for Rural Areas per the contract and may include the following reports:

- NTD
- Drug and Alcohol
- Complementary Paratransit
- EEO
- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- DBE
- Quarterly Report (procurement and construction projects only)
- Surveillance Report
- Preventive Maintenance
- Accidents/Incidents
- FFR
- MPR

D. Section 5311(b)(3) Rural Transit Assistance Program (RTAP) per the contract.

E. Section 5316 Job Reverse Commute (JARC)

1. FFR
2. MPR
3. Quarterly Report Schedule

Quarter #	Date	Report Due Date
Quarter 1	October 1 – December 31	January 15
Quarter 2	January 1 – March 31	April 15
Quarter 3	April 1 – June 30	July 15
Quarter 4	July 1 – September 30	October 15

The report, generated via PTT online, includes the following:

- Number of rides given
- Current geographic region and expansion
- Number of regional coordination meetings held
- Identification of new providers in a region
- Description of new projects to improve accessibility/mobility
- Number of coordination contacts made
- Efforts to improve accessibility/planning efforts (ongoing or completed)
- Lessons learned
- Greatest accomplishments

F. Section 5317 New Freedom

1. FFR
2. MPR
3. Quarterly Report Schedule

Quarter #	Date	Report Due Date
Quarter 1	October 1 – December 31	January 15
Quarter 2	January 1 – March 31	April 15
Quarter 3	April 1 – June 30	July 15
Quarter 4	July 1 – September 30	October 15

The report, generated via PTT online, includes the following:

- Number of rides given
- Current geographic region and expansion
- Number of regional coordination meetings held
- Identification of new providers in a region
- Description of new projects to improve accessibility/mobility
- Number of coordination contacts made
- Efforts to improve accessibility/planning efforts (ongoing or completed)
- Lessons learned
- Greatest accomplishments

G. Section 5339 Bus and Bus Facilities

1. FFR
2. MPR
3. Additional reporting requirements may include the following:

- DBE
- Quarterly Report (procurement and construction projects only)
- Surveillance Report
- Preventive Maintenance
- Accidents/Incidents

17.16 Civil Rights Complaint Procedures

- A. Individuals of the public wishing to file a civil rights administrative complaint with the District shall adhere to the following process:
1. File a written complaint with the general manager setting forth the complainant's name, physical mailing address, e-mail address, and a concise statement of the grounds upon which the complaint is made and any evidence in support of said grounds.
 2. The general manager will consider the complaint and may hold a hearing on the complaint.
 - a. The general manager may subpoena witnesses and compel their attendance at a hearing.
 - b. The general manager may subpoena documents for production at a hearing.
 - c. The rules of evidence do not apply to the hearing.
 - d. The general manager may allow intervention of other parties to the complaint.
 - e. The general manager shall record the hearing and preserve all evidence presented at the hearing.
 - f. Regardless of whether a hearing on a complaint is held, the general manager shall preserve all records and other evidence relied upon in reaching the written decision described herein.
 - g. The records described in subsections 2(e) and 2(f) may not be destroyed until the written decision, and any appeal of the written decision becomes final.
 3. The general manager shall promptly issue a written decision regarding any complaint if it is not settled by mutual agreement of the District and the complainant. The written decision shall state the reasons for the action taken and inform the complainant of the right to appeal to the Board of Trustees. The general manager shall mail, e-mail or otherwise immediately furnish a copy of the written decision to the complainant. IF the general manager does not issue the written decision regarding the complaint within thirty (30) calendar days after the day on which a written request for a final decision is filed with the general manager by the complainant, the complainant may proceed as if an adverse decision had been received.
 4. A decision of the general manager is effective until stayed or reversed on appeal.
 5. A written appeal setting forth the grounds for the appeal must be filed with the Board of Trustees within ten (10) calendar days of the date of the written decision of the general manager.
 - a. The Board of Trustees shall presume that the written decision of the general manager is valid and determine only whether or not the decision is arbitrary or capricious.
 - b. The Board of Trustees' review is limited to the general manager's administrative record. The Board of Trustees may not accept or consider any evidence outside of the general manager's administrative record.
 - c. The Board of Trustees shall issue a written decision regarding any appeal.
 - d. The written decision of the Board of Trustees may be appealed to Utah Department of Transportation, Civil Rights Office, 4501 South 2700 West, P.O. Box 141520, Salt Lake City, Utah 84114-1520.

MINUTES

Snyderville Basin Public Transit District

BOARD OF TRUSTEES

THURSDAY, FEBRUARY 18, 2021

Consistent with provisions of the Utah Open and Public Meetings Act, Utah Code Ann. §52-4-207(4), the Summit County Council Chair has issued written determinations supporting Summit County Council's decision to convene electronic meetings of the Council without a physical anchor location. Due to the health and safety risks related to the ongoing COVID-19 pandemic and considering public health orders limiting in-person gatherings, members of the public should not attend Council meetings in person. However, members of the public are invited and encouraged to view and participate in the Council's electronic meetings as described below.

PRESENT:

Kim Carson, *Board Member*

Joe Spink, *Board Member*

Chris Robinson, *Board Member*

Roger Armstrong, *Board Member*

Doug Clyde, *Board Member*

Dave Thomas, *Attorney*

Tom Fisher, *County Manager*

Caroline Rodriquez, *Transportation Planning Director*

Chris Putt, *Transportation Planner*

Jamie Dansie, *Transportation Planner*

The Board was called to order at 1:00 PM

Pledge of Allegiance

Public Input

There was no public input

Work Session

Introduction from members and staff

Each member offered a very brief bio and statement about participation on the Board of Trustees followed by the introduction of the County Manager and transportation staff

Purpose of “new” organization and next steps

Board Member Carson gave a historical overview of the Snyderville Basin Public Transit District from its creation as a County taxing entity to its current structure as standalone, regional body. Caroline Rodriguez presented next step tasks (5-6 month horizon) detailed in the staff report (hyperlink)

Board Member Spink requested goals and milestones on the calendar to track progress

Role of the Board of Trustees

Caroline Rodriguez offered the focus of the BoT detailed in the staff report (hyperlink)

Adoption of 2021 meeting calendar

Discussion of the meeting dates detailed in the staff report (hyperlink) and quorum requirements.

Board Member Armstrong made a motion to approve the 2021 meeting calendar. Board Member Robinson seconded with all voting in favor, 5-0.

This item will be moved under the Agenda heading Board Action and ratified at the next meeting.

Board Action

Discussion and possible action on Transit District name change

Chris Putt presented seven name options listed in the staff report (hyperlink) and any conflicts or issues followed by discussion between board members of each name.

Board Member Clyde made a motion to approve the name High Valley Transit to replace the Snyderville Basin Public Transit District. Board Member Carson seconded. There was additional discussion and an approved addition to the motion to direct staff to prepare an ordinance consistent with the name change decision for signature by the chair of the Board of Trustees. All voted in favor, 5-0.

It was noted that state statutes require a public hearing to change the name.

Board Member Clyde made a motion to propose the new name to be High Valley Transit and a public hearing be performed accordingly. Board Member Carson seconded. All voted in favor, 5-0.

Discussion and possible approval of meeting stipend per Utah Code §17B-1-301

Members discussed stipend options.

Board Member Robinson made a motion to adopt a per meeting stipend of \$200 per trustee who is not also a member of the Summit County Council up to the statutory allowable maximum of \$5000 per year. Board Member Armstrong seconded. The motion was passed with a vote of 4-1 with Board Member Spink opposing.

Appoint officers

Caroline Rodriguez reviewed the rules and guidelines for board positions. Board Member Spink proposes himself as Vice Chair and Secretary and Member Carson as Chair.

Board Member Robinson made a motion to elect Kim Carson the Board Chair and Joe Spink the Vice Chair/Secretary. Board Member Clyde seconded. All voted in favor, 5-0.

Board Member Robinson moved to amend the motion to state that the appointments of the Chair and Vice Chair/Secretary are for two-year terms. Board Member Armstrong seconded. All voted in favor, 5-0.

Board comments

- Board Chair Carson suggested there can be further discussion on ex-officio board members. Board Member Armstrong noted that can be better determined after looking at milestones and seeing where there are needs for certain expertise.
- Dave Thomas suggested the chair attend subcommittee meetings between Park City and Summit County in order to align efforts between the entities.

- Board member Armstrong noted a person should also attend JTAB meetings and member Robinson noted the Chair is best to fill that requirement.

Staff comments

- Caroline Rodriguez noted that press might reach out to BoT members and if there is interest among the board and KPCW, a standing interview can be scheduled.
- Caroline Rodriguez commented that sustainability is part of the district's planning but it is not feasible with the existing infrastructure to launch an electric system. Members agreed it should be an aspirational goal to move toward renewable operations.
- Caroline Rodriguez asked for input on upcoming agenda items. Agreed that there will a standing item at the beginning of each meeting to review negotiations and progress.
- Jamie Dansie noted that progress is being made on applications for GL and Workers Compensation coverage. A finalized district name and a primary contact will be necessary.

The meeting adjourned at 2:48

Deliverables:

- Outlook appointments for each scheduled meeting
- A detailed calendar with key decision points
- Add a March 4 agenda item to ratify the meeting calendar
- Schedule a public hearing for the proposed name change: High Valley Transit
- Send out Board Chair and Board Vice Chair job descriptions

**A RESOLUTION OF THE SNYDERVILLE BASIN PUBLIC TRANSIT DISTRICT
CHANGING ITS NAME TO HIGH VALLEY TRANSIT DISTRICT**

WHEREAS, the Snyderville Basin Public Transit District (the “District”) was created pursuant to Summit County Resolution No. 2003-15, dated June 25, 2003, and its subsequent November 2003 General Election, and was officially incorporated as such through the issuance of a Certificate of Incorporation issued by the Lieutenant Governor, dated February 23, 2004, as a small transit district providing transit services to residents within the District; and

WHEREAS, pursuant to Summit County Ordinance No. 917, dated December 16, 2020, the District was re-codified by the Summit County Council (the “Council”); and,

WHEREAS, the District is located solely within Summit County, Utah; and,

WHEREAS, the Council appointed five new members to the Board of Trustees (the “Board”) in January 2021; and,

WHEREAS, the Board has indicated that it wishes to change the name of the District to “High Valley Transit District” in order to better reflect the more regional nature of future transit services; and,

WHEREAS, Utah Code §17B-1-105 provides a mechanism to change the name of a local district; and

WHEREAS, a public hearing was held on March 4, 2021 to consider the name change; and,

WHEREAS, the Board finds (a) that the proposed name, High Valley Transit District, is not the name of a county, municipality or another local or special service district, (b) that all requirements of Utah Code §17B-1-105 have been satisfied, and (c) that there is good cause for said name change;

NOW, THEREFORE, BE IT RESOLVED, by the Board of Trustees of the Snyderville Basin Public Transit District as follows:

Section 1. **High Valley Transit.** The District’s name shall hereinafter be “High Valley Transit District.”

Section 2. **Notice of Impending Name Change.** Pursuant to Utah Code §67-1a-6.7, the acting General Manager is directed to file a “Notice of Impending Name Change” with the Utah Lieutenant Governor.

Section 3. **Certification.** Pursuant to Utah Code §67-1a-6.7(3), the Board hereby certifies the following:

- a. The current name of the District is the “Snyderville Basin Public Transit District.”
- b. The District intends to change the name of the District to “High Valley Transit District.”
- c. The District is located solely within Summit County, Utah.
- d. All requirements of Utah Code §17B-1-105 have been satisfied.

ADOPTED AND APPROVED this 4th day of March, 2021.

SNYDERVILLE BASIN PUBLIC TRANSIT DISTRICT

ATTEST:

Joe Spink
Secretary

By: _____
Kim Carson
Chair

APPROVED AS TO FORM:

David L. Thomas
Chief Civil Deputy