



Records Access and Management Policy Template

Prepared for

**The adoption and use of Special and Special Service Districts
in Utah in consultation with their legal counsel**

**Prepared by
The Utah Association of Special Districts
November 9, 2023 Update**

(insert the districts' name)

RECORDS ACCESS AND MANAGEMENT POLICY

I.BACKGROUND

- A. **Policy:** This shall be known as the Records Access and Management Policy (the "Policy") of _____ ("the District"). The Policy is governed by applicable provisions of the Government Records Access and Management Act ("GRAMA" or the "Act") Utah Code Ann. § 63G-2-101, et. seq., and Utah Code Ann. § 63A-12-100.5, et. seq., Division of Archives and Records Service and Management of Government Records, as either may be amended from time to time.
- B. **Purpose:** The Policy establishes guidelines for open government information recognizing the need to maintain and preserve accurate records, provide public access to public records and preserve the right of privacy of personal data collected or received by the District. In particular, the purpose of this Policy is to conform to GRAMA Section 63G-2-701 which provides that each political subdivision may adopt an ordinance or a policy relating to information practices including classification, designation, access, denials, segregation, appeals, management, retention and amendment of records. The intent of this Policy is to implement the general provisions of state law and provide limited modifications to the general provisions of state law, where allowed, to best meet the public needs, operation, management capabilities and resources of the District.

II.COMPLIANCE WITH STATE LAW

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

III.DEFINITIONS

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

- A. **Act:** As used herein, the terms “Act” and “GRAMA” are interchangeable and shall refer to the Government Records Access and Management Act, §§63G-2-101, et. seq., Utah Code Ann., 1953, as amended.
- B. **Board:** The “Board” is the governing legislative body of the District, however designated.
- C. **Computer Program:** The phrase “computer program” means a series of instructions or statements that permit the functioning of a computer system in a manner designed to provide storage, retrieval, and manipulation of data from the computer system, and any associated documentation, manuals, and other source material explaining how to operate the computer program. “Computer program” does not include the original data; analysis, compilation and other manipulated forms of the original data produced using the program; or mathematical or statistical formulas (excluding the underlying mathematical algorithms contained in the program) that would be used if the manipulated forms of the original data were produced manually.
- D. **Controlled Records:** “Controlled records” are those defined as controlled under the provisions of the Act (Section 63G-2-304).
- E. **Data:** “Data” shall refer to individual entries (for example, birth date, address, etc.) in records.
- F. **Dispose:** “Dispose” means to destroy, or render irretrievable or illegible, a record or the information contained in it by any physical, electronic, or other means, including deletion or erasure of electronically recorded audio, visual, non-written formats, data processing, or other records.
- G. **District:** Shall refer to the District or any public or private entity which, pursuant to contract with the District, has agreed to produce and/or maintain District records.
- H. **Non-Public Records:** “Non-public records” shall refer to those records defined as private, controlled, or protected under the Act.
- I. **Private Records:** “Private records” shall refer to those records classified as private under the provisions of the Act (Sections 63G-2-302 and -303).
- J. **Protected Records:** “Protected records” shall refer to those records classified as protected under the provisions of the Act (Section 63G-2-305).

- K. **Public Records:** “Public records” shall refer to those records which have not been classified as non-public in accordance with the provisions of the Act and are not exempt from disclosure. *See* Section 63G-2-301 of GRAMA.
- L. **Record:** “Record” means all books, letters, documents, papers, maps, plans, photographs, films, cards, tapes, recordings, electronic data or other documentary materials regardless of physical form or characteristics, prepared, owned, used, received, or retained by the District where all the information in the original is reproducible by photocopy or other mechanical or electronic means. “Record” does not mean:
1. Temporary drafts or similar materials prepared for the originator's personal use or prepared by the originator for the personal use of a person for whom the originator is working.
 2. Materials that are legally owned by an individual in the individual's private capacity.
 3. Materials to which access is limited by copyright or patent laws unless the copyright or patent is owned by the District.
 4. Proprietary software.
 5. Junk mail or commercial publications received by the District or by an officer or employee of the District.
 6. A personal note or communication, prepared by any District employee or official in a capacity other than the employee's or official's governmental capacity or that is unrelated to the conduct of the public's business.
 7. A daily calendar or other personal note prepared by any District employee or official for that person's personal use or for the personal use of a supervisor or other individual for whom that person is working.
 8. Notes or internal memoranda prepared for the use of any District officer or employee acting in a quasi-judicial or deliberative process or pursuant to matters discussed in a meeting properly closed to the public in accordance with the Utah Open and Public Meetings Act, Utah Code Ann. §§ 52-4-204, 52-4-205 and 52-4-206.
 9. Computer programs as defined in Section III.C. that are developed or purchased by or for the District for District use.

10. A mobile telephone number used by an employee or officer of the District, provided that the employee or officer has designated at least one business telephone number that is a public record as provided by the Act (GRAMA Section 63G-2-301).
 11. Any other record that is exempt from disclosure under the Act or any other applicable law.
- M. **Statutory Definitions:** Other words and phrases defined in Section 63G-2-103 of the Act shall have the statutorily defined meaning and, should any definition stated above in this Section III differ from a definition in the Act, the statutory definition shall control.

IV. PUBLIC RIGHT TO RECORDS

- A. **Public Access:** Members of the public shall have the right to see, review, examine and take copies, in any format maintained by the District, of all District governmental records defined as “public” under the provisions of this Policy, upon the payment of the lawful fee and pursuant to the provisions of this Policy and the Act provided, however, that disclosure of records to which access is governed or limited pursuant to court rule, a state statute other than the Act, federal statute, or federal regulation, including records to which access is governed or limited as a condition of participating in a state or federal program or receiving state or federal funds, is governed by the specific provisions of that statute, rule or regulation. To the extent not inconsistent therewith, the Act and this Policy are applicable to records that are subject to restrictions by statute, rule or regulation. The District may decline to fulfill a records request if the request unreasonably duplicates prior records requests from that person or organization in accordance with Utah Code Ann. § 63G-2-201(7).
- B. **Regularly Maintained Records:** In response to a record request, the District has no obligation to create a record or record series; compile, format, manipulate, package, summarize, or tailor information; or provide a record in a particular format, medium, or program not currently maintained by the District. Upon request, the District may provide a record in a particular format if it is able to do so without unreasonably interfering with its duties and responsibilities and the requesting party agrees to pay to the District all costs, in compliance with state statute, incurred in providing the record in the requested format.
- C. **Records in Public Publications:** The District has no obligation to fulfill an individual’s record request if the record requested is accessible in the identical physical form and content in a public publication or a product produced by the District, and the District provides the individual with the publication or product and specifies where the record can be found within the publication or product.

- D. **Custodial Agency:** When a record is temporarily held by a custodial agency, pursuant to the custodial agency's statutory functions, such as records storage, investigation, litigation or audit, the record shall not be considered a record of the custodial agency for the purposes of this Policy. The record shall be considered a record of the District and any requests for access to such records shall be directed to the District, rather than the custodial agency, pursuant to these procedures.
- E. **Business Confidentiality:** Any person who provides a record to the District that the person believes should be protected as a “trade secret” as defined in UTAH CODE ANN. § 13-24-2(4) or should be protected as “commercial information” or “nonindividual financial information” under UTAH CODE ANN. § 63G-2-305(2) shall provide, along with the record, a written claim of business confidentiality and a concise statement of reasons supporting the claim of business confidentiality. The Records Officer or Manager shall consider the business confidentiality claim and shall notify the claimant whether the record is to be classified as protected or as public or if the District determines that the record should be released after balancing the interests and determining that there is no interest in restricting access to the record or that the interests favoring access outweigh the interests favoring restriction of access. Except as provided by court order, the District is not to disclose records which are the subject of a business confidentiality claim but which the District determines should be classified as public until the period in which to bring an appeal from that determination expires or the end of the appeals process, including judicial appeal, as provided in Section XI. The foregoing sentence does not apply where the claimant, after notice, has waived the claim by not appealing or intervening before the appeals board established by the Board. As provided in Subsection 63G-2-309(1)(c) of the Act, a person who makes a claim of business confidentiality is required to protect, defend, and indemnify the District and all staff members and employees of the District “from and against any claims, liability, or damages resulting from or arising from a denial of access to the record as a protected record based on the claim of business confidentiality.”
- F. **Employee Personnel Files:** The right to examine and copy documents in an employee’s personnel file is subject to access in accordance with the Act.
- G. **Disclosure of Electronic Information:** Under some circumstances, as a result of an investigation, subpoena, lawsuit, or the Act, the District may be required to provide electronic or other information. Consequently, anything on the District’s computer system, including personal data, may be disclosed to third parties pursuant to the above-mentioned processes and applicable law.
- H. **Vexatious Requester:** As provided in subsection 63G-2-201(7)(a)(vi) of the Act, the District is not required to fulfill a records request from a person who has been

determined by the State Records Committee, under Section 63G-2-209 of the Act, to be a “vexatious requester” in an order that specifies a period of time during which the District is not required to fulfill a record request for the vexatious requester and that period of time has not expired.

II. CLASSIFICATION OF RECORDS

- A. **Public Records:** Public District records shall be as defined or identified in Section 63G-2-201 or Section 63G-2-301 of the Act. Public records shall be made available to any person. All District records are considered public unless they are (1) expressly designated, classified, or defined otherwise by the District in accordance with policies and procedures established by this Policy, (2) are so designated, classified or defined by the Act, or (3) are made non-public by other applicable law or court order.
- B. **Private Records:** Private records shall be those District records classified as “private”, as defined in Section 63G-2-302 of the Act and as designated, classified, or defined in procedures established pursuant to this Policy. Private records include, but are not limited to, the following: records concerning an individual’s eligibility for unemployment insurance benefits, social services, welfare benefits, or the determination of benefit levels; medical records; records concerning current and former employees of the District and applicants for employment that would disclose the individual’s home address, home telephone number, social security number, insurance coverage, marital status or payroll deductions; and other records properly classified as private by the District, including records containing data on individuals, the disclosure of which would constitute a “clearly unwarranted invasion of personal privacy”.
- C. **Controlled Records:** Controlled records shall be those District records classified as “controlled”, as defined in Section 63G-2-304 of the Act and as designated, classified, or defined under procedures established in this Policy. A record is “controlled” if it contains medical, psychiatric or psychological data about an individual; the District reasonably believes that releasing the information could be detrimental to the mental health of the subject of the record or to the safety of any individual; or releasing the information would constitute a violation of normal professional practice and medical ethics; and the District has properly classified the record as “controlled”.
- D. **Protected Records:** Protected records shall be those District records classified as “protected”, as defined in Section 63G-2-305 of the Act and as designated, classified or defined in procedures established in this Policy. Provided that they are properly classified by the District, protected records include but are not limited to the following: records that are the subject of a proper written claim of business confidentiality as provided in UTAH CODE ANN. § 63G-2-309;

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

the nature of the law, ordinance, rule or order and to the individual's compliance with the law, ordinance, rule or order.

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

VI.ACCESS TO NON-PUBLIC RECORDS

- A. **Access to Private Records:** Private records shall be made available to the following persons: the subject of the record; the parent or legal guardian of an unemancipated minor who is the subject of the record; the legal guardian of a legally incapacitated individual who is the subject of the record; any person who has a power of attorney from the subject of the record; any person who has a notarized release from the subject of the record or his legal representative dated no more than ninety (90) days before the request; a health care provider, if the record is a medical record and releasing the record or information in the record is consistent with normal professional practice and medical ethics; or any person to whom the record must be provided pursuant to a legislative subpoena or a court order issued by a court of competent jurisdiction. If there is more than one subject of a private record, the portion of the record pertaining to another subject is to be segregated from the portion that the requester is entitled to inspect. Private records may be disclosed to persons other than those listed above as provided in Section 63G-2-202 of the Act.
- B. **Access to Controlled Records:** Controlled records shall be made available to a physician, psychologist, certified social worker, insurance provider or agent, or a government public health agency upon submission of a release from the subject of the record dated no more than ninety (90) days prior to the request and upon a signed acknowledgment from the person not to disclose controlled information to any person, including the subject of the record; or any person to whom the record must be disclosed pursuant to a legislative subpoena or a court order signed by a judge of a court of competent jurisdiction. If there is more than one subject of a controlled record, the portion of the record pertaining to another subject is to be segregated from the portion that the requester is entitled to inspect.
- C. **Access to Protected Records:** Protected records shall be made available, upon request, to the person who submitted the information in the record; to a person who has a power of attorney or notarized release (dated not more than ninety (90) days prior to the request) from all persons and governmental entities (or from

their legal representatives) whose interests may be protected by the classification of the record; and to any person to whom the record must be provided pursuant to a legislative subpoena or court order signed by a judge of a court of competent jurisdiction. Protected records may be disclosed to persons other than those listed above as allowed under the Act or other applicable law. The District may disclose an individual's home address, home telephone number, or personal mobile phone number even though it is classified as protected if the Records Officer determines that disclosure of the record is beneficial to the subject of the record, the District, and the public; the disclosure serves a public purpose related to public safety or consumer protection; and the person agrees not to use or allow the use of the record for advertising or solicitation.

- D. **Access for Research Purposes:** Controlled or private records may be disclosed to a person for research purposes provided the following criteria are satisfied: the research cannot reasonably be accomplished without use of the record; the proposed research is bona fide; the research value outweighs any infringement upon personal privacy; the researcher signs a statement insuring that the records will remain confidential and that all individual identifying information will be removed from the provided record once the research is complete; and that the record will be used for no other purpose than the research approved by the District. The District may require indemnification as a condition of permitting the records to be released for research.
- E. **Disclosure to Governmental Entity:** The District may provide a private, controlled, or protected record to another governmental entity, a government-managed corporation, a political subdivision, the federal government, the state of Utah or (only as provided in Section 63G-2-206 of the Act) another state under the following circumstances: the requesting entity serves as a repository or archives for historical preservation; the requesting entity enforces, litigates, or investigates, civil, criminal, or administrative law, and the record is necessary to a proceeding or investigation; the requesting entity is authorized by state statute to conduct an audit and the record is needed for that audit; the requester is the legislature or an agent of the legislature and the requested record is related to the legislature's duties; or the requesting governmental entity provides written assurance: that the record is necessary to the performance of the governmental entity's duties and functions; that the record will be used for a purpose similar to the purpose for which the information in the record or record series was collected or obtained; and that the use of the record produces a public benefit that outweighs the individual privacy right that caused the record to be classified as private, controlled or protected.
- F. **Disclosure to Contractor or Private Provider:** The District may provide a private, controlled, or protected record or record series to a contractor or a private provider if: the record or record series produces a public benefit that equals or

outweighs the individual's privacy right that caused the record to be classified as private, controlled or protected; the record series requested is necessary for the performance of a contract with a governmental entity; the record will only be used for the performance of the contract with the governmental entity; the record will not be disclosed to any other person; the record will not be used for advertising or solicitation purposes; and the contractor or private provider gives written assurance that it will adhere to the restrictions of this Subsection F.

II.PRIVACY RIGHTS

- A. **Personal Right of Privacy:** The District recognizes and upholds the personal right of privacy retained by persons who may be the subject of governmental records.
- B. **Notification:** The District may, as determined appropriate by the Manager, notify the subject of a record that a request for access to the subject's record has been made.
- C. **Release:** Access to non-public records is controlled by Section 63G-2-202 of the Act. To the extent allowed by law, the District may require that the requester of a non-public record provide a written release in form reasonably acceptable to the District which is signed by the subject of the requested record and notarized within ninety (90) days before the request, before access to the record is provided.
- D. **Identification:** Before receiving a private, controlled or protected record, the requesting party shall be required to provide evidence of identity that is reasonably satisfactory to the District.

VIII.DESIGNATION, CLASSIFICATION AND RETENTION

All District records and records series, of any format, shall be designated, classified and scheduled for retention according to the provisions of the Act and this Policy. Any record or record series generated in the future shall also be so designated, classified and scheduled for retention. Records designation classification and scheduling for retention shall be conducted by or under the supervision of the District Records Officer. The Records Officer may approve and implement procedures consistent with the requirements of this Policy and the Act pursuant to which records will be classified. Until such time as the District has its own approved retention schedule, the most recent approved model retention schedule for municipalities maintained by the State Archivist will serve as the District's retention schedule unless there is a model retention schedule for special districts.

IX.PROCEDURES FOR RECORD REQUEST

- A. **Written Form:** The requester shall fill out and present to the District a written request on a form provided or approved by the District or an applicable State rule. The date and time of the request shall be noted on the written request form and all time frames provided under this Policy shall commence from that time and date. Requesters of non-public information shall adequately identify themselves and their status prior to receiving access to non-public records in accordance with this Policy.
- B. **District Response:** Upon receiving a request for a record, the District will undertake a “reasonable search” as defined in Section 63G-2-103(24) of the Act (meaning “a search that is: (a) reasonable in scope and intensity; and (b) not unreasonably burdensome for the government entity”). The District may respond to a request for a record by approving the request and providing the record, denying the request, or such other appropriate response as may be determined by the Records Officer.
1. **Lengthy Requests:** If a person requests copies of more than fifty (50) pages of records, and if the records are contained in files that do not also contain records that are exempt from disclosure, the District may:
 - a. Provide the person with facilities for copying the requested records and require the person to make the copies and collect appropriate copying fees; or
 - b. Allow the person to provide his/her own copying facilities and personnel to make the copies at the District's office, in which case the fee for copying the records will be waived.
 2. **Normal Response Time:** In most circumstances, and excepting those eventualities set out in Subsection B.3 immediately below, the District shall respond to a written request for a public record within ten business days after that request.
 3. **Extended Response Time:** Extraordinary circumstances may justify the District's failure to respond to a written request for a public record within ten business days and shall extend the time for response to that amount of time which is reasonably necessary to respond to the request, as determined by the Records Officer or Manager. Extraordinary circumstances shall include but not be limited to the following:
 - a. Some other governmental entity is currently and actively using the requested record.

- b. The record request is for either a voluminous quantity of records or requires the District to review a large number of records or perform extensive research to locate the requested materials.
 - c. The District is currently processing either a large number of records requests or is subject to extraordinary seasonal work loads in the processing of other work.
 - d. The request involves an analysis of legal issues to determine the proper response to the request.
 - e. The request involves extensive editing to separate public data in a record from that which is not public.
 - f. Providing the requested record requires computer programming or other format manipulation.
4. **Estimated Response Time:** When a record request cannot be responded to within ten business days, the Records Officer or the Chief Administrative Officer of the District (the “Manager”) shall give the requester an estimate of the time required to respond to the request.

C. Appellate Rights:

- 1. A written notice of a full or partial denial is to describe the record, or the portions of a record, to which access is being denied, and will include a citation to the provision or provisions of the Act, this Policy, or any other state or federal law, rule or regulation, or court order or decree, that justifies the denial. The notice of denial will also explain the requester’s right to appeal the denial to the Manager, the time limits for filing an appeal, and the name and business address of the District.
- 2. A notice of full or partial denial will be provided to the requester either in person or by sending, by U.S. mail or other reliable means such as e-mail , the notice of denial to the requester’s street, e-mail, or other known address.
- 3. The failure or inability of the District to respond to a request for a record within the time frames set out herein, or the District's full or partial denial of such a request, shall give the requester the right to appeal as provided in Section XI below.

X.FEES

- A. **Policy Regarding Fees:** Applicable fees for the processing of information requests under this Policy shall generally be set at actual cost or as otherwise established by policies adopted under this Policy.
- B. **Applicable Fees:** The District will charge the following fees for requests relating to GRAMA:
1. Reviewing a record to determine whether it is subject to disclosure.....No Charge
 2. Inspection of record by requesting personNo Charge
 3. Copy Fees (standard sizes)25 cents per page (for District prepared copies), or such other charge as the District may establish from time-to-time by Board resolution or motion
 4. Copy Fees (non-standard sizes)The greater of 25 cents per page or actual cost (for District prepared copies), or such other charge as the District may establish from time-to-time by Board resolution or motion
 5. Computer Disk or other Electronic MediaActual cost (including overhead and time of District staff)
 6. Other Forms.....Actual cost (including overhead and time of District staff)
 7. Miscellaneous Fees.....Actual cost (including overhead and time of District staff)
- C. **Formatting Fee:** If, in response to a record request, the District compiles a record in a form other than that normally maintained by the District, the cost of staff time for search, retrieval and other direct administrative costs incurred in complying with the request may not exceed the salary of the lowest paid employee who, in the discretion of the Records Officer or the Manager, has the necessary skill and training to perform the request provided, however, that no charge may be made for the first quarter hour of staff time involved in search, retrieval and other direct administrative costs incurred in compiling the record in a non-standard form or format.
- D. **Fee Waivers:** The District may fulfill a record request without charge when either the Records Officer or the Manager determines that releasing the record

primarily benefits the public rather than a person; the individual requesting the record is the subject of the record, is the parent or legal guardian of an unemancipated minor who is the subject of the record, is the legal guardian of a legally incapacitated individual who is the subject of the record, has a power of attorney from the subject of the record, submits a notarized release from the subject of the record or the subject's legal representative dated no more than ninety (90) days before the date the records request is made, is the health care provider if the record is a medical record or is a person to whom the record must be provided pursuant to court order or legislative subpoena; or the requester's legal rights are directly implicated by the information in the record and the requester is impecunious.

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

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

XI. APPEAL PROCESS

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

1. **Notice Regarding Privacy Rights:** If the Manager determines that the appeal involves a record that is subject to business confidentiality or affects the privacy rights of an individual, the Manager will see to it that a notice of the requester's appeal is sent to the affected person. If the appeal involves a business confidentiality claim, notice of the appeal shall be sent

to the business confidentiality claimant within three (3) business days after the Manager receives the notice of appeal unless a notice must be given to more than thirty-five (35) persons, in which event the notice shall be sent as soon as reasonably possible. Similarly, the Manager shall send notice of the business confidentiality claim and the schedule for the Manager's determination to the requester within three (3) business days after having received the notice of appeal. Any business confidentiality claimant shall have seven (7) business days after notice has been sent to the claimant to submit further support for the claim of business confidentiality.

2. **Decision by the Manager:** The Manager shall make a determination on the appeal within ten (10) business days after receipt of the notice of appeal or five (5) business days after receipt of the notice of appeal if the requester or interested party demonstrates that an expedited decision benefits the public rather than the requester or interested party or, if a claim of business confidentiality is involved, within twelve (12) business days after a copy of the notice of appeal has been sent to the person(s) who submitted the claim of business confidentiality. Notwithstanding the foregoing, if the appeal is filed by a person who is aggrieved, but is not the requester of the subject record (for example, a person who is aggrieved by the District's classification or designation of a particular record as non public) and the non requester is the only appellant, notwithstanding the foregoing, the determination on the appeal shall be made within thirty (30) days after the Manager receives the notice of appeal. Should a determination not be issued within the applicable time specified above, unless the parties agree in writing to extend the time limitation, the appeal shall be deemed to have been denied and the aggrieved person may appeal to an appeals board established by the District Board of Trustees as provided in Subsection XI.B.
3. **Informal Hearing:** The Manager may schedule an informal hearing or request any additional information deemed necessary to make a determination. At a hearing, if one is allowed, the Manager may allow the parties (including employees and consultants of the District) to testify, present evidence and comment on the issues. The Manager may also allow other interested persons to comment on the issues. In making his/her determination, the Manager shall consider such facts, evidence and arguments as deemed appropriate. Regardless of whether a hearing is held, the Manager is to issue a signed order either granting the petition or upholding the determination of the District, in whole or in part, no later than the time periods specified in Subsection 2 immediately above unless the parties, by written agreement, extend the time. Any failure by the Manager to issue a decision within the stated time frame shall constitute

an order of denial, which may be appealed as provided in Subsection XI.B.

4. **Written Notice of the Manager's Decision:** The Manager may, upon considering and weighing the various interests and public policies pertinent to the classification and disclosure or non-disclosure of any record, order the disclosure of information properly classified as private or as protected if the interests favoring access outweigh the interests favoring restriction of access. The District shall send a written notice of the Manager's determination to all participants. If the Manager affirms the denial in whole or in part, the notice shall include a statement that the requester or other aggrieved person has a right to appeal the denial to the appeal panel established by the District Board of Trustees provided that the written notice of further appeal is filed with the Manager within thirty (30) days after issuance of the Manager's written notice of decision or within thirty (30) days after the Manager is deemed to have denied the appeal as provided in Subsection XI.A.2.
5. **Delegation of Duties:** The Manager may delegate any of the duties of the Manager under this Section XI.A or under Section XI.B.

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

1. **Notice of Further Appeal:** The notice of appeal to the appeals board must contain the petitioner's name, mailing address, and daytime telephone

number; a copy of any denial of the record request; and a statement of the relief sought; and may also contain a statement of facts, reasons and legal authority in support of the appeal.

2. **Notice of Hearing:** Within five (5) business days after receiving a notice of appeal to the appeals board, the District Clerk, Manager or other designated person shall schedule a hearing for the appeals board to discuss the appeal which is at least ten (10) business days but not more than forty-five (45) calendar days after the notice of further appeal is received by the Manager. An expedited hearing may be scheduled upon application of the petitioner and for good cause shown, as determined by the Manager in consultation with the appeals board Chair. Within five (5) business days after receiving a notice of further appeal, a copy of the notice of hearing is to be sent to the petitioner and a copy of the notice of further appeal, a supporting statement, and a notice of hearing is to be sent to each member of the appeals board, be delivered to the Records Officer and the Manager, and be mailed to any person who made a business confidentiality claim for a record which is the subject of the appeal and to all persons who participated in the proceeding before the Manager. A written statement of facts, reasons and legal authorities in support of the Manager's position must be submitted to the members of the appeals board and mailed to the petitioner by first class mail, postage prepaid, not later than five (5) business days before the hearing. If an expedited hearing is scheduled, the Manager may modify the timing of the delivery of notices and documents accordingly.
3. **Request for Intervention:** No later than ten (10) business days after the notice of further appeal is mailed as set forth above, a person whose legal interests may be substantially affected by the proceeding may file a request for intervention before the appeals board. Any written statement of facts, reasons and legal authority in support of the intervenor's position shall be filed with the request for intervention. The person seeking intervention shall provide copies of the statement to all parties to the proceeding.
4. **Hearing:** At the hearing, the appeals board shall allow the parties (including employees and consultants of the District) to testify, present evidence and comment on the issues. The appeals board may also allow other interested persons to comment on the issues. In making its determination, the appeals board shall consider such facts, evidence and arguments as it deems appropriate. The information gathering portion of the appeal will be conducted during an open meeting of the appeals board, but the deliberative phase of the appeal proceeding may be held as a closed meeting of the appeals board. Furthermore, if the appeals board is

weighing the various interests and public policies pertinent to the classification and disclosure or nondisclosure of information classified as private, controlled or protected, and the appeals board must review the disputed records, the review shall be in a closed meeting of the appeals board.

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

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

XII. REASONABLE ACCOMMODATIONS

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

XIII. RECORD AMENDMENTS

Any government record held by the District may be amended or corrected as needed. Requests for amendments, corrections, or other changes shall be made in writing to the District Records Officer and shall set forth, with specificity, the requested amendment or correction. When an amendment or correction of a government record is made, both the original record and the amended or corrected record shall be retained, unless provided otherwise in the Act or other state or federal law.

XIV. VIOLATIONS/PENALTIES

- A. **Knowing Violation:** District employees who knowingly refuse to permit access to records in accordance with the Act and this Policy, who knowingly permit access to non-public records, or who knowingly, without authorization or legal authority, dispose of, alter, use or remove records or allow other persons to do so in violation of the provisions of the Act, this Policy or other applicable law or regulation, may be subject to criminal prosecution and disciplinary action, including termination.
- B. **Limitation on Damages:** In accordance with the Act, neither the District nor any of its officers or employees shall be liable for damages resulting from the release of a record where the requester presented evidence of authority to obtain the record, even if it may be subsequently determined that the requester had no such authority, as provided in Section 63G-2-803 of the Act.

XV. RECORDS OFFICER

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

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

XVI. RECORDS MAINTENANCE

- A. **Procedures:** Records maintenance procedures shall be developed to ensure that due care is taken to maintain and preserve District records safely and accurately over the long term. The Records Officer shall be responsible for monitoring the application and use of technical processes in the creation, duplication, and disposal of District records. He/she shall monitor compliance with required standards of quality, permanence, and admissibility pertaining to the creation, use, and maintenance of records.
- B. **Ownership of Records:** All District records shall remain the property of the District unless federal or state legal authority provides otherwise. Property rights to District records may not be permanently transferred from the District to any private individual or entity, including legally disposable, obsolete District records. This prohibition does not include providing copies of District records otherwise produced for release or distribution under the Policy.
- C. **Control of Access:** All requests for records are to be processed by the Records Officer under the direction of the Manager. If a member of the press or media, a governmental official, an attorney or any other third party contacts an employee, official or representative of the District requesting information regarding the District or an incident involving the District about which the employee, official or representative has information, the employee, official or representative is encouraged to refer such requests to the Manager or the Records Officer or a designee of either, who may respond to such requests for information in accordance with the requirements of the Act and the Policy.
- D. **Custodian of Records:** Custodians of any District records shall, at the expiration of their terms of office, appointment or employment, deliver custody and control of all records kept or received by them to their successors, supervisors, or to the District Records Officer.

XVII. CONTENT OF CERTAIN REPORTS

- A. **Definitions:** For purposes of this Section XVII, the following terms shall have the meanings indicated.

1. **Promotional Literature:** The term “promotional literature” refers to those reports, the primary or secondary purpose of which is to provide non-residents with information about the District.
2. **Report:** The term “report” means each account, statement, record of proceeding, summary of activities and other written or printed document required by statute that is prepared or produced by the District and distributed to the public. The term “report” does not mean written or printed documents the primary purpose of which is to provide biographical information about District officials.

B. **Restriction on Content:**

1. **Statutory Compliance:** In compliance with Utah Code Ann. § 52-8-201, a report may not include a photograph or likeness of any elected official provided, however, that a report that is promotional literature may contain the photograph or likeness of the Manager.
2. **Penalty:** If an elected official’s photograph or likeness appears on any report in violation of this Section XVII, and the report was prepared under the authority or at the direction of the elected official, that elected official will be personally liable for the cost of preparing and distributing the report as provided in Utah Code Ann. § 52-8-202.

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

Title: _____

(insert the District's name)
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