

**P / SM CSD PURCHASING ORDINANCE \_\_\_\_\_**

**AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE PAJARO / SUNNY MESA COMMUNITY SERVICES DISTRICT REGARDING PURCHASING AND BIDDING**

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The Board of Directors of the Pajaro / Sunny Mesa Community Services District hereby ordains as follows:

## **1.00 ADMINISTRATION**

### **§ 1.01 PURPOSE:**

The purpose of this ordinance is to inform and govern the District’s delegated authority, practices and to establish the District's policies, procedures, for bidding for purchases of supplies, inventory, materials, equipment , non-professional and professional personal services This ordinance is adopted pursuant to California Government Code §§ 61060 through 61063,

### **§ 1.02 PUBLIC WORKS EXCLUDED**

This ordinance does not apply to public works as public works are defined by California Labor Code § 1720.

### **§ 1.03 PURCHASES BY THE DEPARTMENT OF GENERAL SERVICES.**

As appropriate, the State of California Office of Procurement, California Department of General Services, may purchase miscellaneous equipment and supplies for the District as authorized by state law. The General Manager may sign and deliver all necessary requests and other documents in connection with such purchases.

### **§ 1.04 DEFINITIONS**

As used in this Ordinance, the following words and phrases shall have the following meaning:

#### **§ 1.04.01 BIDDER'S LIST:**

Bidder’s List shall mean a list of prospective suppliers, vendors, and qualified contractors capable of providing the commodity or service being bid upon, maintained by the General Manager.

§ 1.04.02 BOARD:

Board shall mean the Board of Directors of the Pajaro / Sunny Mesa Community Services District.

§ 1.04.03 COMMODITY:

Supplies, materials, equipment, and other tangible personal property appropriate for the reasonable operation of the District.

§ 1.04.04 COMPETITIVE BIDDING:

The formal or informal submission, or receipt, of verbal or written estimates or cost proposals in terms of dollars, person days of work required, percentage of construction cost, or any other measure of compensation whereby the District may compare prices and other relevant criteria. The competitive bidding process typically involves the submission of offers by bidders pursuant to a public notice inviting bidders to provide the District with a specified commodity or service, or to purchase District personal property which has been found by the Board not to be required for public use, and which offers are submitted under seal or by voice at a public auction.

§ 1.04.05 DISTRICT:

District shall mean the Pajaro / Sunny Mesa Community Services District.

§ 1.04.07 FORCE ACCOUNT:

Any work performed by District employees, or day's labor under District supervision or superintendence.

§ 1.04.08 GENERAL SERVICES:

Labor that does not require any unique skill, special background, or training and involve routine, recurring, and usual work for the continued operation and maintenance of the District. General services include the provision of telecommunication, gas, water, electric, light and power services and rentals of equipment and machinery.

§ 1.04.09 OPEN MARKET:

Purchase of a commodity or services that does not require the solicitation of competitive sealed bids for awarding to the lowest responsible bidder.

§ 1.04.10 PROFESSIONAL SERVICES:

Services performed by a physician, architect, engineer, land surveyor, construction manager, appraiser, expert, accounting firm, attorney, computer or information technology consultant, or other consultant or organization possessing a high degree of technical and professional skills and that require specific skills, experience and training, and professional judgment.

§ 1.04.11 REQUEST FOR PROPOSALS (RFP)

A Request for Proposals shall mean a process used for one-time project-based professional services procurement where the work scope is known; a lump sum price for the specified design or other professional services is primary and experience and qualifications are known.

§ 1.04.2 REQUEST FOR QUALIFICATIONS (RFQ)

A Request for Qualifications shall mean a process used for recurring, ongoing or on-call non-project-based professional services procurement, where the work scope is unknown, unit pricing for the specified design and other professional services is desired and no specific design exists, and experience and qualifications are unknown.

**2.00. GENERAL MANAGER**

**§2.01 POWERS AND DUTIES OF GENERAL MANAGER:**

The General Manager shall, under the direction of the Board and in compliance with the provisions of this Ordinance and applicable State law, have the following powers and duties.:

- (a) Purchase or contract for all Commodities, or General, Trade and Professional Services required by the District.
- (b) Submit to the Board, for review and approval, contracts for the purchase of Commodities or retention of General, Trade or Professional Services. After approval by the Board by Resolution, the General Manager may sign such contracts on the District's behalf.
- (c) Dispose of property pursuant to Section 7.
- (d) In consultation with District General Counsel, develop standard forms and specifications for invitations to bid and related bid documents, purchase orders, Construction Contracts, and contracts for General, Trade or Professional Services, and prescribe the use of other forms and procedures as may be required to carry out the provisions of this Ordinance.
- (e) Supervise the inspection of all Commodities and services purchased under this Ordinance to assure conformance with District specifications.
- (f) Maintain up-to-date Bidder's List, vendor's catalogs, files, and such other records as needed to perform these duties.
- (g) Ensure that purchasing specifications are written to encourage full competition in the marketplace, especially Monterey, San Benito, and Santa Cruz counties.
- (h) Perform such other tasks as may be necessary or appropriate to administer the provisions of this Ordinance.

**§2.02 DELEGATION OF AUTHORITY BY GENERAL MANAGER:**

If the General Manager is unavailable to take the actions described in this Ordinance, the Board shall review the item at a regular or special board meeting and the duties may be fulfilled by the President of the Board or an interim general manager after deliberation and action by the Board. may make the necessary purchases, securing competitive quotations whenever possible. That person may issue a verbal order to a vendor as necessary to resolve the immediate hazard. Such a person shall notify the General Manager of their actions as soon as reasonably possible.

**§ 2.03 COMPLIANCE**

The General Manager shall follow and administer this ordinance, recommend District practices, and shall take steps as are reasonable and proper to ensure compliance with this Ordinance.

**§ 2.04 AVAILABILITY OF FUNDS:**

The General Manager may authorize a purchase or contract only if there are appropriated, unexpended funds available in the District budget for the purchase or to pay the costs of such contract. If there are no unexpended and appropriated funds within the approved District budget, then the purchase or contract shall only be authorized by the Board with appropriate budget amendments.

**§ 2.05 DISTRICT STANDARDS:**

The General Manager may establish and maintain administrative standards and practices that implement this Ordinance, including, but not limited to:

- (a) Procedures and regulations for inspecting deliveries of supplies, materials, and equipment and for evaluating the provision of general, trade or professional services.
- (b) Procedures and regulations for submitting requisitions for supplies, materials, equipment, and services by District employees; and
- (c) Procedures and regulations for the control and safeguarding of District supplies, materials, and equipment and the maintenance of an inventory system for such supplies, materials, and equipment.
- (d) The General Manager shall inform the Board and provide copies during the next succeeding Board meeting after they promulgate any proposed administrative regulations.

**§ 2.06 BULK ORDERS:**

When practicable, the General Manager shall seek to reduce the number of purchasing transactions for regular, recurring or commonly used or purchased materials, inventory, supplies, and equipment by combining them into bulk orders.

### **§ 2.07 CHANGE ORDERS AND CONTRACT AMENDMENTS:**

The General Manager may negotiate, approve, and sign change orders and contract amendments, if the sum of all amendments does not exceed \$60,000. Any change order or contract amendment that cumulatively exceeds \$60,000 shall require Board approval.

## **3.0 EMERGENCY CONTRACTING**

### **§ 3.01 DETERMINATION OF EMERGENCY:**

The authority to declare the existence of an emergency or emergency situation, including but not limited to those described in California Government Code §§ 8558 and 54956.5 generally resides with the Board. When urgent circumstances preclude taking the time for such a determination by the Board, the General Manager may declare the existence of an emergency subject to ratification of the Board at its next Board meeting.

### **§ 3.02 BOARD NOTIFICATION AND FINDING EMERGENCY:**

The General Manager shall promptly report to the Board the emergency actions taken and the circumstances surrounding such an emergency.

## **4.0 EXEMPTIONS FROM BIDDING**

Unless determined to be exempt from competitive bidding under one of the following exceptions to competitive bidding requirements:

- (a) An emergency under § 4.0 requires that an order be placed with the nearest available source of supply, service, or equipment.
- (b) Reasonable attempts have been made to obtain informal bids or proposals, and fewer than three (3) proposals can be obtained.
- (c) Equipment, supplies, or non-professional services are unique, available only from one (1) source, or sought to match existing equipment or supplies already in use (also known as a “sole source purchase”).
- (d) Equipment, supplies, or non-professional services have been uniformly adopted or otherwise standardized in the District. In this case, evidence for the standardization shall be documented and maintained as a public record and approved by the Purchasing Officer before the purchase and then at least once every five (5) years.
- (e) The purchase is made cooperatively with one (1) or more other units of government through cooperative purchasing programs substantially the same as the District’s bidding procedures (sometimes called (piggy backing).
- (f) When in the opinion of the Purchasing Officer the equipment, supplies and non-professional services are available from a vendor who has been selected as the lowest bidder within the prior twelve (12) months by another public entity

using competitive bidding procedures substantially the same as those used by the District for the acquisition of such equipment or supplies (sometimes called “piggybacking”).

(g) The purchase of used supplies or equipment.

(h) Contracts for professional witness services if the purpose of such contracts is to provide for professional advice services or testimony relating to an existing or probable judicial proceeding in which the District is or may become a party, including contracts for special investigative services for law enforcement purposes.

(i) Contracts negotiated and/or prepared by the General Counsel or special counsel in connection with the settlement of a dispute, claim, or matter of litigation or threatened litigation.

(j) The purchase of books, magazines, newspapers, subscriptions, online library reference services, film, videos, and assorted materials for which contracts by competitive bid solicitation are not practical.

(k) Specialized seminar, training, and educational classes.

(l) Contracts for election services.

(m) Contracts for legal services.

(n) Franchise contracts; and

(o) Contracts for procuring and maintaining insurance policies.

## **5.0 BIDDING FOR PURCHASES OF EQUIPMENT, INVENTORY, SUPPLIES AND NON-PROFESSIONAL SERVICES**

### **§ 5.01 BID-SPLITTING OF TRANSACTIONS UNLAWFUL:**

The District shall not split requirements for Commodities, Trade or General Services, into amounts or estimated amounts of less than \$60,000 to avoid the provisions of this Section 6.

### **§ 5.02 WHEN BIDDING NOT REQUIRED**

Competitive bidding is not required for purchases of equipment, inventory, supplies or professional services expected to cost less than \$10,000.

**§ 5.03 INFORMAL BIDDING REQUIREMENTS FOR EQUIPMENT, INVENTORY, SUPPLIES AND NON-PROFESSIONAL SERVICES.**

5.03.01 INFORMAL BIDDING REQUIREMENT.

Equipment, inventory, supplies and non-professional services which are estimated to cost more than \$10,000 but less than \$60,000.00 shall be purchased pursuant to the informal competitive bidding procedures of this Ordinance .

§ 5.03.02 QUOTATIONS—NOTICE OF INVITATION—RESPONSES.

Invitations for quotations shall be made either by verbal or written request. Quotations from at least three (3) prospective sellers, vendors, suppliers, or contractors shall be requested.

§ 5.03.03 INFORMAL QUOTATIONS—SUBMISSION IN WRITING—RECORDKEEPING.

Written quotations, received via mailed letter, fax or email are required, and a record of open market quotations and orders shall be kept in accordance with the District's record retention policy after the receipt of such quotations.

§ 5.03.04 INFORMAL QUOTATIONS—REJECTION.

Quotations or proposals may be rejected if:

- (a) They fail to meet the specific purchase requirements in any respect;  
or
- (b) All quotations, for any reason whatsoever, and a new request for quotation or proposal may be invited.

§ 5.03.05 INFORMAL AWARD OF PURCHASE.

Purchases shall be awarded to the person submitting the lowest responsive and responsible quotation, except as follows:

- (a) If two (2) or more quotations are received for the same total amount or unit price, quality and service being equal, and if, the public interest will not permit the delay of inviting new quotations, then the lower quotation obtained through negotiation with the persons submitting the tie quotations may be accepted.
- (b) If no quotations are received, the required purchase may be made for the best price and terms available without further notice to bidders.

§ 5.03.06 INFORMAL FORM OF CONTRACT.

Purchase orders shall be used and approved by the General Manager to award the purchase of equipment and supplies and no professional services less than \$60,000. .



**§ 5.04 FORMAL BIDDING: EQUIPMENT, INVENTORY, SUPPLIES AND NON-PROFESSIONAL SERVICES.**

§ 5.04.01 FORMAL COMPETITIVE BIDDING REQUIRED:

A purchase of equipment, inventory, supplies and non-professional services, commodities or of General Services in an amount or estimated amount exceeding \$60,000 shall be made pursuant to the Competitive Bidding requirements set forth in this § 5.04 et seq.

§ 5.04.02 FORMAL FORFEITURE OF BID SECURITY:

Upon award to the lowest responsible responsive bidder, if the successful bidder fails to proceed with the sale to the District or execute a contract with the District within 10 days from the date of the award, the bidder shall forfeit the bid security.

§ 5.04.03 FORMAL BID PROTEST PROCEDURES:

Any bid protest from an unsuccessful bidder must be submitted in writing to the District by the seventh day following the date of award. A "bid protest" means any protest, objection, complaint, or challenge to, concerning or against (i) a rejection of a bidder for any reason; (ii) a contract award to the apparent low bidder; (iii) another bidder's bid; or (iv) the legality or enforceability of the bid documents or contract documents or process. The bidder filing the protest must have submitted a bid for the purchase or contract. The protest shall be in the form of a letter or memorandum to the General Manager and shall include the following: (i) a complete statement of the basis or bases for the protest, including supporting documents; (ii) a reference to the specific portion(s) of the contract or bid documents that form(s) the basis of the protest; and (iii) the name, street and email address, and telephone number of the person representing the protesting bidder.

The bidder filing the protest shall concurrently transmit a copy of the protest document and any attached documentation to all other bidders with a direct financial interest who may be adversely affected by the outcome of the protest, including all other bidders who appear to have a reasonable prospect of receiving an award depending upon the outcome of the protest.

The Board shall issue a prompt decision on the protest. If the Board determines that a protest is frivolous, the bidder submitting the protest may be determined to be irresponsible and be deemed ineligible for future contract awards as described herein.

The procedure and time limits set forth in this Ordinance are mandatory and are the bidder's sole and exclusive remedy in the event of a bid protest. Failure to timely comply with these procedures will constitute a waiver of any right to further pursue the bid protest, including, but not limited to filing a petition for writ of mandate, Government Claims Act claim, or a lawsuit or legal proceeding.

§ 5.04.04 FORM OF CONTRACT AFTER FORMAL BIDDING.

Contracts shall be used to award the purchase of equipment, inventory, supplies and non-professional services, commodities or of General Services costing more than \$60,000.

§ 5.04.05 REJECTION OF IRRESPONSIBLE BIDDER:

The General Manager may declare a bidder to be irresponsible for the following reasons:

- (a) Failure to furnish satisfactory proof of responsibility when requested by the District.
- (b) Unsatisfactory delay in the performance of a contract or purchase order.
- (c) Unsatisfactory performance of a contract or purchase order.
- (d) Submittal of a frivolous bid protest as described in Section 6.04 above; or
- (e) Violations or attempted violations of this Ordinance.

Once a bidder has been determined to be irresponsible, the General Manager may remove the bidder from the Bidder's List and deem the bidder to be ineligible for future contract awards for a reasonable period as determined by the General Manager. The barred bidder shall be furnished with a written notice explaining the reasons for the irresponsibility determination and may appeal such decision to the Board within 10 days of receiving the notice.

## **6.00 CONTRACTS FOR PROFESSIONAL SERVICES**

### **§ 6.01 PROFESSIONAL SERVICE CONTRACTS NOT EXCEEDING \$10,000.**

For Professional Service contracts in an amount or estimated amount of \$10,000 or less, the General Manager may negotiate, approve, and sign the Professional Services contract through negotiation, comparative pricing or informal Competitive Bidding, whichever method the General Manager deems most appropriate in the circumstances.

The General Manager may however approve the contract only if there are unexpended funds available in the District budget to pay the costs of the Professional Services contract. If there are no unexpended funds within the approved District budget, then the contract must be authorized by the Board.

### **§ 6.02 PROFESSIONAL SERVICES CONTRACTS EXCEEDING \$10,000:**

#### § 6.02.01 RFQ OR RFP REQUIRED

A contract for Professional Services in an amount or estimated amount exceeding \$10,000 shall be made pursuant to the solicitation procedures of this Ordinance:

#### § 6.02.02 RFP OR RFQ PREPARATION:

The General Manager shall prepare a RFQ (for ongoing or on-call non-project based professional services) or RFP (for one-time project based professional services) that describes the one time Professional Services needed, the required minimum qualifications, any required pre-proposal conferences, any professional, errors and omissions, workers compensation, or general liability insurance requirements, the

requirement that the proposal response be sealed, the deadline date and time for submitting the response to the RFQ or RFP, and the place to submit the response.

The General Manager shall review all proposals received in compliance with the RFP or RFQ requirements and may conduct follow-up interviews with the most qualified consultants. The proposals need not be opened in public. At the next Board meeting following the opening of proposals, the General Manager shall present the proposals to the Board for consideration and shall make a recommendation to the Board on an award to the most qualified proposal based on the factors herein.

**§ 6.02.03 FACTORS TO CONSIDER IN SELECTING PROFESSIONAL SERVICES CONSULTANT:**

A Professional Services contract shall be awarded only to firms and persons which have demonstrated a satisfactory level of experience, competence, training, credentials, character, integrity, reputation, financial responsibility, resources, equipment, staffing, and other similar or appropriate qualifications necessary to competently perform the services required by the District and within budget. The cost of the Professional Services shall not be the sole determinative factor, as it may be in the District's best interest to award the Professional Services contract to a higher-priced consultant based on the scope of services, availability, unique skills, staffing levels, timing, prior experience, familiarity with District operations, and other information as determined by the District. The information required for determining the qualifications for providing the District with such services shall be developed by the General Manager.

When selecting an architectural, landscape architectural, engineering, and environmental, land surveying, or construction project management firm, the selection will be based on the demonstrated competence and professional qualifications necessary for the satisfactory performance of the required services in accordance with [California Government Code section 4526](#).

**§ 6.02.04 AWARD OF CONTRACT:**

Instead of a RFP or RFQ, if the General Manager determines that a RFQ or RFP would not be in the best interests of the District, the General Manager may recommend a sole source Professional Services contract to the Board. In its discretion, the Board may award the contract to the person or firm recommended by the General Manager or, if applicable, another proposer, reject all proposals and re-solicit proposals, reject all proposals, and not proceed with the contract, or reject all proposals and direct that the General Manager solicit and negotiate a contract with a specific person or firm.

**§ 6.04 CONTRACT AMENDMENTS:**

The General Manager may negotiate and execute Professional Services contract amendments if the sum of all amendments does not exceed the approved contingency amount for that specific contract. Any contract amendment that, in addition to any approved contingency amount, shall require Board approval.

## **7.00 DISPOSAL OF DISTRICT PROPERTY**

### **7.01 DISPOSAL OF SURPLUS REAL PROPERTY:**

The General Manager shall dispose of real property that the Board has determined to be no longer necessary for the District's use in compliance with the requirements set forth in the California Surplus Lands Act at Government Code §§ [54220 through 54233](#), the County Park Abandonment Law of 1959 at California Government Code § 25580 et seq, or as otherwise directed by the Board and in compliance with State Law, in particular the California Community District Law at California Government Code § 61000 et seq.

### **7.02 DISPOSAL OF SURPLUS PERSONAL PROPERTY:**

This section applies to surplus personal property, which is personal property owned by the District that the Board has declared surplus as inadequate or no longer necessary for the needs of the District. The General Manager may sell surplus personal property, or trade-in surplus personal property, as the Manager deems in the best interests of the District. The General Manager may discard or dispose of unsalable surplus personal property in any appropriate manner. The General Manager may also discard or destroy surplus personal property in any appropriate manner that may have some resale value but where, because of safety or liability concerns, destruction or disposal is preferable to sale.

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## **SECTION 3. SUPERSEDE.**

This ordinance supersedes all prior inconsistent District practices, ordinances, resolutions, policies, rules, or regulations concerning the subject matter of this ordinance.

## **SECTION 4. EFFECTIVE DATE.**

This Ordinance shall take effect 30 days after its adoption.

## **SECTION 5. SEVERABILITY.**

If any section or provision of this Ordinance or the application of it to any person, transaction or circumstance is held invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Ordinance that can be given effect without the invalid or unenforceable provision, and to this end the provisions of this Ordinance are declared to be severable.

**SECTION 6. PUBLICATION**

**Publication.** The District Secretary is directed to prepare and publish a summary of this ordinance once, with the names of the members voting for and against the ordinance, in a newspaper published in the District within 15 days after the adoption of this ordinance.

**INTRODUCED** by the Board of Directors on the \_\_\_\_ day of November 2023.

**PASSED AND ADOPTED** by the Board of Directors of the Pajaro / Sunny Mesa Community Services District at a regular meeting on the 1—<sup>h</sup> day of \_\_\_\_\_, 2024 by the following roll call vote: