SWEETWATER SPRINGS WATER DISTRICT

TO: Board of Directors **AGENDA NO. III-D**

FROM: Steve Mack, General Manager

Meeting Date: October 3, 2013

Subject: DISCUSSION/ACTION RE ADOPTION, BY TITLE ONLY, WAIVING READING OF TEXT OF ORDINANCE 48 REVISING POLICY 3700, BIDDING AND PURCHASING AND POLICY 1020, CONFLICT OF INTEREST

RECOMMENDED ACTION: Adopt, by title only, waiving reading of text of Ordinance 48 Revising Policy 3700, Bidding and Purchasing and Policy 1020, Conflict of Interest.

FISCAL IMPACT: None.

DISCUSSION:

The annual audits of the past few years have pointed out that the District does not follow its purchasing policy as stated in Policy Number 3700. Review of the policy has shown that it has inconsistent direction as well as practices that are no longer followed. In the process of trying to fix the existing policy, District Legal Counsel, David Warner, suggested modeling a revised purchasing policy on that of the City of Healdsburg and that is what we have done. We believe this revised policy incorporates the important elements of the existing policy – it changes no purchasing limits – and is much more straightforward and easy to follow. Legal Counsel David Warner requested one small change in Section 3700 – 3700.80A was deleted because it references the public project definition for cities which is inapplicable to the District.

The changes to Policy Number 1020, Conflict of Interest are necessary because the County of Sonoma has changed its procedures which allows it to delegate some responsibility for filing statements of economic interests to municipalities and special districts. These changes are small and should have little impact on District operations. These changes are shown in "Track Changes" format in Exhibit A. Exhibit A has a small change from the introduced Ordinance – the correct link and web address for the FPPC standard terms of conflict of interest code is included in this final version. This change and the one to Section 3700 are small changes and will not required reintroduction of the Ordinance.

Staff recommends adoption of Ordinance 48 which is attached as Exhibit A. Ordinance 48 was introduced at the September 5, 2013 meeting. If adopted at the October 3, 2013 meeting, Ordinance 48 will become effective 30 days after the meeting.

ORDINANCE NO. 48

AN ORDINANCE OF SWEETWATER SPRINGS WATER DISTRICT REPLACING SECTION 3700 AND SECTION 1020 OF THE DISTRICT'S POLICIES AND PROCEDURES

WHEREAS, Section 3700 of the Sweetwater Springs Water District's Policies and Procedures contains important policies regarding District purchasing, bidding and sales practices, and;

WHEREAS, Section 1020 of the Sweetwater Springs Water District's Policies and Procedures contains important policies regarding District conflict of interest policies, and;

WHEREAS, District staff, legal counsel and the Board of Directors have reviewed and discussed revisions to Section 3700 and Section 1020; and

WHEREAS, the purpose of reviewing Section 3700 was to update the Policies to reflect current practices, improve wording and consistency, and make it easier to follow; and

WHEREAS, the purpose of reviewing Section 1020 was to update the Policies to reflect current County of Sonoma requirements which have been recently changed; and

WHEREAS, Exhibit A attached is a clean, final version of Section 3700 and Section 1020; and

WHEREAS, Ordinance 48 was introduced at the September 5, 2013 Board meeting**.**

NOW THEREFORE BE IT ORDAINED by the Board of Directors of the Sweetwater Springs Water District, County of Sonoma, as follows:

Section 1. Section 3700 and Section 1020 of the District's Policies and Procedures are hereby replaced with a new Section 3700 and Section 1020, a copy of which is attached as Exhibit A.

S**ection 2**. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of the Ordinance. The Board hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

Section 3. Effective Date. This ordinance shall become effective thirty (30) days after the date of its adoption by the Board of Directors.

This Ordinance was adopted on October 3, 2013, on roll call by the following vote:

Tim Lipinski _____
Gaylord Schaap: _____
Victoria Wikle: _____
Richard Holmer: _____
Sukey Robb-Wilder: _____

_____
Richard Holmer
President of the Board

ATTEST:

_____
Julie A. Kenny
Clerk of the Board

Exhibit A. Ordinance 48, Policies and Procedures Sections 3700 and 1020

SWEETWATER SPRINGS WATER DISTRICT
Policy Title: **Bidding, Purchasing, Sales, and Transfers**
Policy Number: 3700
Date Approved: February 9, 1993
Date Revised: September 5, 2002
Date Revised: September 5, 2013

Subsections:

3700.10 Purpose of purchasing policies and procedures.

3700.20 Definitions.

3700.30 Purchasing officer designated and duties established.

3700.40 Procedures for purchases of less than $25,000.

3700.50 Procedures for purchases of more than $25,000 – Formal sealed bids.

3700.60 Purchasing award.

3700.70 Purchasing award – Factors to be considered.

3700.80 Exceptions to this section.

3700.90 Splitting orders prohibited.

3700.100 Prevailing wages.

3700.110 Inspection and testing of purchases.

3700.120 Surplus supplies and equipment.

3700.130 Surplus real property.

3700.140 Purchase of Real Property - Eminent Domain.

3700. 10 Purpose of purchasing policies and procedures.

The purpose of this section is to (A) establish efficient and effective processes for the purchase or lease of services, supplies, materials and equipment at the lowest feasible cost commensurate with the level of quality required; (B) exercise financial control and accountability over purchases; and (C) clearly define authority for the purchasing function. In adopting the ordinance codified in this section, it is the intent of the District to

responsibly manage public funds and provide responsibility for, and consistency in, implementing purchasing policies and procedures.

3700.20 Definitions.

As used in this section, the following terms shall have the meanings described below:

A. "District" means the Sweetwater Springs Water District, including the political entity and its geographical boundaries.

B. "Excluded goods or services" means goods or services (as described below) in which any District official or District employee has a financial interest.

C. "Goods or services" means services, supplies, materials and equipment that are the subject of this section.

D. "Purchasing officer" means the District General Manager or designee of the District General Manager.

E. "This section" means Section 3700

3700.30 Purchasing officer designated and duties established.

A. Purchase agreements up to an amount of $25,000 may be authorized and executed by the purchasing officer. Purchase agreements of $25,000 or more shall be authorized by the District Board.

B. The District General Manager is designated as purchasing officer for the District.

C. The District General Manager may delegate all or a portion of the duties of purchasing officer to any District staff member. The purchasing officer shall have the authority to:

3700.30.01. Purchase, or contract for the sale or lease of, goods or services required by the District in accordance with purchasing procedures established in this section and other applicable law;

3700.30.02. Negotiate and recommend execution of contracts for purchase or lease of goods or services in accordance with purchasing procedures established in this section and other applicable law;

3700.30.03. Act to procure for the District the necessary quality in goods or services in accordance with the provisions of this section and other applicable law;

3700.30.04. Prepare and recommend to the District Board amendments to the purchasing rules;

3700.30.05. Establish and maintain such forms as reasonably necessary to the purchasing function and maintain other records necessary for the efficient acquisition of goods or services;

3700.30.06. Supervise the inspection of all goods or services purchased or leased by the District to ensure conformance with specifications;

3700.30.07. Recommend and oversee the sale or disposal of all goods or services which cannot be used by the District, or which have become unsuitable for District use;

3700.40 Procedures for purchases of less than $25,000.

For purchases of goods or services of less than $25,000, or that are not subject to other laws and/or procedures, the purchasing officer shall use the following procedures:

3700.40.01. For purchases of goods or services having an estimated value of $1,000 or less, informal quotes may be obtained from vendors but are not required.

3700.40.02. For purchases of goods or services having an estimated value of more than $1,000, but less than $25,000, firm quotes either received in writing or taken verbally but confirmed in writing shall be obtained. At the discretion of the purchasing officer, the competitive bid process described in 3700.50 may be used for the acquisition of goods or services having an estimated value of more than $1,000, but less than $25,000.

3700.50 Procedures for purchases of more than $25,000 – Formal sealed bids.

When the estimated amount of value involved in a purchase transaction exceeds $25,000, the authorization to award a purchase contract shall be made by District Board resolution following a sealed competitive bid process as outlined below:

3700.50.01. A notice inviting bids shall be prepared and shall include a general description of the goods or services to be purchased or sold, where bid instructions and specifications may be obtained, the time and place for bid openings, and whether a bid deposit or bond, or other security, such as performance, payment or maintenance bonds, will be required.

3700.50.02. A notice inviting bids shall be advertised at least twice in a newspaper of general circulation in the District with the first publication being at least 10 days prior to the opening of bids.

3700.50.03. When required by law or deemed appropriate by the purchasing officer, and if included in bid instructions, bidders may be required to submit a bid deposit or bond in an amount determined by the purchasing officer. Bidders shall be entitled to return of bid security, except that a successful bidder (and a successful bidder's surety, if a bid bond is required) shall be liable for any damages suffered or incurred by the

District upon refusal or failure to execute a contract within 10 days after the notice of award of contract has been mailed, unless the District is responsible for the delay.

3700.50.04. The District Board may, on refusal or failure of the successful bidder to execute the contract, award it to the next lowest responsible bidder. If the District Board awards the contract to the next lowest bidder following a forfeit of the bid security by the lowest bidder, the amount of the lowest bidder's bid security shall be applied by the District to the difference between the low bid and the second lowest bid; the surplus, if any, shall then be returned to the lowest bidder.

3700.50.05. When deemed appropriate by the purchasing officer, and if included in bid instructions, any person or entity entering into a contract with the District may be required to furnish a faithful performance deposit or bond in an amount determined by the purchasing officer.

3700.50.06. Sealed bids shall be submitted to the purchasing officer and shall be identified as bids on the envelope. Bids shall be opened in public at the time and place stated in the public notices. A tabulation of all bids received shall be open for public inspection during regular business hours for a period of not less than 30 calendar days after the bid opening.

3700.50.07. In its sole discretion, the District Board may reject all bids presented and readvertise for bids.

3700.60 Purchasing award.

In awarding a contract for goods or services that is subject to this section, the following procedures and policies shall be applied:

A. Except as may otherwise be provided in this section, contracts that are subject to this section shall be awarded to a responsible bidder who submits the lowest responsive bid.

B. If two or more bids received from responsible bidders are for the same total amount or unit price, quality and service being equal the purchasing officer or District Board (depending on who will make the award) may accept the lowest bid made by negotiation with the tie bidders.

3700.70 Purchasing award – Factors to be considered.

A. In determining bid responsiveness, the purchasing officer or District Board (depending on who will make the award) shall consider whether the bid documents are completed as required and the bid generally conforms to the bidding requirements. The purchasing officer or District Board may waive any bid nonconformities in accordance with applicable law. Any conditions or qualifications included by a bidder in a bid will be considered when determining whether a bid is responsive.

B. In its discretion, the purchasing officer or District Board (depending on who will make the award) may use any of the following criteria in evaluating the responsibility of bidders:

3700.70.01. The ability, capacity and skill of the bidder to perform the contract or provide the service required.

3700.70.02. The ability of the bidder to perform the contract or provide the service promptly, or within the time specified, without delay or interference.

3700.70.03. The reputation and experience of the bidder, including the District's previous experience with the bidder.

3700.70.04. Prior and current compliance by the bidder with applicable law, including, without limitation, compliance with any applicable licensing requirements.

3700.70.05. The sufficiency of the bidder's financial and staffing resources for performing the contract or providing the goods or services.

3700.70.06. The quality, availability and adaptability of the supplies or contractual services to the particular use required.

3700.70.07. The ability and availability of the bidder to provide future maintenance/service.

3700.70.08. Any conditions or exceptions attached to the bid by the bidder.

3700.80 Exceptions to this section.

~~A. This section is expressly made inapplicable to bids for public projects as defined by the state of California in the Public Contracts Code, Section 20160, et seq.~~

~~B.~~ The following conditions constitute sufficient cause to dispense with the bidding requirements of this section and such requirements shall not apply to:

3700.80.01. Contracts for professional or expert services, such as, but not limited to, services rendered by architects, attorneys, engineers, and other specialized consultants.

3700.80.02. Goods or services which can be provided by only one supplier or only from one source due to a patent or copyright.

3700.80.03. Contracts for advertising, ordinary travel expense items, and subscriptions to trade publications or other publications used by the District for a public purpose.

3700.80.04. Situations where no bids have been received following bid announcements or all bids received exceed budget appropriations or costs estimates.

3700.80.05. Emergency conditions which involve a sudden, unexpected occurrence or discovery of a condition or circumstance that poses a clear and imminent danger requiring immediate action and that compels placing an order with the most expedient source of supply.

3700.80.06. Contracts for janitorial services for District buildings and facilities.

3700.80.07. Products or services for which other public agencies have gone through a competitive bidding process and are able to have the bid prices they received extended to the District. These “cooperative purchasing” or “piggyback purchasing” agreements (including, but not limited to, CCOP State Department of General Services, U.S. General Services Administration, any county, and state cooperative purchasing pools) in which the District is eligible to participate may be used in lieu of any bidding requirements under this section.

3700.80.08. When the estimated value of the goods or services is less than $1,000.

3700.80.09. When the District Board specifically waives the competitive bid process and authorizes staff to negotiate the purchase.

3700.90 Splitting orders prohibited.

It is unlawful to split or separate into smaller orders the purchase of goods or services for the purpose of evading the competitive bidding provisions of this section. For goods or services which are purchased repeatedly throughout a year, the bidding procedures used shall be consistent with the estimated cumulative expenditures during a 12-month period.

3700.100 Prevailing wages.

Potential bidders for goods and services that are subject to the requirements of the California Prevailing Wage Law (California Labor Code Section 1720, et seq.) shall be notified of the applicability of prevailing wage requirements in the bid documents and shall comply therewith.

3700.110 Inspection and testing of purchases.

The purchasing officer is authorized to order the inspection of supplies and equipment delivered and services performed to determine their conformance with the specifications set forth in the order or contract. The purchasing officer shall have authority to require chemical and physical tests of samples submitted with bids and samples of deliveries which are necessary to determine their quality and conformance with specifications.

3700.120 Surplus supplies and equipment.

At such times as determined by the purchasing officer, reports shall be prepared showing all supplies and equipment which are no longer used or which have become obsolete or worn out. The purchasing officer shall have the authority to sell, trade or exchange all supplies and equipment. All surplus property valued at more than $10,000.00 requires a District Board resolution declaring it surplus. Upon declaration of an asset as surplus, the District General Manager shall have the authority to dispose of supplies and equipment in whatever manner shall best serve the interests of the District.

3700.130 Surplus Real Property Belonging to District.

Surplus real property belonging to the District shall be disposed of, sold or transferred only as the Board of Directors may prescribe, but unless otherwise prescribed in any case, the following procedures therefore shall be followed:

3700.130.01. A notice shall be given by the Clerk of the Board stating that the District proposes to sell certain described property and stating the time and place when sealed bids will be received thereon.

3700.130.02. The Board of Directors shall fix the time and place for the receipt of such bids and shall instruct the Clerk of the Board with respect thereto.

3700.130.03. Such notice calling for sealed bids shall be published at least once in a newspaper of general circulation printed, published and circulate within the District or County of Sonoma, State of California, at least ten days prior to the date fixed for the receipt and opening of such bids.

3700.130.04. Upon the receipt of such bids and at the time and place fixed therefore, the same shall be publicly opened and declared by the Board of Directors and the property sold to the highest bidder therefore, provided, however, that the Board may reject all bids and retain the property or determine that bids shall again be called for.

3700.130.05. Nothing herein set forth shall apply to any easement, license or lease of land for a term of fifty (50) years of less; provided that such easement, license or lease and all use thereunder shall be subordinate to use of such land by the District for the major purposes of the District.

3700.140 Purchase of Real Property - Eminent Domain.

If and whenever the Board of Directors shall determine that the District requires and should purchase real property, or any interest therein, it shall do so without any call for bids and in such manner as may be specified in each instance. In the event the Board shall so determine, it may in any instance proceed with eminent domain proceedings.

1020 Conflict of Interest

Date Approved: _____
Date Revised: October 7, 2004
Date Revised: September 5, 2013

1020.10 The Political Reform Act, Government Code Section 81000 et seq., requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission ~~(http://www.fppc.ca.gov/)~~ Section 18730 (http://www.fppc.ca.gov/legal/regs/current/18730.pdf) has adopted a regulation, 2 Cal. Code of Regs. Section 18730, which contains the terms of a standard conflict of interest code. It can be incorporated by reference and may be amended by the Fair Political Practices Commission after public notice and hearings to conform to amendments in the Political Reform Act. Therefore, the terms of 2 Cal. Code of Regs. Section 18730 and any amendments to it duly adopted by the Fair Political Practices commission are hereby incorporated by reference and, along with the attached Appendix "A" in which members of the Board of Directors and employees are designated, and in which disclosure categories are set forth, constitute the conflict of interest code of the SWEETWATER SPRINGS WATER DISTRICT.

1020.20 Board Members and the General Manager shall file statements of economic interests with the clerk of the County of Sonoma. All other d~~D~~esignated employees shall file statements of economic interests with the ~~clerk of the County of Sonoma~~Clerk of the Board for the Sweetwater Springs Water District.

APPENDIX "A"

General Provisions:

An investment, interest in real property, income, or position of management is reportable if the business entity is in which the investment is held, the interest in real property, the income or source of income, or position of management may foreseeably be affected materially by any decision made or participated in by the designated employee by virtue of the employee's position.

Each designated employee shall disclose his or her financial interests pursuant to the appropriate disclosure category as indicated in Appendix "B".

"Financial Interests" are reportable only if located within or subject to the jurisdiction of the District, or if the business entity is doing business or planning to do business in the District, or has done business within the District at any time during the two (2) years prior to the filing of the statement. In addition to other activities, a business entity is doing business within the District if it owns real property within the District. Reportable real property interests include those located within two (2) miles of the District or within two (2) miles of any land owned or used by the District.

Disclosure Categories:

Category 1:

Designated officers and employees in this category must report
Investments, interests in real property, income, and any business entity in which the person is a director, officer, partner, trustee, employee, or holds any position in management.

Category 2:

Designated officers and employees in this category must report all income from and investments in businesses that provide or sell services or supplies of the type associated with job assignment and utilized by the District.

APPENDIX "B"

Designated Positions	Disclosure Category
Members of the Board of Directors	1
General Counsel	1
District Engineer	1
Consultants*	1
General Manager	1
Field Manager	2
Office Manager	2

*Consultants are those persons or firms who provide under contract information, advice, recommendation or counsel to the District except as provided in 2 Cal Code of Regs Section 18706 a2(A) and (B).

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