

**MIDWAY SEWER DISTRICT
RESOLUTION NO. 2015-10**

RESOLUTION AMENDING DISTRICT CODE

Background:

1. Chapter 57.08 RCW authorizes the Board of Commissioners to dispose of surplus property.
2. The Board intends to establish a formal policy regarding the allowable methods of disposing of surplus property.

Resolution: NOW THEREFORE, BE IT RESOLVED, that the Board of Commissioners of Midway Sewer District approves the following additions to the Midway Sewer District Code:

Title 3 of the Midway Sewer District Code is hereby amended to add the following new Chapter:

Chapter 3.37 Surplus Property

3.37.010 Purpose

It is the purpose of this policy to establish procedures for the lawful disposal of District owned property that has been determined by staff to be of limited or no value to the District. It is also the purpose of this policy to allow for the flexible application of these guidelines for more efficient and cost effective dispositions of property where the strict application of the procedures would not be in the District's best interest.

3.37.020 Definitions

- a) *Personal Property.* All equipment, material, fixtures, supplies and other personal property owned by the District.
- b) *Real Property.* All interests in real property owned by the District.
- c) *Property.* References to Property in this chapter include both Personal Property and Real Property.
- d) *Fair Market Value.* The value of the Property that would be obtained through an arms length transaction using a Commercially Reasonable Means of sale, or the value established by a formal third party appraisal.
- e) *Commercially Reasonable Means.* Process or procedures designed to obtain the highest value for surplus property which may include but are not limited to: public bidding procedures, consignment sales, sales through want ads, internet sites or other form of public notice, auctions, garage sales, sales through brokers, or privately negotiated sales provided that there is independent documentation that the private sale is for Fair Market Value. Examples of Commercially Reasonable Means include, but are not limited to the following:

- 1) Personal Property can be submitted to the Washington State Surplus Property program.
- 2) Property can be sold to other government entities at fair market value unless otherwise declared by the Board of Commissioners to be in the best interests of the public.
- 3) Trade-ins of old equipment to upgrade equipment of the same or reasonably related kind are permitted when it is in the best interests of the District.
- 4) Personal Property can be sold for scrap. Scrap is any equipment or material that cannot serve its original purpose.
- 5) Personal Property that is still in working order can be sold at a public sale.

3.37.030 Authorization for Disposition of Surplus Property.

- a) *Board of Commissioners:* The Board of Commissioners shall approve by Resolution the decision to surplus any Property of the District. The Resolution shall identify the surplus Property and shall direct that the Property be disposed of consistent with this policy unless the Resolution establishes an exception to this policy.
- b) *General Manager.* The General Manager shall approve all decisions to surplus Personal Property.

3.37.40 Disposition of Surplus Property.

- a) *Estimated Value of Personal Property less than cost of disposal.* When staff has determined that the cost of disposal exceeds the value of the Personal Property, such determination should be documented in writing. The Personal Property may then be disposed in any manner deemed suitable by staff.
- b) *Estimated Value of Personal Property exceeds cost of disposal but is less than \$2,500.00.* Personal Property shall be disposed of using Commercially Reasonable Means approved by the General Manager
- c) *Estimated Value of Personal Property exceeds \$2,500.00 and all Real Property.*
 - 1) Personal Property and Real Property shall be disposed of using Commercially Reasonable Means approved by the General Manager.
 - 2) Prior to completing the sale District staff shall publish a notice of intention to sell once a week for two consecutive weeks in a newspaper of general circulation in the District. The notice shall describe the property and state the time and place at which it will be sold or offered for sale, the terms of sale, whether the property is to be sold at public or private sale, and if at public sale the notice shall call for bids, fix the conditions of the bids and reserve the right to reject any and all bids for good cause.
- d) Documentation of Sales.
 - 1) Any inventoried items that are sold or scrapped shall be documented.

- 2) Sales of Personal Property in excess of a value of \$500.00 shall be transferred pursuant to a Bill of Sale in a form approved by District legal counsel
- 3) Sales of Real Property shall be by deed in a form approved by District legal counsel.

3.37.050 Employee Purchases of Surplus Property.

- a) Employees, their spouses, and their agents are not permitted to purchase District surplus Property except in the following situations. Purchases of surplus Personal Property valued at less than \$1,500 when such property is sold in through a sealed public bidding process or if purchased at a sale open to the public and the employee pays a Fair Market Value price.

Adoption: ADOPTED at a regular meeting of the Board of Commissioners of Midway Sewer District on May 13, 2015 the following Commissioners being present and voting:

Commissioner

Commissioner

Commissioner

Commissioner

Commissioner

EXHIBIT A
BILL OF SALE AND HOLD HARMLESS AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties to this Agreement, the _____, a Washington municipal corporation, (“District”) does hereby sell and transfer to _____, a _____ (“Buyer”) all right, title, and interest that the District may have in the _____ (“Equipment”) identified in the attached and incorporated Exhibit A, which have been found to be surplus to the District’s needs.

The District hereby warrants to Buyer that immediately prior to the delivery of this Bill of Sale, the District was the owner of the full legal title to the described Equipment and that the District had the lawful right to sell the same and that good and clear title to the Equipment is hereby vested in Buyer free and clear of all liens, claims, encumbrances, and rights of others. The District makes no warranty with respect to the Equipment and Buyer warrants that it has inspected the described Equipment, is aware of any defects in such equipment, and has determined that the Equipment is in a reasonable safe condition for Buyer’s use. **THE EQUIPMENT IS OUT OF SERVICE AND MAY NOT MEET ANY CURRENT STATE OR FEDERAL SAFETY STANDARDS.**

Buyer accepts the Equipment “as is,” and the District makes no warranty of any kind, express or implied, or arising by operation of law, by course of dealing or arising by performance, trade practice, or otherwise. The District disclaims all other warranties, including without limitation, any implied warranties of merchantability or fitness for a particular purpose. Repair or replacement of defective parts shall be the sole obligation of Buyer. In no event shall the District be liable for direct, indirect, incidental, exemplary, consequential, or special damages arising in any manner whatsoever, even if the District had been previously advised of the possibility of that damage. The District’s maximum liability shall in no event exceed the price of the surplus Equipment specified herein. No person has authority to make any claim, representation, warranty, promise, guarantee or commitment on behalf of the District that is not expressed in this agreement. THE BUYER SPECIFICALLY ACKNOWLEDGES THAT THE EQUIPMENT MAY NOT MEET ANY CURRENT STATE OR FEDERAL SAFETY STANDARDS.

BY SIGNING THIS AGREEMENT, THE BUYER AFFIRMS:

- 1) That the District has made Buyer aware that the Equipment to be sold under this agreement is used and has been determined by the District to be surplus to the District’s needs.
- 2) That the Buyer has been given ample opportunity to inspect the Equipment and has in fact inspected the Equipment referred to in this Agreement, is aware of any defects and accepts the Equipment “as is.”
- 3) That the Buyer has independently found the Equipment to meet or exceed its requirements and standards.
- 4) That the Buyer agrees to the terms of this Agreement.

IN CONSIDERATION OF RECEIVING THE EQUIPMENT BUYER AGREES TO INDEMNIFY AND HOLD THE DISTRICT HARMLESS FROM AND AGAINST THE FULL AMOUNT OF ANY AND ALL COSTS AND EXPENSES (INCLUDING WITHOUT LIMITATION, ATTORNEYS' FEES AND COURT COSTS INCIDENT TO ANY SUIT, ACTION, INVESTIGATION OR OTHER PROCEEDING), DAMAGES AND LOSSES, SETTLEMENTS, REDUCTIONS OR OTHER ADVERSE EFFECTS ARISING OUT OF OR RESULTING FROM ANY FUTURE CLAIMS RELATING TO THE EQUIPMENT AND THE USE THE EQUIPMENT.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE PURCHASER'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER.

IN WITNESS WHEREOF, the parties have caused this Bill of Sale and Hold Harmless Agreement to be executed and delivered in its name this ____ day of _____, 20__.

[BUYER]

By: _____

Print Name: _____

Its: _____

By: _____

Print Name: _____

Its: _____

EXHIBIT B
BILL OF SALE AND HOLD HARMLESS AGREEMENT

For good and valuable consideration received (specifically including but not limited to Buyer's waiver of claims against the District and the absence of a warranty) the receipt and sufficiency of which are hereby acknowledged by the parties to this Agreement, the _____, a Washington municipal corporation, ("District") does hereby sell, assign, convey, transfer and deliver to: _____ "Buyer" One _____ VIN# _____, together with all attached equipment the "Vehicle." Which has been found to be surplus to the District's needs.

The current mileage of the Vehicle is _____

The District hereby warrants to Buyer that immediately prior to the delivery of this Bill of Sale, the District was the owner of the full legal title to the described Vehicle and that the District had the lawful right to sell the same and that good and clear title to the Vehicle is hereby vested in Buyer free and clear of all liens, claims, encumbrances, and rights of others. The District makes no warranty with respect to the Vehicle and Buyer warrants that it has inspected the described Vehicle, is aware of any defects in such Vehicle, and has determined that the Vehicle is in a reasonable safe condition for Buyer's use. **THE VEHICLE IS OUT OF SERVICE AND MAY NOT MEET ANY CURRENT STATE OR FEDERAL SAFETY STANDARDS.**

Buyer accepts the Vehicle "as is," and the District makes no warranty of any kind, express or implied, or arising by operation of law, by course of dealing or arising by performance, trade practice, or otherwise. The District disclaims all other warranties, including without limitation, any implied warranties of merchantability or fitness for a particular purpose. Repair or replacement of defective parts shall be the sole obligation of Buyer. In no event shall the District be liable for direct, indirect, incidental, exemplary, consequential, or special damages arising in any manner whatsoever, even if the District had been previously advised of the possibility of that damage. The District's maximum liability shall in no event exceed the price of the surplus Vehicle specified herein. No person has authority to make any claim, representation, warranty, promise, guarantee or commitment on behalf of the District that is not expressed in this agreement. THE BUYER SPECIFICALLY ACKNOWLEDGES THAT THE VEHICLE MAY NOT MEET ANY CURRENT STATE OR FEDERAL SAFETY STANDARDS.

BY SIGNING THIS AGREEMENT, THE BUYER AFFIRMS:

- 1) That the District has made Buyer aware that the Vehicle to be sold under this agreement is used and has been determined by the District to be surplus to the District's needs.
- 2) That the Buyer has been given ample opportunity to inspect the Vehicle and has in fact inspected the Vehicle referred to in this Agreement, is aware of any defects and accepts the Vehicle "as is."
- 3) That the Buyer has independently found the Vehicle to meet or exceed its requirements and standards.
- 4) That the Buyer agrees to the terms of this Agreement.

IN CONSIDERATION OF RECEIVING THE VEHICLE BUYER AGREES TO INDEMNIFY AND HOLD THE District HARMLESS FROM AND AGAINST THE FULL AMOUNT OF ANY AND ALL COSTS AND EXPENSES (INCLUDING WITHOUT LIMITATION, ATTORNEYS' FEES AND COURT COSTS INCIDENT TO ANY SUIT, ACTION, INVESTIGATION OR OTHER PROCEEDING), DAMAGES AND LOSSES, SETTLEMENTS, REDUCTIONS OR OTHER ADVERSE EFFECTS ARISING OUT OF OR RESULTING FROM ANY FUTURE CLAIMS RELATING TO THE VEHICLE AND THE USE THE VEHICLE.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE PURCHASER'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER.

IN WITNESS WHEREOF, the parties have caused this Bill of Sale and Hold Harmless Agreement to be executed and delivered in its name this ____ day of _____, 20__.

[BUYER]

By: _____

Print Name: _____

Its: _____

By: _____

Print Name: _____

Its: _____