

BRAZOS RIVER AUTHORITY OPERATIONS POLICIES MANUAL

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PREFACE

BRAZOS RIVER AUTHORITY OPERATIONS POLICIES MANUAL PREFACE - BRAZOS RIVER AUTHORITY

The watershed of the Brazos River begins in eastern New Mexico and extends in a southeasterly arc through Texas to the Gulf of Mexico near Freeport. Normal rainfall gradually increases from west to east, ranging from about nineteen inches a year in Lubbock to more than fifty-six inches a year in Angleton. The Brazos Basin covers more than 42,000 square miles in Texas, or about one-sixth the total area of the state. The basin includes all or parts of sixty-five counties. Nearly 3.3 million Texans live within its borders.

The main stem of the Brazos River is formed in eastern Stonewall County at the confluence of the Salt Fork and the Double Mountain Fork. From there, the river winds more than nine hundred miles to the Gulf. Along the way, it gathers flows from tributary rivers, such as the Clear Fork, the Bosque, the Lampasas, the Leon, the Little River, and the Navasota. In an average year, the Brazos discharges about 5.5 million acre-feet of water into the Gulf of Mexico.



There are several legends about how the river received its name. One is that early Spanish explorers, their water supply exhausted and threatened with death from thirst, came upon the river and christened it Brazos de Dios, meaning “arms of God,” in thanksgiving. Another is that early Spanish mapmakers called the river “arms of God” because of the great spread of its tributaries.

The Brazos River Valley was intimately connected to early Anglo settlement of

Texas. The capital of Stephen F. Austin's colony was located on the river in what is now Austin County. Washington-on-the-Brazos, site of the Texas Declaration of Independence from Mexico in 1836, is just downstream of the confluence of the Brazos and Navasota River near Brenham.

The early Texans' dreams of using the river as a commercial highway remained unfulfilled, as periodic floods and droughts impeded economic development. Eventually, as the result of devastating floods throughout the state in the early twentieth century, Texas adopted the Conservation Amendment to the Texas Constitution in 1917. Under this provision, conservation and management of flood and storm waters became a duty of the state for the first time.

In 1929, the Texas Legislature created the Brazos River Conservation and Reclamation District (later renamed the Brazos River Authority) with statutory authority to conserve and develop the surface water resources of the entire Brazos River Basin in Texas and make those resources available for all beneficial uses. The district was the first agency in the United States with such responsibility covering an entire major river basin.

Although the Brazos River Authority is a governmental agency, it operates without benefit of appropriations from state or federal government, nor does it have taxing authority. Except for occasional government grants to pay for specific projects, the Brazos River Authority is entirely self-supporting. It generates its operating revenues from the customers who benefit from the products and services that it provides. The Brazos River Authority's headquarters are in Waco.

Authority for Preface

BRAZOS RIVER AUTHORITY: THE WATERSHED OF THE BRAZOS RIVER
(2002)

<<http://www.brazos.org/ORGANIZATION/history.htm>>.

SECTION 1 - GENERAL POLICIES

1.1 AUTHORITY

This Operations Policies Manual is established by the Brazos River Authority. Any deletions, amendments, revisions, or additions to the policies must be approved by the Board of Directors. The Board of Directors shall have the sole discretion to adopt new policies.

These policies completely replace and supersede all operations policies previously adopted, individually or as a set of policies, by the Brazos River Authority and the Board of Directors.

In addition to this Operations Policies Manual, department heads may establish departmental rules and regulations that relate specifically to their departments, as long as they do not conflict with these policies. Departmental rules are important, and employees must comply with them. If there is a conflict between a departmental rule and the Operations Policies Manual, as provided herein or as may be amended in the future, policies or the terms of these policies, as amended, will prevail. Additionally, departmental rules and regulations must be approved in writing by the Brazos River Authority's General Manager/Chief Executive Officer.

1.2 POLICY CONSTRUCTION

Severability

The provisions of these policies are severable, and if any provision or part of a provision is held invalid, illegal, or unenforceable, this shall not affect the validity of the remaining provisions or parts of provisions, which shall remain in force and effect.

Gender Neutral

These policies are intended to be gender neutral. Words of one gender used in these policies are intended to include all other genders.

Titles and Headings

Headings do not limit or expand the meaning of a policy.

TCEQ

The term “TCEQ” means the “Texas Commission on Environmental Quality.”

1.3 RESPONSIBILITY FOR IMPLEMENTATION OF OPERATIONS POLICIES

The General Manager/Chief Executive Officer is responsible for the administration of the Operations Policies Manual. The General Manager/Chief Executive Officer may delegate authority to appropriate staff members, including department heads, to act on his behalf in the administration of these policies.

1.4 PURPOSE OF OPERATIONS POLICIES

These policies set forth the primary rules governing the operations of the Brazos River Authority, including the responsibilities and authority of the General Manager/Chief Executive Officer and the Board of Directors. They have been prepared and adopted in order to promote consistent, equitable, effective, and efficient practices by the General Manager/Chief Executive Officer, Board of Directors, and Brazos River Authority Staff, resulting in high quality public service.

These policies are not intended to be a contract. The Brazos River Authority reserves the right, in accordance with applicable law, to change or make exceptions to all Brazos River Authority policies and procedures, whether or not contained herein, without advance notice.

1.5 APPLICABILITY OF OPERATIONS POLICIES

The Operations Policies Manual shall be applied consistently to all persons and entities addressed by the policies therein. In cases where federal or state laws or regulations supersede local policy, such laws or regulations will substitute for these operations policies, only insofar as necessary to comply with the applicable laws or regulations.

1.6 ORGANIZATIONAL POLICIES AND PROCEDURES

- (1) Organizational policies set forth the primary rules governing the operations of the Brazos River Authority, including the responsibilities and authority of the General Manager/Chief Executive Officer and the Board of Directors. All organizational policies must be adopted by the Board of Directors. All organizational policies will be made readily available online. The Board of Directors, General Manager/Chief Executive Officer, and Brazos River Authority Staff shall comply with all applicable policies.
- (2) Organizational procedures provide instruction concerning how to carry out policies and are procedural or operational in nature. All organizational procedures must be authorized in writing by the General Manager/Chief Executive Officer. The General Manager/Chief Executive Officer may also vacate procedures as he sees fit. All organizational procedures will be published in print and electronic form and made readily available in print and online to all affected persons. The master copy of procedures will be kept in Central Files and will be made available to the Board of Directors and Brazos River Authority Staff upon request. The Board of Directors, General Manager/Chief Executive Officer, and Brazos River Authority Staff shall comply with all applicable procedures.

1.7 MINIMUM REQUIRED POLICIES

Required Policies

The Brazos River Authority is required by law and/or regulation to incorporate the following subjects into its administrative policies. (TEX. WATER CODE § 49.199(a); 30 TEX. ADMIN. CODE §§ 292.11(a), 292.13.)

Code of Ethics

The Brazos River Authority shall have a code of ethics. (TEX. WATER CODE § 49.199(a)(1); 30 TEX. ADMIN. CODE § 292.13(1).)

The code of ethics shall require compliance with the *Texas Local Government Code*, chapter 171, relating to conflicts of interest with a business entity in which a board member of the Brazos River Authority has a substantial interest. (TEX. LOCAL GOV'T CODE § 171.001(1); 30 TEX. ADMIN. CODE § 292.13(1)(A).)

The code of ethics shall require compliance with the *Texas Government Code*, chapter 573, relating to nepotism. (30 TEX. ADMIN. CODE § 292.13(1)(B).)

The code of ethics shall require compliance with the *Texas Government Code*, chapter 572, relating to standards of conduct, personal financial disclosure, and conflicts of interest. (30 TEX. ADMIN. CODE § 292.13(1)(C).)

The code of ethics shall require compliance with article III, section 52, of the *Texas Constitution*, relating to the prohibition against granting public money or things of value to any individual, association, or corporation. (30 TEX. ADMIN. CODE § 292.13(1)(C).)

Travel Expenditures

The Brazos River Authority shall have a policy on travel expenditures. (TEX. WATER CODE § 49.199(a)(2); 30 TEX. ADMIN. CODE § 292.13(2).)

The policy on travel expenditures shall provide for reimbursing Brazos River Authority officials for necessary and reasonable travel expenditures incurred while conducting business or performing official duties or assignments. (TEX. GOV'T CODE § 611.001; TEX. WATER CODE § 49.199(a)(2); 30 TEX. ADMIN. CODE § 292.13(2).)

The policy on travel may further define the criteria for necessary and reasonable travel expenditures and provide procedures for the reimbursement of expenses. (TEX. WATER CODE § 49.199(a)(2); 30 TEX. ADMIN. CODE § 292.13(2).)

Investments by the Brazos River Authority

The Brazos River Authority shall have a policy on investments. (TEX. WATER CODE §

49.199(a)(3); 30 TEX. ADMIN. CODE § 292.13(3).)

The policy on investments shall ensure that purchases and sales of investments are initiated by authorized individuals, conform to investment objectives and regulations, and are properly documented and approved. (TEX. WATER CODE § 49.199(a)(3)(A).)

The policy on investments shall ensure that periodic review is made of the Brazos River Authority's investments to evaluate investment performance and security. (TEX. WATER CODE § 49.199(a)(3)(B).)

The policy on investments shall require compliance with subchapter A, chapter 2256 of the *Texas Government Code*, i.e., the *Public Funds Investment Act*. (30 TEX. ADMIN. CODE § 292.13(3)(A).)

The policy on investments shall require compliance with chapter 2257 of the *Texas Government Code*, i.e., the *Public Funds Collateral Act*. (30 TEX. ADMIN. CODE § 292.13(3)(B).)

The policy on investments shall require compliance with any other appropriate statutes which are applicable to the investment of the Brazos River Authority's funds. (30 TEX. ADMIN. CODE § 292.13(3)(C).)

Professional Services

The Brazos River Authority shall have a policy on professional services. (TEX. WATER CODE § 49.199(a)(4); 30 TEX. ADMIN. CODE § 292.13(4).)

The professional services policy shall provide for the selection, monitoring, or review and evaluation of professional services. (TEX. WATER CODE § 49.199(a)(4).)

The professional services policy shall require compliance with chapter 2254, subchapter A of the *Texas Government Code*, i.e., the *Professional Services Procurement Act*, which prohibits the selection of professional services based on competitive bids. 30 TEX. ADMIN. CODE § 292.13(4)(A).)

The professional services policy shall require that a list be maintained of at least three qualified persons or firms for each area of professional service used by the Brazos River Authority. (30 TEX. ADMIN. CODE § 292.13(4)(B).)

The professional services policy shall require that the pre-qualified persons or firms shall be sent a request for proposal for any contract award for a new project which is expected to exceed \$25,000. (30 TEX. ADMIN. CODE § 292.13(4)(B).)

Industrial Development Bonds and Pollution Control Bonds

The Brazos River Authority shall have a policy on industrial development bonds and

pollution control bonds. (TEX. WATER CODE § 49.199(a)(5); 30 TEX. ADMIN. CODE § 292.13(5).)

The bond policy shall provide for a uniform method of accounting and reporting for industrial development bonds and pollution control bonds that complies with the requirements of the Texas Commission on Environmental Quality. (TEX. WATER CODE § 49.199(a)(5).)

The bond policy shall reference any industrial development corporation associated with the Brazos River Authority. (30 TEX. ADMIN. CODE § 292.13(5).)

The bond policy shall require compliance with the memorandum issued by the State Auditor on October 7, 1988, relating to the disclosure of industrial development and pollution control bonds. (30 TEX. ADMIN. CODE § 292.13(5).)

Management Policies

The Brazos River Authority shall have management policies. (TEX. WATER CODE § 49.199(a)(6); 30 TEX. ADMIN. CODE § 292.13(6).)

The management policies shall ensure the best use of management information. (TEX. WATER CODE § 49.199(a)(6).)

The management policies shall require budgets for use in planning and controlling cost. (TEX. WATER CODE § 49.199(a)(6)(A).)

The management policies shall require an audit committee of the Board of Directors. (TEX. WATER CODE § 49.199(a)(6)(B).)

The management policies shall require uniform reporting requirements that use “Audits of State and Local Government Units” as a guide on audit working papers and that use “Governmental Accounting and Financial Reporting Standards.” (TEX. WATER CODE § 49.199(a)(6)(C).)

The management policies shall require that an independent management audit be conducted every five years to be submitted to the Texas Commission on Environmental Quality. As an alternative to this requirement, the management policies may provide for the establishment of an internal audit office which reports to the Board of Directors. (30 TEX. ADMIN. CODE § 292.13(6)(A).)

Wholesale Potable Water and Wastewater Services

The Brazos River Authority shall have a policy that provides for the adoption of a program that gives its wholesale potable water and wastewater services customers the opportunity to review and comment on the provisions contained in the Brazos River Authority’s annual budget that apply to these services before the budget is adopted. (TEX. WATER CODE

§ 49.200; 30 TEX. ADMIN. CODE § 292.11(a).)

Management of Brazos River Authority Records

The Brazos River Authority Board of Directors shall establish, promote, and support an active and continuing program for the efficient and economical management of all of its records. (TEX. LOCAL GOV'T CODE § 203.021(1).)

The Brazos River Authority Board of Directors shall cause policies and procedures to be developed for the administration of the program under the direction of a Records Management Officer. (TEX. LOCAL GOV'T CODE § 203.021(2).)

Processing Requests for Public Information That Require Programming or Manipulation of Data

The Brazos River Authority shall establish procedures that assure the expeditious and accurate processing of requests for information that require programming or manipulation of data pursuant to the provisions of the *Public Information Act*. (TEX. GOV'T CODE § 552.231(e).)

Review of Policies by Executive Director of the Texas Commission on Environmental Quality

The Brazos River Authority shall submit a copy of its administrative policies and any subsequent amendments to the Executive Director of the Texas Commission on Environmental Quality. (30 TEX. ADMIN. CODE § 292.12(a).)

Authority for Policy 1.7

TEX. GOV'T CODE §§ 552.231(e), 611.001.

TEX. LOCAL GOV'T CODE §§ 171.001(1), 203.021.

TEX. WATER CODE §§ 49.199(a), 49.200.

30 TEX. ADMIN. CODE §§ 292.11(a), 292.12(a), 292.13.

SECTION 2 - GENERAL OPERATIONS PRACTICES

2.1 AUTHORITY AND RESPONSIBILITIES OF THE BOARD OF DIRECTORS AND GENERAL MANAGER/CHIEF EXECUTIVE OFFICER

Authority and Responsibilities of the Board of Directors

As the governing body of the Brazos River Authority, the Board of Directors shall be responsible for the management of all of the affairs of the Brazos River Authority. It shall have all authority expressly or impliedly conferred on the Brazos River Authority. It shall carry out the Brazos River Authority's purpose of conserving and developing the natural resources of this state in accordance with Special District Local Laws Code 8502, Brazos River Authority Bylaws, board policies and resolutions, and other applicable law. (TEX. SPEC. DIST. CODE §§ 8502.001, 8502.004; TEX. WATER CODE §§ 49.051, 49.057; Brazos River Authority Bylaws §§ 1.01.)

Delegations to the General Manager/Chief Executive Officer

The Board of Directors, exercising its authority to delegate to the General Manager/Chief Executive Officer full authority to manage and operate the affairs of the Brazos River Authority, subject only to board orders, delegates to the General Manager/Chief Executive Officer all general authority and responsibilities set forth in Special District Local Laws Code Chapter 8502, Brazos River Authority Bylaws, board policies and resolutions, and other applicable law as necessary to carry out the Brazos River Authority's purpose, plans, and objectives, excepting only those specifically reserved for the Board of Directors pursuant to Special District Local Laws Code Chapter 8502, Brazos River Authority Bylaws, board policies and resolutions, or other applicable law. In addition, the Board of Directors specifically delegates to the General Manager/Chief Executive Officer the authority to file permit applications, amendments, and other documents with state and federal agencies on behalf of the Brazos River Authority, to facilitate the interests thereof. (TEX. WATER CODE §§ 49.056-.057, 49.151(b); Brazos River Authority Bylaws § 7.01.)

Authority and Responsibilities of the General Manager/Chief Executive Officer

The General Manager/Chief Executive Officer shall be responsible to the Board of Directors for the proper administration of all of the affairs of the Brazos River Authority. He shall manage and operate the affairs of the Brazos River Authority by exercising the authority and responsibilities delegated to him by the Board of Directors. The General Manager/Chief Executive Officer shall also have the authority to delegate to Brazos River Authority staff the authority and responsibilities as he sees fit to affect the efficient, economical, and otherwise appropriate operation of the Brazos River Authority. (TEX. WATER CODE § 49.056; Brazos River Authority Bylaws § 7.01.)

Restrictions on Authority and Responsibilities of the General Manager/Chief Executive Officer

Notwithstanding the authority and responsibilities delegated by the Board of Directors to the General Manager/Chief Executive Officer, the General Manager/Chief Executive Officer shall *not*, without board approval, have the authority to:

- (1) exceed the applicable budget allotment for the procurement of equipment, goods, or services except in the case of an emergency, in which event the General Manager/Chief Executive Officer must obtain approval from the Chairman, Vice Chairman, and Secretary;
- (2) approve the sale of any real property of the Brazos River Authority;
- (3) approve a contract or purchase order for professional and/or consulting services in excess of \$250,000;
- (4) approve any contract or make any single expenditure in excess of \$500,000;
- (5) borrow money, excluding trade payables incurred in the normal course of business, or approve bond resolutions;
- (6) set rates charged for water, power, and other utilities; or
- (7) approve a lease agreement extending beyond a fifty-year term.

In addition, the General Manager/Chief Executive Officer shall not exercise any other authority or responsibility that has been restricted by the Board of Directors.

General Manager/Chief Executive Officer Miscellaneous Requirements

The General Manager/Chief Executive Officer may not be reassigned to another position in the Brazos River Authority unless the Board of Directors, in an open meeting, votes to approve the proposed reassignment. (TEX. GOV'T CODE § 669.002.)

The Brazos River Authority may not enter into a contract with the General Manager/Chief Executive Officer, with a person who at any time during the four years before the date of the contract was the General Manager/Chief Executive Officer, or with a person who employs a current or former executive head of a state agency affected by this section, unless the governing body:

- (1) votes, in an open meeting, to approve the contract; and
- (2) notifies the Legislative Budget Board, not later than the fifth day before the date of the vote, of the terms of the proposed contract. (TEX. GOV'T CODE

§ 669.003.)

The Brazos River Authority may not pay the General Manager/Chief Executive Officer more than an amount owed under a contract with the General Manager/Chief Executive Officer unless the Brazos River Authority holds at least one public hearing. Notice must be given of the hearing in accordance with notice of a public meeting under Subchapter C, Chapter 551, Government Code. The Brazos River Authority must state the following at the public hearing:

- (1) the reason the payment in excess of the contractual amount is being offered to the General Manager/Chief Executive Officer, including the public purpose that will be served by making the excess payment; and
- (2) the exact amount of the excess payment, the source of the payment, and the terms for the distribution of the payment that effect and maintain the public purpose to be served by making the excess payment. (TEX. LOCAL GOV'T CODE § 180.007.)

Authority for Policy 2.1

TEX. SPEC. DIST. CODE §§ 8502.001, 8502.004.
TEX. WATER CODE §§ 49.051, 49.056, 49.057, 49.151(b).
TEX. GOV'T CODE § 669.002, .003.
TEX. LOCAL GOV'T CODE § 180.007.
Brazos River Authority Bylaws §§ 1.01, 7.01.

2.2 CODE OF ETHICS FOR BOARD OF DIRECTORS AND GENERAL MANAGER/CHIEF EXECUTIVE OFFICER

The Board of Directors and General Manager/Chief Executive Officer shall conduct themselves with the utmost integrity so as to bring continuing respect to the Brazos River Authority and to avoid any questionable conduct that could bring discredit to the Brazos River Authority.

Definitions

“Business entity” means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law. (TEX. LOCAL GOV’T CODE § 171.001(2); TEX. GOV’T CODE § 572.002(2).)

Unless otherwise noted, a person having a “substantial interest” is defined as one of the following:

- (1) A person has a substantial interest in a business entity if:
 - (a) the person owns ten percent or more of the voting stock or shares of the business entity or owns either ten percent or more or \$15,000 or more of the fair market value of the business entity; or
 - (b) funds received by the person from the business entity exceed ten percent of the person’s gross income for the previous year.
- (2) A person has a substantial interest in real property if the interest is an equitable or legal ownership with a fair market value of \$2,500 or more.
- (3) A board member has a substantial interest if someone related to him in the first degree by consanguinity or affinity¹ has a substantial interest as described in (1) or (2) above. (TEX. LOCAL GOV’T CODE § 171.002.)

¹ See nepotism charts below.

Constitutional Limits on Grants of Public Money or Things of Value

The Brazos River Authority may not grant public money or things of value to any person, association, or individual except as provided in the Texas Constitution. (TEX. CONST. ART. III, § 52.)

Limitation on Contracting with Former Brazos River Authority Director

A person who has served as a Board Member of the Brazos River Authority may not contract with the Brazos River Authority or be employed by an organization to which the Brazos River Authority has awarded a contract for one year following the date on which the person ceased to serve as a Board Member. (TEX. WATER CODE § 49.072.)

Conflicts of Interest Concerning Board Members

Before a contract award is made, each board member who has a substantial interest in a potential contractor must disclose that interest by affidavit filed with the Brazos River Authority. The board member must abstain from further participation in the award of the contract if such award would have a special economic effect on that potential contractor that is distinguishable from the effect on the public. (TEX. WATER CODE § 49.214; TEX. LOCAL GOV'T CODE §§ 171.002, 171.004(a).)

The Board of Directors must take a separate vote on any budget item specifically dedicated to a contractor in which a board member has a substantial interest. The board member may not participate in the separate vote. (TEX. WATER CODE § 49.214; TEX. LOCAL GOV'T CODE §§ 171.002, 171.005.)

A board member shall not act as surety for a business entity that has work, business, or a contract with Brazos River Authority. (TEX. LOCAL GOV'T CODE § 171.003(a).)

A board member shall not act as surety on an official bond required of an officer of Brazos River Authority. (TEX. LOCAL GOV'T CODE § 171.003(a).)

A board member may serve as a member of the board of directors of private, nonprofit corporations when he receives no compensation or other remuneration for doing so. (TEX. LOCAL GOV'T CODE § 171.009.)

A board member who has a personal or private interest in a measure, proposal, or decision pending before the board must publicly disclose the fact to the board in a meeting called and held in compliance with the *Open Meetings Act*. The board member may not vote or otherwise participate in the decision. Disclosure must also be entered in the board's minutes. (TEX. GOV'T CODE § 572.058(a).)

Conflicts of Interest Concerning Leases

The Brazos River Authority shall not lease any office space or other real property from a

member of the legislature, an executive or judicial officer elected in a statewide election, or a business entity in which the legislator or officer has a substantial interest. The legislator or officer has a substantial interest in a business entity if he:

- (1) has a controlling interest in the business entity;
- (2) owns more than ten percent of the voting interest in the business entity;
- (3) owns more than \$25,000 of the fair market value of the business entity;
- (4) has a direct or indirect participating interest by shares, stock, or otherwise, regardless of whether voting rights are included, in more than ten percent of the profits, proceeds, or capital gains of the business entity;
- (5) is a member of the board of directors or other governing board of the business entity;
- (6) serves as an elected officer of the business entity; or
- (7) is an employee of the business entity. (TEX. GOV'T CODE §§ 572.005, 572.057; TEX. WATER CODE § 49.199(a)(1); 30 TEX. ADMIN. CODE §§ 292.11(a), 292.13(1).

Nepotism

The Brazos River Authority shall comply with the anti-nepotism rules set forth in Government Code Chapter 573, as amended from time to time, and the provisions thereof are incorporated into the policies of the Brazos River Authority.

General Rule: The Board of Directors shall not hire an individual who is related to any of the board members within the third degree of consanguinity or within the second degree of affinity. (TEX. GOV'T CODE § 573.041(2); 30 TEX. ADMIN. CODE § 292.13(1)(B); see *also* Op. Tex. Att'y Gen. No. JC-0184 (2000).)

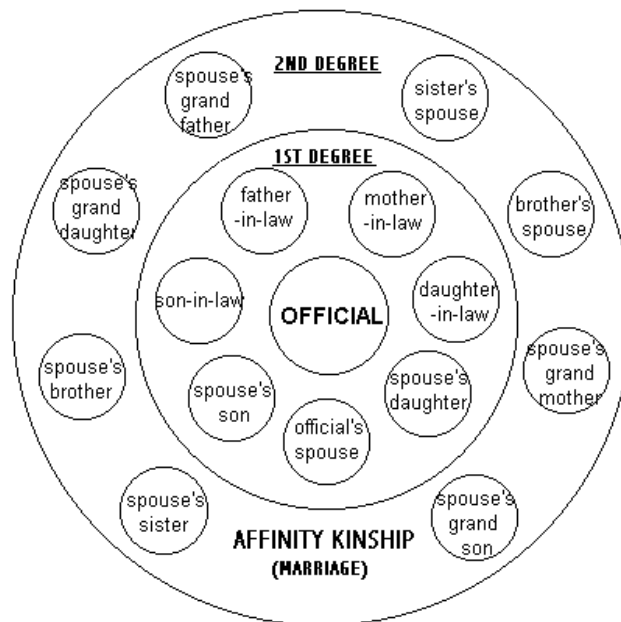
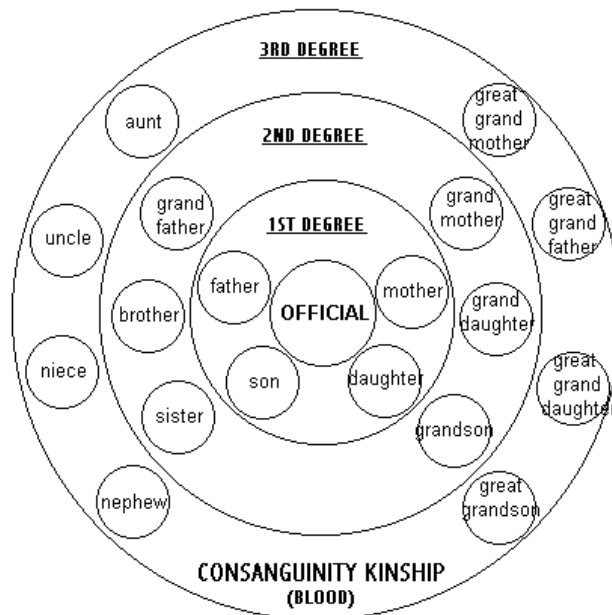
Exceptions: This rule applies only to the hiring of *individuals*. (Tex. Att'y Gen. LO-97-028 (1997).) This rule applies only when the board has control over the hiring decision. (Tex. Att'y Gen. LO-95-012 (1995).)

General Rule: A board member shall not vote to hire an individual related to another public official within the third degree of consanguinity or within second degree of affinity in exchange for the other public official's hiring or voting to hire an individual related to the board member within the third degree of consanguinity or within second degree of affinity. ("Trading") (TEX. GOV'T CODE § 573.044.)

Exceptions: This rule does not apply when the individual already holds the position at the time the related board member is appointed and has continuously held that position

for at least thirty days. Under these circumstances, the related board member shall not deliberate or vote on the appointment, reappointment, confirmation of the appointment or reappointment, employment, reemployment, change in status, compensation, or dismissal of the individual as an individual as opposed to the class or category of employment to which the individual belongs. (TEX. GOV'T CODE § 573.062.) An appointment or employment of a personal attendant by an officer of the state or a political subdivision of the state for attendance on the officer who, because of physical infirmities, is required to have a personal attendant. (Tex. Gov't Code § 573.061(5).)

The following charts illustrate **kinship by affinity** and **kinship by consanguinity**:



Nepotism Disclosure

If the General Manager/Chief Executive Officer, Chief Financial Officer, Cash and Investment Manager/Financial Analyst or other person designated by the Brazos River Authority as an “investment officer” pursuant to the provisions of the *Public Funds Investment Act* is related within the second degree by affinity or consanguinity to an individual seeking to sell an investment to the Brazos River Authority, he must file a statement disclosing that relationship with the Board of Directors and with the Texas Ethics Commission. (TEX. GOV'T CODE § 2256.005(i).)

Personal Financial Disclosure

The General Manager/Chief Executive Officer and each member of the Board of Directors shall file an annual financial statement with the Texas Ethics Commission in compliance with chapter 572 of the *Texas Government Code*. (TEX. GOV'T CODE § 572.021-.025.)

If the General Manager/Chief Executive Officer, Chief Financial Officer, Cash and Investment Manager/Financial Analyst or other person designated by the Brazos River Authority as an “investment officer” pursuant to the provisions of the *Public Funds Investment Act* has a “personal business relationship,” as defined in the *Public Funds Investment Act*, with a business organization offering to engage in an investment transaction with the Brazos River Authority, he must file a statement disclosing that personal business interest with the Board of Directors and with the Texas Ethics Commission. (TEX. GOV'T CODE § 2256.005(i).)

Standards of Conduct for the Brazos River Authority

The Brazos River Authority may accept a gift having a value of \$500 or more only if it has the authority to accept the gift and a majority of the Board of Directors, in an open meeting, acknowledges the acceptance of the gift not later than the ninetieth day after the date the gift is accepted. The name of the donor, a description of the gift, and a statement of the purpose of the gift must be recorded in the board minutes. (*Modeled after* TEX. GOV'T CODE §§ 575.001-.004.)

The Brazos River Authority may not accept a gift from a person who is a party to a “contested case,” as that term is defined in § 2001.003 of the *Texas Government Code*, until the thirtieth day after the date the decision in the case becomes final. (*Modeled after* TEX. GOV'T CODE §§ 575.005, 2001.003, 2001.144.)

Standards of Conduct for Board Members and the General Manager/Chief Executive Officer

When performing regulatory functions or conducting inspections or investigations, board members and the General Manager/Chief Executive Officer shall not solicit, accept, or agree to accept any benefit from a person they know to be subject to regulation, inspection, or investigation by the Brazos River Authority. (TEX. PENAL CODE § 36.08)

(a.)

When carrying on civil or criminal litigation on behalf of the Brazos River Authority, board members and the General Manager/Chief Executive Officer shall not solicit, accept, or agree to accept any benefit from a person against whom they know litigation is pending or contemplated. (TEX. PENAL CODE § 36.08(c).)

When exercising discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions of the Brazos River Authority, the board members and the General Manager/Chief Executive Officer shall not solicit, accept, or agree to accept any benefit from a person they know is interested in or likely to become interested in any contract, purchase, payment, claim, or transaction involving the exercise of their discretion. (TEX. PENAL CODE § 36.08(d).)

The three rules above do not apply to:

- (1) A fee prescribed by law to be received by the board members or the General Manager/Chief Executive Officer or any other benefit to which the board members and the General Manager/Chief Executive Officer are lawfully entitled or for which they give legitimate consideration in a capacity other than that of a board member or the General Manager/Chief Executive Officer. (TEX. PENAL CODE § 36.10(a)(1).)
- (2) A gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the board member or the General Manager/Chief Executive Officer. (TEX. PENAL CODE § 36.10(a)(2).)
- (3) A benefit to the General Manager/Chief Executive Officer or board member that is derived from a function in his honor or appreciation if the benefit, if in excess of \$50.00, is reported in a financial statement pursuant to the provisions of chapter 572 of the *Texas Government Code* and the benefit is used solely to defray the expenses that accrue in the performance of duties or activities in connection with the position which are not reimbursable by the Brazos River Authority. (TEX. PENAL CODE § 36.10(a)(3).)
- (4) An item with a value of less than \$50.00, excluding cash or a negotiable instrument. (TEX. PENAL CODE § 36.10(a)(6).)
- (5) An item issued by the Brazos River Authority that allows the use of property or facilities owned, leased, or operated by the Brazos River Authority. (TEX. PENAL CODE § 36.10(a)(7).)
- (6) Food, lodging, transportation, or entertainment accepted by the board member or the General Manager/Chief Executive Officer as a guest, so long as such benefit, if required to be reported by law, is so reported by the board

member or the General Manager/Chief Executive Officer. (TEX. PENAL CODE § 36.10(b).)

Board members and the General Manager/Chief Executive Officer shall not solicit, accept or agree to accept any benefit as consideration for their decision, opinion, recommendation, vote or other exercise of discretion as a board member or the General Manager/Chief Executive Officer. (TEX. PENAL CODE §§ 36.02(a)(1).)

Board members and the General Manager/Chief Executive Officer shall not solicit, accept, or agree to accept an honorarium in consideration for services that they would not have been requested to provide but for their position or Brazos River Authority duties. Board members and the General Manager/Chief Executive Officer, however, are not prohibited from accepting transportation and lodging expenses in connection with conferences or similar events in which they render services, such as addressing an audience or engaging in a seminar, to the extent that those services are more than merely perfunctory, or from accepting meals in connection with such events. (TEX. PENAL CODE § 36.07.)

Board members and the General Manager/Chief Executive Officer shall not intentionally or knowingly violate a law relating to their position with the intent to obtain a benefit or intent to harm or defraud another. (TEX. PENAL CODE § 39.02(a)(1).)

Board members and the General Manager/Chief Executive Officer shall not misuse Brazos River Authority property, services, personnel, or any other thing of value belonging to the Brazos River Authority that has come into their custody or possession by virtue of their position. (TEX. PENAL CODE § 39.02(a)(2).)

Board members and the General Manager/Chief Executive Officer shall not accept or solicit gifts, favors, or services that might reasonably tend to influence them in the discharge of their Brazos River Authority duties or that they know or should know are being offered with the intent to influence them in the discharge of their Brazos River Authority duties. (TEX. GOV'T CODE § 572.051(1).)

Board members and the General Manager/Chief Executive Officer shall not accept other employment or engage in business or professional activity that they might reasonably expect would require or induce them to disclose confidential information acquired by reason of their being a member of the Brazos River Authority Board of Directors or the General Manager/Chief Executive Officer. (TEX. GOV'T CODE § 572.051(2).)

Board members and the General Manager/Chief Executive Officer shall not accept other employment or compensation that could reasonably be expected to impair their independence of judgment in performance of their Brazos River Authority duties. (TEX. GOV'T CODE § 572.051(3).)

Board members and the General Manager/Chief Executive Officer shall not make personal investments that could reasonably be expected to create a substantial conflict

between their private interests and those of the public. (TEX. GOV'T CODE § 572.051(4).)

Board members and the General Manager/Chief Executive Officer shall not intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised their Brazos River Authority powers or duties in favor of another. (TEX. GOV'T CODE § 572.051(5).)

Board members and the General Manager/Chief Executive Officer shall not solicit or accept from a governmental entity a commission, fee, bonus, retainer, or rebate as compensation for their personal solicitation of the award of a contract for services or sale of goods to Brazos River Authority. This rule does not apply to contracts awarded by competitive bid. (TEX. GOV'T CODE § 572.056.)

Conflict Disclosure Statement

Definitions

"Agent" means a third party who undertakes to transact some business or manage some affair for another person by the authority or on account of the other person. The term includes an employee.

"Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (1) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (2) a transaction conducted at a price and subject to terms available to the public; or
- (3) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

"Contract" means a written agreement for the sale or purchase of real property, goods, or services.

"Family member" means a person related to another person within the first degree by consanguinity or affinity, as described by Subchapter B, Chapter 573, Government Code.

"Family relationship" means a relationship between a person and another person within the third degree by consanguinity or the second degree by affinity, as those terms are defined by Subchapter B, Chapter 573, Government Code. (2-b)

"Gift" means a benefit offered by a person, including food, lodging, transportation, and entertainment accepted as a guest. The term does not include a benefit offered on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient.

"Investment income" means dividends, capital gains, or interest income generated from:

- (1) a personal or business checking or savings account, share draft or share account, or other similar account;
- (2) a personal or business investment; or
- (3) a personal or business loan.

"Local government officer" means:

- (1) a member of the governing body of a local governmental entity;
- (2) a director, superintendent, administrator, president, or other person designated as the executive officer of a local governmental entity; or
- (3) an agent of a local governmental entity who exercises discretion in the planning, recommending, selecting, or contracting of a vendor

"Vendor" means a person who enters or seeks to enter into a contract with a local governmental entity. The term includes an agent of a vendor. The term includes an officer or employee of a state agency when that individual is acting in a private capacity to enter into a contract. The term does not include a state agency except for Texas Correctional Industries. (TEX. LOCAL GOV'T CODE § 176.001.)

Filing Requirements

Board Members, the General Manager/Chief Executive Officer, and applicable employees must file a conflicts disclosure statement in accordance with Chapter 176, Local Government Code, which requires disclosure with respect to a vendor who enters or seeks to enter into a contract with the Brazos River Authority or is an agent of such a person (this does not include contracts with the state, a political subdivision of the state, the Federal Government, or foreign governments) if the vendor:

- (1) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that a contract has been executed or the Brazos River Authority is considering entering into a contract with the vendor, or

- (2) has given the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that a contract has been executed or the Brazos River Authority is considering entering into a contract with the person (an officer is not required to file a conflicts disclosure statement in regards to a gift if the gift is 1) a political contribution as defined by Title 15, Election Code, or 2) food accepted as a guest).
- (3) has a family relationship with the local government officer. (TEX. LOCAL GOV'T CODE § 176.003.)

If a local government officer is required to file a conflicts disclosure statement, it must be filed by 5 p.m. on the seventh business day after the date on which the officer becomes aware of the facts that require the filing of the statement.

Penalties

A local government officer commits an offense if the officer is required to file a conflicts disclosure statement and knowingly fails to do so within the required timeframe.

An offense under this chapter is:

- (1) a Class C misdemeanor if the contract amount is less than \$1 million or if there is no contract amount for the contract;
- (2) a Class B misdemeanor if the contract amount is at least \$1 million but less than \$5 million; or
- (3) a Class A misdemeanor if the contract amount is at least \$5 million. (TEX. LOCAL GOV'T CODE §§ 176.013.)

Form of Conflicts Disclosure Statement

The conflicts disclosure statement shall be in the form adopted by the Texas Ethics Commission. (TEX. LOCAL GOV'T CODE § 176.0003(e).)

Miscellaneous Requirements

The records administrator for the Brazos River Authority shall maintain a list of local government officers and shall make that list available to the public and any person who may be required to file a questionnaire under Section 176.006 of the Local Government Code. (TEX. LOCAL GOV'T CODE § 176.0065.)

The Brazos River Authority shall make conflicts disclosure statements and conflicts questionnaires filed in accordance with Chapter 176 of the Local Government Code available to the public on its web site. (TEX. LOCAL GOV'T CODE § 176.009.)

Authority for Policy 2.2

TEX. CONST. ART. III, § 52.

TEX. GOV'T CODE §§ 572.001-.058, 573.001-.084, 575.001-.005, 2001.003, 2001.144, 2252.901(a), 2254.033, 2256.005(i).

TEX. LOCAL GOV'T CODE §§ 171.001-.0013; §§ 176.001-.013.

TEX. PENAL CODE §§ 36.01-.10, 39.01-.06.

TEX. WATER CODE §§ 49.056-.057(d), 49.072, 49.199, 49.214.

30 TEX. ADMIN. CODE §§ 292.11(a), 292.13.

Op. Tex. Att'y Gen. No. JC-0184 (2000).

Tex. Att'y Gen. LO-97-028 (1997).

Tex. Att'y Gen. LO-95-012 (1995).

2.3 Ethics Policy

All officers and employees shall abide by the Brazos River Authority's Ethics Policy. In accordance with the Ethics Policy, an officer or employee of the Brazos River Authority shall not:

- (1) accept or solicit any gift, favor, or service that might reasonably tend to influence the officer or employee in the discharge of official duties or that the officer or employee knows or should know is being offered with the intent to influence the officer's or employee's official conduct;
- (2) accept other employment or engage in a business or professional activity that the officer or employee might reasonably expect would require or induce the officer or employee to disclose confidential information acquired by reason of the official position;
- (3) accept other employment or compensation that could reasonably be expected to impair the officer's or employee's independence of judgment in the performance of the officer's or employee's official duties;
- (4) make personal investments that could reasonably be expected to create a substantial conflict between the officer's or employee's private interest and the public interest; or
- (5) intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the officer's or employee's official powers or performed the officer's or employee's official duties in favor of another. (TEX. GOV'T CODE § 572.051(a).)

Employees who violate the Brazos River Authority's Ethics Policy are subject to termination or another employment related sanction. (TEX. GOV'T CODE § 572.051(b).) Copies of the Ethics Policy and Chapter 572, Subchapter C of the Texas Government Code shall be distributed to all current employees, all new employees within three days of hire, and all new officers within three days of qualification for office. (TEX. GOV'T CODE § 572.051(c) and (h).)

Authority for Policy 2.3

TEX. GOV'T CODE § 572.051

2.4 DIRECTORS' FEES AND REIMBURSEMENT OF BUSINESS EXPENSES

Directors' Fees

Within budgetary limitations, each director shall receive fees of office at the rate set by board resolution, which amount shall not exceed the per diem rate set by the Texas Ethics Commission for members of the legislature under Section 24a, Article III, of the Texas Constitution, for each day the director actually spends performing the duties of a director; provided, however, that the total fees of office received by a director in a single fiscal year shall not exceed the amount a director would receive for 60 days of service a year at the maximum daily rate authorized by the board resolution. In this policy, the phrase "performing the duties of a director" means substantive performance of the management or business of the Brazos River Authority, including participation in board or committee meetings or other activities involving the substantive deliberation of Brazos River Authority business and in pertinent educational programs. The phrase does not include routine or ministerial activities such as the execution of documents, self-preparation for meetings, or other activities requiring a minimal amount of time. (TEX. WATER CODE § 49.060; Brazos River Authority Bylaws § 1.04.)

Reimbursement of Business Expenses

Within budgetary limitations, each director is entitled to receive reimbursement of actual expenses reasonably and necessarily incurred while performing the duties of a director. In lieu of reimbursement, the Brazos River Authority may directly pay for travel expenses. (TEX. WATER CODE §§ 49.060, 49.199(a); 30 TEX. ADMIN. CODE § 292.13(2); Brazos River Authority Bylaws § 1.04.)

Travel Expenses

Travel expenses include, but are not necessarily limited to, the actual expenses reasonably and necessarily incurred in connection with performing the duties of a director. Travel expenses are limited to those incurred for meals, lodging, registration, fees, travel, transportation, and other necessary business expenditures. Travel expenses may include the purchase of alcohol when deemed appropriate by the Presiding Officer; provided, however, alcohol may not be consumed on or in facilities owned or under the control of the Brazos River Authority. (TEX. GOV'T CODE § 611.001; TEX. WATER CODE §§ 49.060, 49.199(a); 30 TEX. ADMIN. CODE § 292.13(2); Brazos River Authority Bylaws § 1.04.)

In addition, the Board of Directors shall comply with the following:

- (1) Directors may attend State or National meetings or conferences associated with the water business. The Brazos River Authority will provide payment or reimbursement of funds to Directors attending conferences or training, either in-state or within the lower continental United States (48 states), in an amount not to exceed \$2,500 per Director per budget year.

- (2) The Board of Directors acknowledges the need for its Presiding Officer to attend various functions and meetings throughout the year and therefore resolves to allow payment or reimbursement of all ordinary and necessary expenses incurred by the Presiding Officer in performing his duties.

Privately-Owned Conveyances

Auto travel expense in a privately owned automobile will be paid at the standard mileage rate established by the Internal Revenue Service. Air travel expense in a privately owned aircraft will be paid at the same rates established by the Texas Legislature for board members. In addition to the amount entitled to be reimbursed for air travel set forth above, if two or more directors travel with another director in an aircraft owned or leased by the other director, the director who owns or leases the aircraft is entitled to an amount equal to the amount that would have been paid or reimbursed to each additional director had those directors incurred average coach airfare. The total reimbursement to the director may not exceed the total cost of the trip. If the director leases the aircraft, the director may require the reimbursement to be paid to the vendor providing the leased aircraft instead of to the director. The vendor of a leased aircraft may be a proprietorship, partnership, or corporation in which the director has an interest. (TEX. WATER CODE §§ 49.060, 49.199(a); 30 TEX. ADMIN. CODE § 292.13(2); Brazos River Authority Bylaws § 1.04.; TEX. GOV'T CODE § 660.074)

Commercial or Charter Conveyances

Travel by commercial or charter conveyance or other conveyance not owned by a director but rented or otherwise utilized by a director for transportation shall be reimbursed at actual cost, not to exceed customary rates for like service; however, transportation expenses on a common carrier shall not be reimbursed in an amount exceeding the lowest available fare. (TEX. GOV'T CODE § 611.001; TEX. WATER CODE §§ 49.060, 49.199(a); 30 TEX. ADMIN. CODE § 292.13(2); Brazos River Authority Bylaws § 1.b.)

Lodging

A director shall not be reimbursed for expenses incurred as the result of his failure to cancel lodging reservations unless the failure to do so resulted from circumstances beyond the director's control. (TEX. WATER CODE §§ 49.060, 49.199(a); 30 TEX. ADMIN. CODE § 292.13(2); Brazos River Authority Bylaws § 1.04.)

Entertainment Expenses

Directors are entitled to receive reimbursement for reasonable expenses incurred entertaining persons in the course of Brazos River Authority business. (Brazos River Authority Bylaws § 1.04.)

Filing Requirements

In order to receive fees of office and reimbursement for expenses, each director shall file with the Treasurer of the Brazos River Authority a verified statement showing the number of days actually spent in the service of the Brazos River Authority and a general description of the duties performed for each day of service. (TEX. WATER CODE §§ 49.060, 49.199(a); 30 TEX. ADMIN. CODE § 292.13(2); Brazos River Authority Bylaws § 1.04.)

Authority for Policy 2.4

TEX. GOV'T CODE §§ 611.001, 660.074
TEX. WATER CODE §§ 49.060, 49.199(a).
30 TEX. ADMIN. CODE § 292.13(2).
Brazos River Authority Bylaws § 1.04.

2.5 INDEMNITY OF OFFICERS, DIRECTORS, EMPLOYEES, AND VOLUNTEERS

The Board of Directors shall have the power to indemnify any Brazos River Authority director, officer, employee, or volunteer, past or present, for expenses, costs, including attorneys' fees, and the amount of judgment actually rendered against that person in connection with any negligence claim asserted by reason of the person's having been such a director, officer, employee, or volunteer so long as the director, officer, employee, or volunteer is not found to have committed official misconduct, to have committed a willful or wrongful act or omission, or to have been grossly negligent. The Board of Directors may provide legal counsel to its directors, officers, employees, or volunteers who have been sued and for whom the Brazos River Authority may have to pay damages. The Board of Directors shall not pay damages awarded against its directors, officers, employees, or volunteers to the extent the damages are recoverable under an insurance contract or a self-insurance plan authorized by statute. Payments made by the Board of Directors shall be subject to any statutory limitations. (Brazos River Authority Bylaws § 1.06.)

The Brazos River Authority may pay actual damages awarded against its current or former board members, employees, or volunteers in a negligence action if the damages result from an act or omission in the course and scope of the person's employment/duties. In such a case, the Brazos River Authority may also pay court costs and attorneys' fees. (TEX. CIV. PRAC. & REM. CODE §§ 102.001, 102.002(a) & (b).) JM-1053 (1989), JM-1005 (1989).)

The Brazos River Authority may not pay damages awarded against its current or former board members, employees, or volunteers that arise from a cause of action for official misconduct or that arise from a cause of action involving a willful or wrongful act or omission or an act or omission constituting gross negligence. (TEX. CIV. PRAC. & REM. CODE §§ 102.001, 102.002(c); JM-1053 (1989), JM-1005 (1989).)

The Brazos River Authority may not pay damages awarded against its current or former board members, employees, or volunteers to the extent the damages are recoverable under an insurance contract or a self-insurance plan authorized by statute. (TEX. CIV. PRAC. & REM. CODE §§ 102.001, 102.002(d) JM-1053 (1989), JM-1005 (1989).)

The Brazos River Authority may purchase liability insurance for itself and for persons in its paid service, excepting, however, independent contractors and their employees. (TEX. CIV. PRAC. & REM. CODE § 101.027.)

Payments made by the Brazos River Authority on behalf of its current or former board members, employees, or volunteers may not exceed \$100,000 to any one person or \$300,000 for any single occurrence in the case of personal injury or death. Payments made by the Brazos River Authority on behalf of its current or former board members, employees, or volunteers may not exceed \$10,000 for a single occurrence of property damages. (TEX. CIV. PRAC. & REM. CODE §§ 102.001, 102.003; JM-1053 (1989), JM-1005 (1989).)

The Brazos River Authority may provide legal counsel to its current or former board members, employees, or volunteers who have been sued and for whom it may have to pay damages. (TEX. CIV. PRAC. & REM. CODE §§ 102.001, 102.004; JM-1053 (1989), JM-1005 (1989).)

Authority for Policy 2.5

TEX. CIV. PRAC. & REM. CODE §§ 101.027, 102.001- .004.

Op. Tex. Att' y Gen. No. JM-1053 (1989).

Op. Tex. Att' y Gen. No. JM-1005 (1989).

Brazos River Authority Bylaws § 1.06.

2.6 SUCCESSION OF GENERAL MANAGER/CHIEF EXECUTIVE OFFICER

The General Manager/Chief Executive Officer shall have a Succession Plan that has been adopted by the Board of Directors. This Succession Plan shall outline the procedures for designating a person who shall serve as Acting General Manager/Chief Executive Officer, the events that activate the Succession Plan, and the termination of the authority granted the Acting General Manager/Chief Executive Officer named in the Succession Plan. The Acting General Manager/Chief Executive Officer shall have all of the authority and responsibilities of the General Manager/Chief Executive Officer.

2.7 FLEET MANAGEMENT

Purpose

The purpose of this policy is to provide standards for a professional, well-maintained fleet; to ensure cost effective use of Brazos River Authority resources; and to exhibit stewardship and accountability for Brazos River Authority operations.

Scope of Policy

This policy applies to all Brazos River Authority rolling stock and equipment; employees driving Brazos River Authority owned, leased, or rented vehicles; and staff members who use personal vehicles for Brazos River Authority business.

General Policy

The General Manager/Chief Executive Officer may establish, from time to time, procedures regarding the operation of Brazos River Authority vehicles and equipment.

Appropriate procedures will be maintained and periodically reviewed to ensure the efficient use of vehicles and equipment.

The fleet procedures and the employees responsible for the procedures will comply with state laws and safety standards.

Vehicle operators will meet eligibility requirements before operating any Brazos River Authority vehicle or equipment or conducting Brazos River Authority business in a personal vehicle.

Vehicle operators and supervisors will ensure that assigned Brazos River Authority vehicles are properly maintained including meeting standards for proper mechanical condition, safety, legal compliance, and appearance.

There will be a Brazos River Authority-wide system of vehicle information, maintenance standards, and procedures.

Vehicles will be used for business-critical functions related to specific job requirements. Employees will be provided take-home vehicles only if to do so is deemed to be business critical and approval has been given by the General Manager/Chief Executive Officer.

Vehicles and equipment will be maintained and operated in such a way as to maximize the useful life of the asset, including appropriate preventive maintenance steps and record keeping.

2.8 RECYCLING PROGRAM

Recycling Program

The Brazos River Authority, shall comply with Texas Health and Safety Code Sections 361.425 and 361.426, as such may be amended from time to time, regarding establishment and management of a recycling program. (TEX. HEALTH & SAFETY CODE §§ 361.425-.426.)

Destruction of Records

In connection with its records management policy, the Brazos River Authority may destroy its records by sale or donation for recycling purposes, as long as the records are rendered unrecognizable by the recycler as Brazos River Authority records and as long as the records, prior to their destruction, are subject to public access. (TEX. LOCAL GOV'T CODE § 202.003.)

Alienation of Records

Although the Brazos River Authority is prohibited, unless it first obtains the consent of the Texas State Library and Archives Commission and the retention period under Local Schedule GR has expired, from selling, donating, loaning, transferring, or otherwise passing out of its custody any records to any private college or university, private museum or library, private organization of any type, or individual, it is not so prohibited if it sells or donates the records to a recycler. (TEX. LOCAL GOV'T CODE § 202.004(b); 13 TEX. ADMIN. CODE § 7.125(b)(1).)

Authority for Policy 2.8

TEX. HEALTH & SAFETY CODE §§ 361.425-.426.
TEX. LOCAL GOV'T CODE §§ 202.003-.004.
13 TEX. ADMIN. CODE § 7.125(b)(1).

2.9 DISPOSITION OF PERSONAL PROPERTY

Leases of Personal Property

The Brazos River Authority may lease any of its personal property to any person. The lease may contain the terms and provisions that the Board of Directors determines to be advantageous to the Brazos River Authority. (TEX. WATER CODE § 49.225.)

Sale of Personal Property

The Brazos River Authority may sell for cash any of its personal property or interest in its personal property if the Board of Directors by affirmative vote of eleven of its members shall have determined that the property or interest is not necessary to the business of the Brazos River Authority and shall have approved the terms of any such sale. Except by sale as authorized above, personal property of the Brazos River Authority and any interest in personal property of the Brazos River Authority shall never come into the ownership or control, directly or indirectly, of any person, firm, or corporation other than a public authority created under the laws of the State of Texas. All property of the Brazos River Authority shall be at all times exempted from forced sale, and the sale of any of the property of the Brazos River Authority under judgment rendered in any suit is prohibited and forbidden. (SPEC. DIST. CODE §§ 8502.013; *but see* TEX. WATER CODE § 49.226.)

If the Brazos River Authority has outstanding bonds secured by a pledge of tax revenues, the proceeds from the sale of property shall be applied to retire outstanding bonds of the Brazos River Authority. If the Brazos River Authority does not have any outstanding bonds, the proceeds derived from the sale of property may be used for any lawful purpose. (TEX. WATER CODE §§ 49.226(d) & (e).)

Authority for Policy 2.9

SPEC. DIST. CODE §§ 8502.013.
TEX. WATER CODE §§ 49.225, 49.226.

2.10 Peace Officer Identification Cards

The Brazos River Authority shall issue identification cards to all certified peace officers it employs. The identification cards shall meet all the requirements set forth in TEX. GOV'T. CODE § 614.122 and shall be recovered upon resignation or termination of the peace officer. (TEX. GOV'T CODE §§ 614.121 *Et. Seq.*)

Authority for Policy 2.10

TEX. GOV'T CODE §§ 614.121-.127.

2.11 MANAGEMENT AND ENVIRONMENTAL AND/OR OCCUPATIONAL HEALTH AND SAFETY AUDITS

Management Audit

The Brazos River Authority shall conduct an independent management audit every five years, the report of which shall be submitted to the Texas Commission on Environmental Quality. (30 TEX. ADMIN. CODE § 292.13(6)(A).)

Environmental and/or Occupational Health and Safety Audit

The Brazos River Authority may conduct environmental and/or occupational health and safety audits of its regulated facilities and operations in accordance with the Texas Environmental, Health, and Safety Audit Privilege Act, Texas Health and Safety Code, Chapter 1101 (“Act”), as such Act may be amended from time to time. The Act provides, subject to a few specific exceptions, that audit reports are privileged and that owners/operators will have immunity from administrative and civil penalties if they voluntarily disclose any violations discovered during an audit. However, in order for the Brazos River Authority to avail itself of the protections set forth in the Act, it must conduct audits in accordance with the provisions therein. Prior to conducting an audit, the Brazos River Authority must provide the statutorily prescribed notice to the appropriate regulatory agency, which in most cases for the Brazos River Authority will be TCEQ. (TEX. HEALTH & SAFETY CODE CHAPTER 1101.)

Authority for Policy 2.11

30 TEX. ADMIN. CODE § 292.13(6)(A)
TEX. HEALTH & SAFETY CODE CHAPTER 1101.

2.12 Payments in Excess of Contracts with Employees and Former Employees

The Brazos River Authority may not pay an employee or former employee more than an amount owed under a contract with the employee or former employee unless the Brazos River Authority holds at least one public hearing. Notice must be given of the hearing in accordance with notice of a public meeting under Subchapter C, Chapter 551, Government Code. The Brazos River Authority must state the following at the public hearing:

- (1) the reason the payment in excess of the contractual amount is being offered to the employee or former employee, including the public purpose that will be served by making the excess payment; and
- (2) the exact amount of the excess payment, the source of the payment, and the terms for the distribution of the payment that effect and maintain the public purpose to be served by making the excess payment. (TEX. LOCAL GOV'T CODE § 180.007.)

Authority for Policy 2.12

TEX. LOCAL GOV'T CODE § 180.007.

2.13 DIRECTOR TRAINING

A person who is appointed to the Brazos River Authority Board of Directors may not vote, deliberate, or be counted as a director in attendance at a board meeting until the person completes a training program that provides the following information:

- (1) the law governing Brazos River Authority operations;
- (2) the programs, functions, rules, and budget of the Brazos River Authority;
- (3) the scope of and limitations on the rulemaking authority of the Brazos River Authority;
- (4) the results of the most recent formal audit of the Brazos River Authority;
- (5) the requirements of:
 - i. laws relating to open meetings, public information, administrative procedure, and disclosure of conflicts of interest; and
- (6) any applicable ethics policies adopted by the Brazos River Authority or the Texas Ethics Commission.

A person participating in such a training program is entitled to reimbursement for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

The General Manager/Chief Executive Officer of the Brazos River Authority shall create a training manual that includes the information required by this section. The General Manager/Chief Executive Officer shall distribute a copy of such training manual annually to each director. Each director shall sign and submit to the General Manager/Chief Executive Officer a statement acknowledging that the director received and has reviewed the training manual.

Authority for Policy 2.13

TEX. SPEC. DIST. CODE § 8502.0092

2.14 REMOVAL OF DIRECTORS

It is a ground for removal from the Board of Directors that a director:

- (1) Does not have at the time of taking office the qualifications required by Special District Local Laws Code, Section 8502.009;
- (2) Does not maintain during service on the Board the qualifications required by Special District Local Laws Code, Section 8502.009;
- (3) Is ineligible for directorship under Chapter 171, Local Government Code;
- (4) Cannot, because of illness or disability, discharge the director's duties for a substantial part of the director's term; or
- (5) Is absent from more than half of the regularly scheduled Board meetings that the Director is eligible to attend during a calendar year without an excuse approved by a majority vote of the Board.

A director shall automatically be removed from and vacate his or her position on the earlier of the date the director enters a plea of guilty or nolo contendere, receives deferred adjudication, or is convicted one of the following offenses:

- (1) bribery;
- (2) theft of public money;
- (3) perjury;
- (4) coercion of public servant or voter;
- (5) tampering with governmental record;
- (6) misuse of official information;
- (7) abuse of official capacity; or
- (8) conspiracy or the attempt to commit any of the above offenses.

The validity of an action of the Board of Directors is not affected by the fact that it is taken when a ground for removal of a director exists.

If the General Manager/Chief Executive Officer has knowledge that a potential ground for removal exists, the General Manager/Chief Executive Officer shall notify the Presiding Officer of the Board of Directors of the potential ground. The Presiding Officer shall then notify the Governor and the Attorney General that a potential ground for removal exists. If the potential ground for removal involves the Presiding Officer, the General Manager/Chief Executive Officer shall notify the next highest-ranking director, who shall

then notify the Governor and the Attorney General that a potential ground for removal exists.

Authority for Policy 2.14

TEX. SPEC. DIST. CODE § 8502.0091

TEX. LOCAL GOV'T CODE § 180.010

2.15 FILING OF COMPLAINTS

The Brazos River Authority shall maintain a system to promptly and efficiently act on complaints filed with the organization. The Brazos River Authority shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

The Brazos River Authority shall make information describing its procedures for complaint investigation and resolution available to the public.

The Brazos River Authority shall periodically notify the complaint parties of the status of the complaint until final disposition unless the notice would jeopardize an investigation.

Authority for Policy 2.15

TEX. SPEC. DIST. CODE § 8502.0094

2.16 PUBLIC TESTIMONY

At each meeting of the Board of Directors, members of the public shall be afforded the opportunity to address and provide comments to the Board of Directors. The Brazos River Authority reserves the right to implement reasonable rules related to providing public comments, including rules that limit the total amount of time that a member of the public may address the Board of Directors. The Board of Directors cannot respond to comments that are not related to items on the posted agenda.

Authority for Policy 2.16

TEX. SPEC. DIST. CODE § 8502.0095

2.17 Use of Certain Social Media Applications and Services

The following applications or services are prohibited from being installed on any device owned or leased by the Brazos River Authority unless the application or service is being installed to the extent necessary for providing law enforcement or developing and implementing information security measures:

- (1) TikTok or any successor application or service developed or provided by ByteDance Limited or any entity owned by ByteDance Limited;
- (2) a social media application or service specified in TEX. GOV'T CODE § 620.005; or
- (3) a social media application or service classified as a risk to the State of Texas by the Department of Information Resources.

Authority for Policy 2.17

TEX. GOV'T CODE § 620.001-.002, .004-.006.

SECTION 3 - PROCUREMENT

3.1 PROCUREMENT, GENERALLY

Scope of Section

Section 3 - Procurement does not apply to the procurement of real property, water, or water rights.

Delegation to General Manager/Chief Executive Officer of Authority and Responsibility to Procure Equipment, Goods, and Services

The General Manager/Chief Executive Officer shall have the authority and responsibility to procure equipment, goods, or services and enter into contracts on behalf of the Brazos River Authority subject only to Spec. Dists. Code Ch. 8502, Brazos River Authority Bylaws, board policies and resolutions, and other applicable law. The General Manager/Chief Executive Officer shall exercise such authority and responsibility subject to the limitations and conditions of Spec. Dists. Code Ch. 8502, Brazos River Authority Bylaws, board policies and resolutions, and other applicable law. (TEX. WATER CODE §§ 49.056, 49.057(g), 49.151(b); Brazos River Authority Bylaws § 7.01.)

Conflicts of Interest

The Brazos River Authority shall not procure any equipment, goods, or services in violation of the Brazos River Authority Code of Ethics. (TEX. WATER CODE § 49.214; TEX. LOCAL GOV'T CODE §§ 171.001-.009.)

Historically Underutilized Businesses

The Brazos River Authority shall comply with the provisions and intent of §106, Contracting With Historically Underutilized Businesses of Texas, Article V, General Provisions of Texas House Bill 1, 72nd Legislature, First Called Session (1991) relative to contracting with underutilized businesses and providing equal employment opportunities. (30 TEX. ADMIN. CODE § 292.13(6)(B).)

Prompt Pay Act

The Brazos River Authority shall notify a vendor of an error or disputed amount in an invoice submitted for payment by the vendor no later than 21 days after the date that the BRA receives the invoice. If there is a disputed amount, the Brazos River Authority shall include in the aforementioned notice a detailed statement of the amount of the invoice which is disputed. No more than 110% of the disputed amount may be withheld from payments to the vendor. (TEX. LOCAL GOV'T CODE § 2251.042.)

Disclosure of Interested Parties

A contract that (1) requires an action or vote by the Board of Directors, (2) has a value of at least \$1 million, or (3) is for services that would require a person to register as a lobbyist under Texas Government Code Section 305, is voidable for failure to provide the disclosure of interested parties required under Texas Government Code Section 2252.908 if:

- (1) The BRA submits to the business entity written notice for the business entity's failure to provide the required disclosure, and
- (2) The business entity fails to submit to the BRA the required disclosure on or before the 10th business day after the date the business entity receives the written notice under subsection (1). (TEX. GOV'T CODE § 2252.908)

Prohibition on Contracts with Companies Boycotting Certain Entities

Definitions.

"Boycott" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a specific entity, but does not include an action made for ordinary business purposes.

"Company" means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit., except that the term does not include a sole proprietorship.

"Contract" means a contract that: 1) is between BRA and a company with 10 or more full-time employees; and 2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the BRA.

The BRA will not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it:

- (1) Does not currently, and will not for the term of the contract, boycott Israel (TEX. GOV'T CODE §§ 2271.001-.002.);
- (2) Does not currently, and will not for the term of the contract, boycott any company that engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law (TEX. GOV'T CODE §§ 2274.001-.002.);
- (3) Does not have a practice, policy, guidance, or directive that discriminates

against a firearm entity or firearm trade association and will not discriminate during the term of the contract against a firearm entity or firearm trade association (TEX. GOV'T CODE §§ 2274.001-.002.).

Authority for Policy 3.1

TEX. GOV'T CODE § 2251.042, § 2252.908, §§ 2271.001-.002, §§ 2274.001-.002

TEX. LOCAL GOV'T CODE §§ 171.001-.009.

TEX. WATER CODE §§ 49.056, 49.057(g), 49.151(b), 49.214.

30 TEX. ADMIN. CODE § 292.13(6)(B).

Brazos River Authority Bylaws § 7.01

3.2 PROCUREMENT OF PROFESSIONAL SERVICES

Basis for Selection and Fees

Professional Services shall be procured in accordance with Government Code Chapter 2254, Subchapter A, and Texas Administrative Code Title 30, Section 292.13(4)(B). In accordance with these provisions, the Brazos River Authority shall not select or contract for professional services on the basis of competitive bids; rather in procuring professional services, the Brazos River Authority shall first select the most highly qualified provider of those services on the basis of demonstrated competence and qualifications and then attempt to negotiate with that provider a contract at a fair and reasonable price. If a satisfactory contract cannot be negotiated with the most highly qualified provider of the services, the Brazos River Authority shall formally end negotiations with that provider, select the next most highly qualified provider, and attempt to negotiate a contract with that provider at a fair and reasonable price. The Brazos River Authority shall continue this process until a contract is made.

The fee for services under a professional services contract may not exceed any maximum provided by law. (TEX. GOV'T CODE § 2254.003-.004; Tex. Water Code §§ 49.057(d).)

In addition, the Brazos River Authority shall maintain a list of at least three qualified persons or firms for each area of professional service used, qualified on the basis of their demonstrated competence and qualifications to perform the services at a fair and reasonable price. For all new projects which are expected to exceed \$25,000, the Brazos River Authority shall send to its pre-qualified providers of professional services requests for proposals. (30 TEX. ADMIN. CODE § 292.13(4)(B).)

Limitation on Indemnification of the Brazos River Authority by Engineer or Architect

The Brazos River Authority shall not make a covenant or promise in, in connection with, or collateral to a contract for engineering or architectural services to which it is a party if the covenant or promise provides that a licensed engineer or registered architect whose work product is the subject of the contract must indemnify or hold harmless the Brazos River Authority against liability for damage, other than liability for damage to the extent that the damage is caused by or results from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the indemnitor or the indemnitor's agent, consultant under contract, or another entity over which the indemnitor exercises control. Such a covenant or promise is void and unenforceable by law. (TEX. LOCAL GOV'T CODE § 271.904(a).)

The Brazos River Authority shall not make a covenant or promise in, in connection with, or collateral to a contract for engineering or architectural services if the covenant or promise provides that a licensed engineer or registered architect whose work product is the subject of the contract must defend a party, including a third party, against a claim based wholly or partly on the negligence of, fault of, or breach of contract by the Brazos

River Authority, the Brazos River Authority's agent, employees, or other entities, excluding the engineer or architect or that person's agent, employee, or subconsultant, over which the Brazos River Authority exercises control. Such a covenant or promise is void and unenforceable by law. A covenant or promise may provide for the reimbursement of a Brazos River Authority's reasonable attorney's fees in proportion to the engineer's or architect's liability, and Brazos River Authority may require in a contract that the engineer or architect name the Brazos River Authority as an additional insured under the engineer's or architect's general liability insurance policy and provide any defense provided by the policy. (TEX. LOCAL GOV'T CODE § 271.904(b-c).)

A contract for engineering or architectural services to which the Brazos River Authority is a party must require a licensed engineer or registered architect to perform services: 1) with the professional skill and care ordinarily provided by competent engineers or architects practicing under the same or similar circumstances and professional license; and 2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect. In the event a contract for engineering or architectural services contains a provision providing for a different standard of care, that provision is unenforceable and the standard of care provided above applies. (TEX. LOCAL GOV'T CODE § 271.904(d-e).)

In a contract for engineering or architectural services, the Brazos River Authority may include and enforce conditions that relate to the scope, fees, and schedule of a project in the contract. ((TEX. LOCAL GOV'T CODE § 271.904(g).)

Limitation on Indemnification of the Brazos River Authority by Appraiser

The Brazos River Authority shall not include a provision in a contract for appraisal services of real property, or make a promise in connection with the contract, that requires the appraiser to indemnify or hold harmless the Brazos River Authority against liability for damage, other than liability for damage to the extent that the damage is caused by or results from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the indemnitor or the indemnitor's agent, consultant under contract, or another entity over which the indemnitor exercises control. Such a provision or promise is void and unenforceable by law (TEX. LOCAL GOV'T CODE § 281.9041(c).)

The Brazos River Authority shall not include a provision in a contract for appraisal services of real property, or make a promise in connection with the contract, if the provision or promise provides that a licensed appraiser whose work product is the subject of the contract must defend a party, including a third party, against a claim based wholly or partly on the negligence of, fault of, or breach of contract by the Brazos River Authority, the Brazos River Authority's agent, employees, or other entities, excluding the appraiser or the appraiser's agent, employee, or consultant, over which the Brazos River Authority exercises control. Such a provision or promise is void and unenforceable by law (TEX. LOCAL GOV'T CODE § 281.9041(d).)

The Brazos River Authority may include a provision in a contract for appraisal services of real property that provides for the reimbursement of a Brazos River Authority's reasonable attorney's fees in proportion to the appraiser's liability, and Brazos River Authority may require in a contract that the appraiser name the Brazos River Authority as an additional insured under the appraiser's general liability insurance policy and provide any defense provided by the policy. (TEX. LOCAL GOV'T CODE §281.9041(e).)

A contract for appraisal services to which the Brazos River Authority is a party must require an appraiser to perform services: 1) with the professional skill and care ordinarily provided by competent appraisers practicing under the same or similar circumstances and professional license; and 2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent appraiser. In the event a contract for engineering or architectural services contains a provision providing for a different standard of care, that provision is unenforceable, and the standard of care provided above applies. (TEX. LOCAL GOV'T CODE § 281.9041(f)-(g).)

In a contract for appraisal services, the Brazos River Authority may include and enforce conditions that relate to the scope, fees, and schedule of a project in the contract. ((TEX. LOCAL GOV'T CODE § 281.9041(h).)

Requests for Proposals

For all new projects which are expected to exceed \$25,000, the Brazos River Authority shall send to its pre-qualified providers of professional services requests for proposals. (30 TEX. ADMIN. CODE § 292.13(4)(B).)

Authority for Policy 3.2

TEX. GOV'T CODE §§ 2254.002-.004.
TEX. LOCAL GOV'T CODE § 271.904(a-e, g), .9041.
TEX. WATER CODE §§ 49.057(d).
30 TEX. ADMIN. CODE § 292.13(4)(B).

3.3 PROCUREMENT OF CONSTRUCTION CONTRACTS

The Brazos River Authority shall procure construction contract services in accordance with Texas Water Code Chapter 49, Subchapter I, and shall contract for construction and repair and renovation of Brazos River Authority facilities and for the purchase of equipment, materials, machinery, and all things that constitute or will constitute the plant, works, facilities, or improvements of the Brazos River Authority in accordance with Texas Water Code Section 49.273. Government Code, Chapter 2269 also provides detailed procedures applicable to local governmental entities in relation to construction contracts; however, Section 2269.003(d) provides that Chapter 2269 does not prevail over any law, rule, or regulation relating to competitive bidding or competitive sealed proposals for construction services, or to procurement of construction services pursuant to Section 49.273, Water Code, unless the governing body of the Brazos River Authority elects to permit Chapter 2269 to supersede the law, rule, or regulation. The Brazos River Authority has not elected to permit Chapter 2269 to supersede Section 49.273 of the Water Code; therefore, the Brazos River Authority procures construction contracts in accordance with Water Code Section 49.273. (TEX. WATER CODE §§ 49.271(a), 49.273(a); (TEX. GOV'T CODE § 2269.003(d).)

Scope of Policy

This policy does not apply to:

- (1) equipment, materials, or machinery purchased by the Brazos River Authority at an auction that is open to the public;
- (2) contracts for personal or professional services or for a utility service operator;
- (3) contracts for services or property for which there is only one source or for which it is otherwise impracticable to obtain competition;
- (4) high technology procurements.
- (5) contracts for the purchase of electricity for use by the Brazos River Authority; or
- (6) contracts for services related to compliance with a state or federal construction storm water requirement, including acquisition of permits, construction, repair, and removal of temporary erosion control devices, cleaning of silt and debris from streets and storm sewers, monitoring of construction sites, and preparation and filing of all required reports. (TEX. WATER CODE § 49.278(a).)

The Brazos River Authority is not required to advertise or seek competitive bids for security or surveillance systems or components of or additions to Brazos River Authority

facilities relating to security or surveillance, including systems used for the prevention of terrorist or criminal acts and incidents or acts of war, if the Board of Directors finds that doing so would compromise the safety and security of Brazos River Authority facilities or residents. (TEX. WATER CODE §§ 49.273(l),)

Qualification of Bidders

The Brazos River Authority may adopt minimum criteria for the qualifications of bidders on its construction contracts. (TEX. WATER CODE § 49.271(c).)

The Brazos River Authority may require attendance by a principal of each prospective bidder at mandatory pre-bid conferences and may make any reasonable additional requirements it deems appropriate to obtain competitive bids from responsible contractors and to minimize contract disputes. (TEX. WATER CODE § 49.271(d).)

Two Percent Deposit Required on Bids for Contracts Over \$50,000

For contracts over \$50,000 a bidder must submit a certified or cashier's check on a responsible bank in the state equal to at least two percent of the total amount of the bid or a bid bond of at least two percent of the total amount of the bid issued by a surety legally authorized to do business in the state. For contracts over \$250,000, the Brazos River Authority must accept a bid bond in the amount it requires as a bid deposit if the bid bond meet the other requirements herein. If the successful bidder fails or refuses to enter into a proper contract with the Brazos River Authority or if it fails or refuses to furnish the payment and performance bonds that are required by law, it forfeits its deposit. (TEX. WATER CODE § 49.271(c).)

Advertising and Bidding Requirements

A contract may cover all the work to be provided for the Brazos River Authority, or the various elements of the work may be segregated for the purpose of receiving bids. A contract may also provide that the work will be completed in stages over a period of years. The Brazos River Authority may not, however, subdivide work to avoid advertising and bidding requirements. (TEX. WATER CODE §§ 49.273(b) & (g).)

For contracts that are \$100,000 or more, the Brazos River Authority shall advertise the letting of the contract, including the general conditions, time, and place of opening of sealed bids. The notice shall be published in any newspaper with general circulation in the boundaries of the Brazos River Authority. The notice shall be published once a week for two consecutive weeks before the date that the bids are opened, and the first publication shall not be later than the 14th day before the date of the opening of the sealed bids. The bidding documents, plans, specifications, and other data needed to bid on the project must be available at the time of the first advertisement, and the advertisement shall state the location at which these documents may be reviewed. (TEX. WATER CODE §§ 49.273(a) and (d).)

For contracts over \$25,000 but less than \$100,000, the Brazos River Authority shall solicit written competitive bids on uniform written specifications from at least three bidders. (TEX. WATER CODE § 49.273(e).)

For contracts of not more than \$25,000, the Brazos River Authority is not required to advertise or to seek competitive bids. (TEX. WATER CODE § 49.273(f).)

The Brazos River Authority may not accept bids that include substituted items unless the substituted items were included in the original bid proposal and all bidders had the opportunity to bid on the substituted items or unless notice is given to all bidders at a mandatory pre-bid conference. (TEX. WATER CODE § 49.273(h).)

The Brazos River Authority is not required to advertise or seek competitive bids for the repair of its facilities if the scope or extent of the repair work cannot be readily ascertained or if the nature of the repair work does not readily lend itself to competitive bidding. (TEX. WATER CODE § 49.273(j).)

Upon written request, the Brazos River Authority shall furnish a copy of the engineer's report or contract plans and specifications to any person desiring to bid on a construction contract. The Brazos River Authority may charge a reasonable fee to cover the cost of making the copy. (TEX. WATER CODE § 49.272.)

A contract for construction work may include economic incentives for early completion of the work or economic disincentives for late completion of the work. (TEX. WATER CODE § 49.271(e).)

Preference Given to Local Contractors

Excepting contracts involving federal funds, the Brazos River Authority shall not award a contract to an out-of-state bidder unless the nonresident bidder underbids the lowest bid submitted by a responsible in-state bidder. The out-of-state bidder must underbid by an amount that is not less than the greater of the following: 1) the amount by which an in-state bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located; or 2) the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which a majority of the manufacturing relating to the contract will be performed. The Brazos River Authority shall use the information published in the *Texas Register* by the Texas Building and Procurement Commission concerning other states' laws relating to bid evaluations to evaluate the bid of a nonresident bidder. (TEX. GOV'T CODE §§ 2252.002-.004.)

Payment and Performance Bonds

Good and sufficient performance and payment bonds must be given by those to whom construction contracts are awarded. (TEX. WATER CODE § 49.275.)

The Brazos River Authority may adopt minimum criteria for the qualifications of sureties issuing payment and performance bonds. It may not, however, require that a contractor obtain a surety bond from any specific insurance or surety company, agent, or broker. (TEX. WATER CODE § 49.271(c); TEX. GOV'T CODE § 2253.021(f).)

Performance and payment bonds must be executed by a corporate surety in accordance with Section 1, Chapter 87, Acts of the 56th Legislature, Regular Session, 1959 (Article 7.19-1, Vernon's Texas Insurance Code). (TEX. GOV'T CODE § 2253.021(d).)

A "performance bond" is:

- (1) solely for the protection of the Brazos River Authority;
- (2) in the amount of the contract; and
- (3) conditioned on the faithful performance of the work in accordance with the plans, specifications, and contract documents. (TEX. GOV'T CODE § 2253.021(b).)

A "payment bond" is

- (1) solely for the protection and use of the payment bond beneficiaries who have a direct contractual relationship with the prime contractor or a subcontractor to supply public work or material; and
- (2) in the amount of the contract. (TEX. GOV'T CODE § 2253.021(c).)

For contracts in excess of \$100,000, the Brazos River Authority shall require the contractor, before beginning work, to execute to the Brazos River Authority a performance bond. (TEX. GOV'T CODE § 2253.021(a)(1).)

For contracts in excess of \$25,000, the Brazos River Authority shall require the contractor, before beginning work, to execute to the Brazos River Authority a payment bond. (TEX. GOV'T CODE § 2253.021(a)(2).)

Change Orders

If changes in plans or specifications are necessary after the performance of the contract is begun, or if it is necessary to decrease or increase the quantity of the work to be performed or of the materials, equipment, or supplies to be furnished, the Board of Directors may approve change orders making the changes. The Board of Directors may grant authority to an official or employee responsible for purchasing or for administering a contract to approve a change order that involves an increase or decrease of \$150,000 or less. (TEX. WATER CODE § 49.273(i).)

The aggregate of the change orders may not increase the original contract price by more

than twenty-five percent (TEX. WATER CODE § 49.273(i)); provided, however, the Brazos River Authority shall not exceed ten percent on change orders without the express authorization of the Board of Directors.

The aggregate of the change orders that increase the original contract price by more than ten percent (or twenty-five percent with Board Authorization) may be issued only (1) as a result of unanticipated conditions encountered during construction, repair, or renovation; (2) as a result of changes in regulatory criteria; or (3) to facilitate project coordination with other political entities. (TEX. WATER CODE § 49.273(i).)

Reverse Auction Procedure

The Brazos River Authority may use the reverse auction procedure only for the procurement of construction contracts for which a bond is not required under Tex. Gov't Code § 2253.021 (TEX. GOV'T CODE § 2253.021(h).) The procedure must include a notice provision and other provisions necessary to produce a method of purchasing that is advantageous to the Brazos River Authority and fair to vendors. (TEX. WATER CODE § 49.273(k); TEX. LOCAL GOV'T CODE § 271.906.)

A "reverse auction procedure" means:

- (1) a real-time bidding process usually lasting less than one hour and taking place at a previously scheduled time and Internet location, in which multiple suppliers, anonymous to each other, submit bids to provide the designated goods or services; or
- (2) a bidding process usually lasting less than two weeks and taking place during a previously scheduled period and at a previously scheduled Internet location, in which multiple suppliers, anonymous to each other, submit bids to provide the designated goods or services. (TEX. GOV'T CODE § 2155.062(d).)

Payments for Construction Work

The Brazos River Authority shall make progress payments under construction contracts monthly as the work proceeds or at more frequent intervals as determined by the Board of Directors or its designee on estimates approved by the Board of Directors or its designee. (TEX. WATER CODE § 49.276(b).)

If requested by the Brazos River Authority, the contractor shall furnish a breakdown of the total contract price showing the amount included for each principal category of the work, in such detail as requested, to provide a basis for determining progress payments. (TEX. WATER CODE § 49.276(c).)

In the preparation of estimates, the Brazos River Authority may authorize material delivered on the site and preparatory work done to be considered if the consideration is specifically authorized by the contract and if the contractor furnishes satisfactory evidence

that he has acquired title to the material and that it will be utilized on the work covered by the contract. (TEX. WATER CODE § 49.276(c).)

On completion and acceptance of each separate project, public work, or other division of the contract, on which the price is stated separately in the contract, payment may be made without retention of a percentage. (TEX. WATER CODE § 49.276(e).)

Retainage and Interest on Retainage

Except as set forth below, contract retainage may not be less than five percent of the estimate of the contract price at the time of execution. (TEX. WATER CODE §§ 49.002, 49.276(d) & (e); TEX. GOV'T CODE § 2252.032-.033; Op. Tex. Att'y Gen. No. JM-199 (1984).)

For contracts estimated at the time of execution to be under \$400,000, ten percent of the estimated amount shall be retained by the Brazos River Authority until final completion and acceptance of the contract work. However, if the board, at any time after fifty percent of the work has been completed, finds that satisfactory progress is being made, it may authorize any of the remaining progress payments to be made in full. Also, if the work is substantially complete, the board, if it finds the amount retained to be in excess of the amount adequate for the protection of the Brazos River Authority, at its discretion may release to the contractor all or a portion of the excess amount. The Brazos River Authority is not obligated to pay interest on amounts retained except as provided herein. The Brazos River Authority is not obligated to pay interest on the ten percent retainage held on the first fifty percent of work completed. If the Brazos River Authority holds any retainage on the remaining fifty percent of the work completed, it shall pay interest on such retainage from the date the retainage is withheld to the date of payment to the contractor. The interest rate to be paid on such retainage shall be the rate of interest paid by the Brazos River Authority's depository bank on interest bearing accounts of similar amounts during the period of time interest accrues as provided herein. On completion and acceptance of each separate project, public work, or other division of the contract, on which the price is stated separately in the contract, payment may be made without retention of a percentage. (TEX. WATER CODE §§ 49.002, 49.276(d) and (e); TEX. GOV'T CODE § 2252.032-.033; Op. Tex. Att'y Gen. No. JM-199 (1984).)

For contracts estimated at the time of execution to be \$400,000 or more, ten percent of the periodic contract payment shall be retained by the Brazos River Authority and deposited in an interest-bearing account. The interest earned on the retainage shall be paid to the prime contractor on completion of the contract. If the board, at any time after fifty percent of the work has been completed, finds that satisfactory progress is being made, it may authorize any of the remaining progress payments to be made in full. Also, if the work is substantially complete, the board, if it finds the amount retained to be in excess of the amount adequate for the protection of the Brazos River Authority, at its discretion may release to the contractor all or a portion of the excess amount. (TEX. WATER CODE §§ 49.002, 49.276(d) and (e); TEX. GOV'T CODE § 2252.032-.033; Op. Tex. Att'y Gen. No. JM-199 (1984).)

Inspection of and Reports on Construction Work

The Board of Directors shall have control of construction work being done for the Brazos River Authority under contract to determine whether or not the contract is being fulfilled and shall have the construction work inspected by the Brazos River Authority engineer or other designated person. (TEX. WATER CODE § 49.277(a).)

During the progress of the construction work, the Brazos River Authority engineer or other designated person shall submit to the Board of Directors detailed written reports showing whether or not the contractor is complying with the contract, and when the work is completed, the Brazos River Authority engineer shall submit to the board a final detailed report including as-built plans of the facilities showing whether or not the contractor has fully complied with the contract. (TEX. WATER CODE §§ 49.277(b).)

Prevailing Wage Rates

For a contract for a public work (a public work includes a building, highway, road, excavation, and repair work or other project development or improvement, paid for in whole or in part from public funds, without regard to whether the work is done under public supervision or direction), the Brazos River Authority shall determine the general prevailing rate of per diem wages in the locality in which the public work is to be performed for each craft or type of worker needed to execute the contract and the prevailing rate for legal holiday and over time work, such rate to be determined as a sum certain, expressed in dollars and cents, by (TEX. WATER CODE §§ 49.279; TEX. GOV'T CODE § 2258.022(a) and (c).):

- (1) conducting a survey of the wages received by classes of workers employed on projects of a character similar to the contract work in the political subdivision of the state in which the public work is to be performed (TEX. GOV'T CODE § 2258.022(a)(1).);
- (2) using the prevailing wage rate as determined by the United States Department of Labor in accordance with the Davis-Bacon Act (40 U.S.C. Section 276a et seq.), and its subsequent amendments (TEX. GOV'T CODE § 2258.022(a)(2).);
- (3) by adopting the prevailing wage rate of one of the municipalities that the Brazos River Authority is wholly or partially located within or located within the extraterritorial jurisdiction of (TEX. WATER CODE §§ 49.279(1)(a).); or
- (4) by adopting the prevailing wage rate of the county in which the Brazos River Authority is located or, if the county in which the Brazos River Authority is located has not adopted a wage rate, the prevailing wage rate of a county adjacent to the county in which the Brazos River Authority is located. (TEX. WATER CODE §§ 49.279(1)(b).)

The Brazos River Authority shall specify in the call for bids for the contract and in the contract itself the wage rates it determines and the Brazos River Authority's determination of the prevailing rate of per diem wages is final. (TEX. GOV'T CODE § 2258.022(d), (e).)

The contractor who is awarded a contract by the Brazos River Authority, or a subcontractor of the contractor, shall pay not less than the rates determined under Texas Government Code Section 2258.022 to a worker employed by it in the execution of the contract. (TEX. GOV'T CODE § 2258.023(a).)

A contractor or subcontractor who violates this section shall pay to the Brazos River Authority, \$60 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the contract. The Brazos River Authority shall specify this penalty in the contract. (TEX. GOV'T CODE § 2258.023(a).)

A contractor or subcontractor does not violate this section if the Brazos River Authority does not determine the prevailing wage rates, and specify the rates in the contract as provided by Texas Government Code Section 2258.022. (TEX. GOV'T CODE § 2258.023(c).)

The Brazos River Authority shall use any money collected under Texas Government Code Section 2258.023 to offset the costs incurred in the administration of Texas Government Code Section 2258.022. (TEX. GOV'T CODE § 2258.023(d).)

The Brazos River Authority shall: (1) take cognizance of complaints of all violations of Texas Government Code Chapter 2258 committed in the execution of the contract; and (2) withhold money forfeited or required to be withheld under Chapter 2258 from the payments to the contractor under the contract, except that the Brazos River Authority may not withhold money from other than the final payment without a determination by the Brazos River Authority that there is good cause to believe that the contractor has violated Chapter 2258. (TEX. GOV'T CODE § 2258.051.)

On receipt of information, including a complaint by a worker, concerning an alleged violation of Texas Government Code Section 2258.023 by a contractor or subcontractor, the Brazos River Authority shall make an initial determination as to whether good cause exists to believe that the violation occurred. The Brazos River Authority must make its determination before the 31st day after the date the Brazos River Authority receives the information. The Brazos River Authority shall notify in writing the contractor or subcontractor and any affected worker of its initial determination. The Brazos River Authority shall retain any amount due under the contract pending a final determination of the violation. (TEX. GOV'T CODE § 2258.052.)

The Brazos River Authority shall use any amounts retained under Texas Government Code Chapter 2258 to pay the worker the difference between the amount the worker received in wages for labor on the public work at the rate paid by the contractor or subcontractor and the amount the worker would have received at the general prevailing

wage rate as provided in the arbitrator's award (if the issue went to arbitration as provided under Chapter 2258). The Brazos River Authority may adopt rules, orders, or ordinances relating to the manner in which a reimbursement is made. If the amounts retained by the Brazos River Authority under this chapter are not sufficient for the Brazos River Authority to pay the worker the full amount owed, the worker has a right of action against the contractor or subcontractor and the surety of the contractor or subcontractor to recover the amount owed, reasonable attorney's fees, and court costs. (TEX. GOV'T CODE § 2258.056.)

Authority for Policy 3.3

TEX. GOV'T CODE §§ 2155.062(d), 2252.002-.004, 2252.032-.033, 2253.021., 2258.002, .021-.023, .051-.052, .056, 2269.003(d).

TEX. LOCAL GOV'T CODE § 271.906.

TEX. WATER CODE §§ 49.002, 49.271-.273, 49.275-.277, 49.278(a)., 49.279

30 TEX. ADMIN. CODE §§ 293.63, 293.81-.82.

Op. Tex. Att'y Gen. No. JM-199 (1984).

3.4 PROCUREMENT OF LEGAL SERVICES

The Brazos River Authority shall procure legal services on the basis of demonstrated competence and qualifications to perform the services for a fair and reasonable price. (TEX. GOV'T CODE § 2254.003(a); TEX. WATER CODE § 49.057(d).)

Contingent Fee Contracts

The requirements herein do not apply to contingent fee contracts between the BRA and a party that the BRA has contracted with for services related to the collection of certain delinquent obligations under Section 2107.003(b), (c), or (c-1) of the Texas Government Code.

The requirements for contingent fee contracts herein include amendments to contingent fee contracts that change the scope of representation or may result in the filing of an action or the amending of a petition in an existing action.

In procuring legal services under a contingent fee contract, the BRA shall:

- (1) select a well-qualified attorney or law firm on the basis of demonstrated competence, qualifications, and experience in the requested services; and
- (2) attempt to negotiate a contract with that attorney or law firm for a fair and reasonable price.

The BRA may require an attorney or law firm to indemnify or hold harmless the BRA from claims and liabilities resulting from negligent acts or omissions of the attorney or law firm or persons employed by the attorney or law firm, but not for claims and liabilities resulting from negligent acts or omissions of the BRA or its employees.

- (1) The BRA may enter into a contingent fee contract for legal services only if the BRA:
 - (A) before or at the time of giving the written notice for an open meeting to consider the contingent fee contract, also provides written notice to the public stating:
 1. the reasons for pursuing the matter that is the subject of the legal services for which the attorney or law firm would be retained and the desired outcome of pursuing the matter;
 2. the competence, qualifications, and experience demonstrated by the attorney or law firm;
 3. the nature of any relationship, including the beginning of the relationship, between the BRA or Board of Directors and the attorney or law firm;
 4. the reasons the legal services cannot be adequately performed by the attorneys and supporting personnel of the

- BRA;
 - 5. the reasons the legal services cannot be reasonably obtained from attorneys in private practice under a contract providing for the payment of hourly fees without contingency; and
 - 6. the reasons entering into a contingent fee contract for legal services is in the best interest of the residents of the BRA; and
 - (B) approves the contract in an open meeting called for the purpose of considering the matters listed in Subsection (a)(1).
- (2) On approval of a contingent fee contract, the Board of Directors shall state in writing that the BRA finds that:
 - (A) there is a substantial need for the legal services;
 - (B) the legal services cannot be adequately performed by the attorneys and supporting personnel of the BRA; and
 - (C) the legal services cannot reasonably be obtained from attorneys in private practice under a contract providing only for the payment of hourly fees, without regard to the outcome of the matter, because of the nature of the matter for which the services will be obtained or because the BRA does not have funds to pay the estimated amounts required under a contract providing only for the payment of hourly fees.
- (3) Before a contingent fee contract for legal services approved by the Board of Directors is effective and enforceable, the BRA must receive attorney general approval of the contract. The political subdivision shall file the contract with the attorney general along with:
 - (A) a description of the matter to be pursued by the political subdivision;
 - (B) a copy of the required notice required and a statement of the method and date of the provision of the notice; and
 - (C) a copy of the statement required by Subsection (b) above.

Contracts for contingent fees shall comply with the provisions of Government Code Chapter 2254, Subchapter C. (TEX. GOV'T CODE § 2254, SUBCHAPTER C.)

Authority for Policy 3.4

TEX. GOV'T CODE §§ 2254.003(a) and Subchapter C.
 TEX. WATER CODE § 49.057(d).

3.5 PROCUREMENT OF LABORATORY AND ENVIRONMENTAL SERVICES

The Brazos River Authority may contract with any person, within or without the boundaries of the Brazos River Authority, to provide or receive laboratory or environmental services related to environmental, health, or drinking water testing. (TEX. WATER CODE § 49.232.).

Authority for Policy 3.5

TEX. WATER CODE § 49.232.

3.6 PROCUREMENT OF PERSONAL PROPERTY

Acquisition of Personal Property

The Brazos River Authority may acquire equipment and other personal property considered necessary for the purpose of accomplishing any one or more of the Brazos River Authority's purposes. (SPEC. DIST. CODE § 8502.012(f); TEX. WATER CODE § 49.218(a).)

The Brazos River Authority shall have the right to acquire property by gift, grant, or purchase, and the right to acquire property shall include property considered necessary for the construction, improvement, extension, enlargement, operation, or maintenance of the plants, works, improvements, facilities, equipment, or appliances of the Brazos River Authority. (SPEC. DIST. CODE § 8502.014; TEX. WATER CODE § 49.218(b).)

The Brazos River Authority may lease property from others for its use on such terms and conditions as the Board of Directors may determine to be advantageous. (SPEC. DIST. CODE §§ 8502.012(f), 8502.014; TEX. WATER CODE §§ 49.218(f) & (g).)

The Brazos River Authority shall not be authorized to mortgage or otherwise encumber any of its personal property or any interest therein or to acquire any such property or interest subject to a mortgage or conditional sale. The Brazos River Authority, however, shall not be prevented from the pledging of revenues as authorized by law. (SPEC. DIST. CODE § 8502.013.)

Authority to Contract for Personal Property

The Brazos River Authority may execute, perform, and make payments under a contract with any person for the use or the purchase or other acquisition of any personal property or the financing thereof. (SPEC. DIST. CODE § 8502.012(c); TEX. LOCAL GOV'T CODE § 271.005(a).)

Any such contract may:

- (1) be on the terms considered appropriate by the Brazos River Authority;
- (2) be in the form of a lease, a lease with an option or options to purchase, an installment purchase, or any other form considered appropriate by the Brazos River Authority;
- (3) be for a particular term, not to exceed twenty-five years, and contain an option or options to renew or extend the term; and
- (4) be made payable from a pledge of all or any part of any revenues, funds, or taxes available to the Brazos River Authority for its public purposes. (TEX. LOCAL GOV'T CODE §§ 271.005(a), 271.009.)

The Brazos River Authority may contract under this policy for materials and labor incident to the installation of personal property. (TEX. LOCAL GOV'T CODE § 271.005(b).)

A contract may provide for the payment of interest on the unpaid amounts of the contract at a rate or rates and may contain prepayment provisions and termination penalties. The net effective interest rate on the contract may not exceed the net effective interest rate at which public securities may be issued in accordance with chapter 1204 of the *Texas Government Code*. Interest on the unpaid amounts of a contract shall be computed as simple interest. (TEX. LOCAL GOV'T CODE § 271.005(c).)

Subject only to applicable constitutional restrictions, the Brazos River Authority may obligate taxes or revenues for the full term of a contract for the payment of the contract. (TEX. LOCAL GOV'T CODE § 271.005(d).)

If the contract provides for the payment of an aggregate amount of \$10,000 or more, the Brazos River Authority may submit the contract and the record relating to the contract to the attorney general for examination as to the validity of the contract. The attorney general shall approve the contract if it has been made in accordance with the constitution and other laws of this state, and the contract then shall be registered by the Comptroller of Public Accounts. After the contract has been approved and registered, it is valid and is incontestable for any cause. The legal obligation of the lessor, vendor, or supplier of personal property or of the person installing personal property to the Brazos River Authority is not diminished in any respect by the approval and registration of the contract. (TEX. LOCAL GOV'T CODE § 271.007.)

Recycled and Recyclable Products

The Brazos River Authority must give preference in purchasing to products made of recycled materials if the products meet applicable specifications as to quantity and quality. (TEX. HEALTH & SAFETY CODE § 361.426(a).)

The Brazos River Authority must review and revise its procurement procedures and specifications for the purchase of goods, supplies, equipment, and materials in order to eliminate procedures and specifications that explicitly discriminate against products made of recycled materials. (TEX. HEALTH & SAFETY CODE § 361.426(b)(1).)

The Brazos River Authority must review and revise its procurement procedures and specifications for the purchase of goods, supplies, equipment, and materials in order to encourage the use of products made of recycled materials and to eliminate procedures and specifications that explicitly discriminate against products made of recycled materials. (TEX. HEALTH & SAFETY CODE § 361.426(b)(2).)

The Brazos River Authority must review and revise its procurement procedures and specifications for the purchase of goods, supplies, equipment, and materials in order to ensure to the maximum extent economically feasible that it purchases products that may

be recycled when they have served their intended use. (TEX. HEALTH & SAFETY CODE § 361.426(b)(13).)

In developing new procedures and specifications, the Brazos River Authority shall encourage the use of recycled products and products that may be recycled or reused. (TEX. HEALTH & SAFETY CODE § 361.426(c).)

Competitive Bidding and Proposals

In any procedure for competitive bidding, the Brazos River Authority shall provide all bidders with the opportunity to bid on the same items on equal terms and have bids judged according to the same standards as set forth in the specifications. The Brazos River Authority shall receive bids or proposals in a fair and confidential manner. The Brazos River Authority may receive bids or proposals under this policy in hard-copy format or through electronic transmission. (TEX. LOCAL GOV'T CODE § 271.0065.)

The Brazos River Authority may reject all bids. (TEX. LOCAL GOV'T CODE § 271.905(c).)

Notwithstanding any provision in the *Texas Local Government Code* to the contrary, the Brazos River Authority may purchase property from any governmental entity by negotiated contract without the necessity of securing appraisals or advertising for bids. In addition, notwithstanding provisions of other law or a home-rule municipal charter, a municipality may contract with the Brazos River Authority and the term of such contract may be of unlimited duration. (TEX. WATER CODE § 49.068.)

Reverse Auction Method of Purchasing

The Brazos River Authority may use the reverse auction procedure in purchasing goods in place of any other method of purchasing that would otherwise apply to the purchase as long as it includes in the procedure a notice provision and other provisions necessary to produce a method of purchasing that is advantageous to the Brazos River Authority and fair to vendors. (TEX. LOCAL GOV'T CODE § 271.906.)

A “reverse auction procedure” means:

- (1) a real-time bidding process usually lasting less than one hour and taking place at a previously scheduled time and Internet location, in which multiple suppliers, anonymous to each other, submit bids to provide the designated goods or services; or
- (2) a bidding process usually lasting less than two weeks and taking place during a previously scheduled period and at a previously scheduled Internet location, in which multiple suppliers, anonymous to each other, submit bids to provide the designated goods or services. (TEX. GOV'T CODE § 2155.062(d).)

Inapplicability of Payment, Performance, and Bid Bonding Requirements

The payment, performance, and bid bonding requirements do not apply to a contract for the purchase of equipment, materials, or machinery not otherwise incorporated into a construction project. (TEX. WATER CODE §§ 49.271(c), 49.275; TEX. GOV'T CODE § 2253.021(a); 30 TEX. ADMIN. CODE § 293.63.)

Authority for Policy 3.6

SPEC. DIST. CODE §§ 8502.012(c), (f), .013, .014.

TEX. GOV'T CODE §§ 2155.062(d), 2253.021(a).

TEX. LOCAL GOV'T CODE §§ 271.005, 271.0065, 271.007, 271.009, 271.905, 271.906.

TEX. HEALTH & SAFETY CODE § 361.426.

TEX. WATER CODE §§ 49.068, 49.218, 49.271(c), 49.275.

30 TEX. ADMIN. CODE § 293.63.

3.7 HIGH TECHNOLOGY PROCUREMENT

A “high technology procurement” means the procurement of equipment, goods, or services of a highly technical nature, including:

- (1) data processing equipment and software and firmware used in conjunction with data processing equipment;
- (2) telecommunications equipment and radio and microwave systems;
- (3) electronic distributed control systems, including building energy management systems; and
- (4) technical services related to those items. (TEX. LOCAL GOV'T CODE § 252.001(4).)

Acceptable Methods of Procurement

For high technology procurements that require an expenditure of more than \$25,000, the Brazos River Authority shall contract using one of the following methods:

- (1) competitive sealed bidding;
- (2) competitive sealed proposals; or
- (3) reverse auction procedure. (TEX. WATER CODE § 49.278(b); TEX. LOCAL GOV'T CODE §§ 252.021(a), 252.042.)

Competitive Bidding In Relation To Historically Underutilized Business.

The Brazos River Authority, in making an expenditure of more than \$3,000 but less than \$50,000, shall contact at least two historically underutilized businesses on a rotating basis, based on information provided by the comptroller pursuant to Chapter 2161, Government Code. If the list fails to identify a historically underutilized business in the county in which the high technology good or service is to be utilized or performed, the Brazos River Authority is exempt from this section. (TEX. LOCAL GOV'T CODE § 252.0215.)

Notice Concerning Competitive Sealed Bidding and Proposals

The Brazos River Authority must give notice of the time and place at which the bids or proposals will be publicly opened and read aloud. Such notice shall be published at least once a week for two consecutive weeks in a newspaper with general circulation in the Brazos River Authority. The date of the first publication must be before the fourteenth day before the date set to publicly open the bids or proposals and read them aloud. (TEX. LOCAL GOV'T CODE §§ 252.041(a) & (b).)

Alternate Method of Accepting Bids or Proposals

The Brazos River Authority may accept bids or proposals through electronic transmission if it has adopted rules to ensure the identification, security, and confidentiality of the electronic bids or proposals and to ensure that the electronic bids or proposals remain effectively unopened until the proper time. (TEX. LOCAL GOV'T CODE § 252.0415.)

Competitive Sealed Bidding

If the Brazos River Authority uses competitive sealed bidding, it must award the contract to the lowest responsible bidder or to the bidder who provides the goods or services at the best value. Before awarding a contract under this section, the Brazos River Authority must indicate in the bid specifications and requirements that the contract may be awarded either to the lowest responsible bidder or to the bidder who provides goods or services at the best value for the municipality. In determining the best value, the Brazos River Authority may consider:

- (1) the purchase price;
- (2) the reputation of the bidder and of the bidder's goods or services;
- (3) the quality of the bidder's goods or services;
- (4) the extent to which the goods or services meet the Brazos River Authority's needs;
- (5) the bidder's past relationship with the Brazos River Authority;
- (6) the impact on the ability of the Brazos River Authority to comply with laws and rules relating to contracting with historically underutilized businesses and non-profit organizations employing persons with disabilities;
- (7) the total long-term cost to the Brazos River Authority to acquire the bidder's goods or services; and
- (8) any relevant criteria specifically listed in the request for bids or proposals. (TEX. LOCAL GOV'T CODE §§ 252.043(a), (b) & (c).)

The Brazos River Authority may reject any and all bids. (TEX. LOCAL GOV'T CODE § 252.043(f).)

A bid that has been opened may not be changed for the purpose of correcting an error in the bid price; however, this does not change the common law right of a bidder to withdraw a bid due to a material mistake in the bid. (TEX. LOCAL GOV'T CODE § 252.043(g).)

In determining who is a responsible bidder, the Brazos River Authority may take into account the safety record of the bidder; of the firm, corporation, partnership, or institution represented by the bidder; or of anyone acting for such a firm, corporation, partnership, or institution if:

- (1) the Board of Directors has adopted a written definition and criteria for accurately determining the safety record of the bidder;
- (2) the Brazos River Authority has given notice to prospective bidders in the bid specifications that the safety record of a bidder may be considered in determining the responsibility of the bidder; and
- (3) the determinations are not arbitrary and capricious. (TEX. LOCAL GOV'T CODE § 252.0435.)

Notwithstanding any provision in the *Texas Local Government Code* to the contrary, the Brazos River Authority may purchase property from any governmental entity by negotiated contract without the necessity of securing appraisals or advertising for bids. In addition, notwithstanding provisions of other law or a home-rule municipal charter, a municipality may contract with the Brazos River Authority and the term of such contract may be of unlimited duration. (TEX. WATER CODE § 49.068.)

Competitive Sealed Proposals

If the Brazos River Authority uses competitive sealed proposals, its request for proposals must solicit quotations and must specify the relative importance of price and other evaluation factors. Discussions in accordance with the terms of a request for proposals and with policies adopted by the Board of Directors may be conducted with offerors who submit proposals and who are determined to be reasonably qualified for the award of the contract. Offerors shall be treated fairly and equally with respect to any opportunity for discussion and revision of proposals. To obtain the best final offers, revisions may be permitted after submissions and before the award of the contract. (TEX. LOCAL GOV'T CODE § 252.042.)

The contract must be awarded to the responsible offeror whose proposal is determined to be the most advantageous to the Brazos River Authority considering the relative importance of price and other evaluation factors included in the request for proposals. (TEX. LOCAL GOV'T CODE § 252.043(h).)

Proposals shall be opened in a manner that avoids disclosure of the contents to competing offerors and keeps the proposals secret during negotiations. All proposals are open for public inspection after the contract is awarded, but trade secrets and confidential information in the proposals are not open for public inspection. (TEX. LOCAL GOV'T CODE § 252.049.)

Reverse Auction

A “reverse auction procedure” means:

- (1) a real-time bidding process usually lasting less than one hour and taking place at a previously scheduled time and Internet location, in which multiple suppliers, anonymous to each other, submit bids to provide the designated goods or services; or
- (2) a bidding process usually lasting less than two weeks and taking place during a previously scheduled period and at a previously scheduled Internet location, in which multiple suppliers, anonymous to each other, submit bids to provide the designated goods or services. (TEX. GOV'T CODE § 2155.062(d).)

Payment for the Purchase of Materials, Equipment, and Supplies

The Brazos River Authority may pay for the purchase of materials, equipment, and supplies on either a lump-sum or unit price basis. If the contract is let on a unit price basis, the information furnished to offerors must specify the approximate quantity needed, based on the best available information, but payment to the contractor must be based on the actual quantity constructed or supplied. (TEX. LOCAL GOV'T CODE § 252.047.)

Change Orders

If changes in plans or specifications are necessary after the performance of the contract is begun or if it is necessary to decrease or increase the quantity of work to be performed or of materials, equipment, or supplies to be furnished, the governing body of the Brazos River Authority may approve change orders making the changes. If a change order involves a decrease or an increase of \$50,000 or less, the Brazos River Authority may grant general authority to an administrative official to approve the change orders. The original contract price may not be increased by more than twenty-five percent. The original contract price may not be decreased by more than twenty-five percent without the consent of the contractor. (TEX. LOCAL GOV'T CODE § 252.048(a), (c), (d).)

Confidentiality of Information In Bids or Proposals.

Trade secrets and confidential information in competitive sealed bids are not open for public inspection. If provided in a request for proposals, proposals shall be opened in a manner that avoids disclosure of the contents to competing offerors and keeps the proposals secret during negotiations. All proposals are open for public inspection after the contract is awarded, but trade secrets and confidential information in the proposals are not open for public inspection. 252.049 (a) & (b)

Authority for Policy 3.7

TEX. GOV'T CODE § 2155.062(d).

TEX. LOCAL GOV'T CODE §§ 252.001(4); 252.021(a); 252.0215; 252.041(a), (b) & (c); 252.0415; 252.042, 252.043; 252.0435; 252.047; 252.048(a), (c), (d); 252.049;.

TEX. WATER CODE §§ 49.068, 49.278(b).

3.8 Additional Miscellaneous Methods of Procurement

State Cooperation in Local purchasing Programs

The Brazos River Authority may participate in the purchasing program of the Texas Comptroller, including participation in purchases that use the reverse auction procedure, as defined by Section 2155.062(d), Government Code, by filing with the commission established by the Comptroller to administer the purchasing program a resolution adopted by the governing body of the Brazos River Authority requesting that the Brazos River Authority be allowed to participate on a voluntary basis, and to the extent the commission deems feasible, and stating that the Brazos River Authority will:

- (1) designate an official to act for the Brazos River Authority in all matters relating to the program, including the purchase of items from the vendor under any contract, and that the governing body will direct the decisions of the representative;
- (2) be responsible for:
 - (A) submitting requisitions to the commission under any contract; or
 - (B) electronically sending purchase orders directly to vendors, or complying with commission procedures governing a reverse auction purchase, and electronically sending to the commission reports on actual purchases made under this paragraph that provide the information and are sent at the times required by the commission;
- (3) be responsible for making payment directly to the vendor; and
- (4) be responsible for the vendor's compliance with all conditions of delivery and quality of the purchased item by the Brazos River Authority

Purchase of an item under a state contract or under a reverse auction procedure, as defined by Section 2155.062(d), Government Code, sponsored by the commission satisfies any state law requiring the Brazos River Authority to seek competitive bids for the purchase of the item. (TEX. LOCAL GOV'T CODE § 271.083.)

Cooperative Purchasing Programs

The Brazos River Authority may participate in a cooperative purchasing program with another local government of this state or another state or with a local cooperative organization of this state or another state. If the Brazos River Authority is participating in a cooperative purchasing program, it may sign an agreement with another participating local government or a local cooperative organization stating that the Brazos River Authority will:

- (1) designate a person to act under the direction of, and on behalf of, the Brazos River Authority in all matters relating to the program;
- (2) make payments to another participating local government or a local cooperative organization or directly to a vendor under a contract made under the cooperative purchasing program, as provided in the agreement between the participating local governments or between the Brazos River Authority and a local cooperative organization; and
- (3) be responsible for a vendor's compliance with provisions relating to the quality of items and terms of delivery, to the extent provided in the agreement between the participating local governments or between the Brazos River Authority and a local cooperative organization.

Purchase by the Brazos River Authority of goods or services through a cooperative purchasing program satisfies any state law requiring the Brazos River Authority to seek competitive bids for the purchase of the goods or services. (TEX. LOCAL GOV'T CODE § 271.102.)

Purchases from Federal Schedule Sources of Supply

The Brazos River Authority may purchase goods or services available under Federal supply schedules of the United States General Services Administration to the extent permitted by federal law. Purchase by the Brazos River Authority of goods or services from Federal schedule sources of supply satisfies any state law requiring the Purchase by the Brazos River Authority of to seek competitive bids for the purchase of the goods or services. (TEX. LOCAL GOV'T CODE § 271.103.)

Interlocal Agreements

The Brazos River Authority may contract or agree with another local government or a federally recognized Indian tribe, as listed by the United States secretary of the interior under 25 U.S.C. Section 479a-1, whose reservation is located within the boundaries of this state to perform governmental functions and services in accordance with this chapter. However, the Brazos River Authority may not contract with an Indian tribe that is not federally recognized or whose reservation is not located within the boundaries of this state. The Brazos River Authority may contract with a state agency, as that term is defined by Government Code, Section 771.002 or a similar agency of another state. An interlocal contract may be to:

- (1) study the feasibility of the performance of a governmental function or service by an interlocal contract; or
- (2) provide a governmental function or service that each party to the contract is authorized to perform individually.

An interlocal contract must:

- (1) be authorized by the governing body of each party to the contract unless a party to the contract is a municipally owned electric utility, in which event the governing body may establish procedures for entering into interlocal contracts that do not exceed \$100,000 without requiring the approval of the governing body;
- (2) state the purpose, terms, rights, and duties of the contracting parties;
- (3) specify that each party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying party; and
- (4) be in an amount that fairly compensates the performing party for the services or functions performed under the contract.

An interlocal contract may be renewed and may have a specified term of years.

If the Brazos River Authority makes purchases or provides purchasing services under an interlocal contract for a state agency, as that term is defined by Government Code, Section 771.002, then the Brazos River Authority must comply with Government Code Chapter 2161 regarding historically underutilized businesses in making the purchases or providing the services.

An interlocal contract between the Brazos River Authority and a purchasing cooperative may not be used to purchase engineering or architectural services.

The Brazos River Authority may not enter into a contract to purchase construction-related goods or services through an interlocal agreement with a purchasing cooperative (where the term “purchasing cooperative” means a group purchasing organization that governmental entities join as members and the managing entity of which receives fees from members or vendors) in an amount greater than \$50,000 unless a person designated by the Brazos River Authority certifies in writing that:

- (1) the project for which the construction-related goods or services are being procured does not require the preparation of plans and specifications under Chapter 1001 or 1051, Occupations Code; or
- (2) the plans and specifications required under Chapters 1001 and 1051, Occupations Code, have been prepared. (TEX. GOV'T CODE § 791.011.)

Interlocal Agreements for Water Supply and Wastewater Treatment Facilities

The Brazos River Authority may contract with a municipality, district, or other river authority of this state to obtain or provide part or all of:

- (1) water supply or wastewater treatment facilities; or
- (2) a lease or operation of water supply facilities or wastewater treatment facilities.

The contract may provide that the municipality, district, or river authority obtaining one of the services may not obtain those services from a source other than a contracting party, except as provided by the contract and if a contract includes such a term, payments made under the contract are the paying party's operating expenses for its water supply system, wastewater treatment facilities, or both. The contract may:

- (1) contain terms and extend for any period on which the parties agree;
- (2) require the purchaser to develop alternative or replacement supplies prior to the expiration date of the contract and may provide for enforcement of such terms by court order; and
- (3) provide that it will continue in effect until bonds specified by the contract and any refunding bonds issued to pay those bonds are paid.

Where a contract sets forth explicit expiration provisions, no continuation of the service obligation will be implied. Tax revenue may not be pledged to the payment of amounts agreed to be paid under the contract. The powers granted by Government Code Section 781.026 prevail over a limitation contained in another law. (TEX. GOV'T CODE § 791.026.)

Department of Information Resources Purchasing Program

The Brazos River Authority may purchase goods or services and/or avail itself of other resources available under the Department of Information Resources Purchasing Program to the extent permitted by state law. The Brazos River Authority shall comply with any rules adopted by the Department of Information Resources regulating the purchase of goods or services, including a requirement that the purchase be in accordance with a contract developed by the Department of Information Resources. (TEX. GOV'T CODE §§ 2054.0525; 2157.001, .006, .068.)

Comptroller Contract for Travel Services

An officer or employee of the BRA who is engaged in official business of the BRA may participate in the Texas Comptroller's ("Comptroller") contract for travel services. The Comptroller may charge the BRA a fee not to exceed the costs incurred by the Comptroller in providing such services. The Comptroller shall periodically review the fees and adjust the fees as necessary to ensure recovery of costs incurred in providing services to governmental entities under this subsection. This subsection applies only to

a governmental entity that is a party to a compact, interagency agreement, or cooperative purchasing agreement under Section 2156.181. (TEX. GOV'T CODE §§ 2156.181).

Authority for Policy 3.8

TEX. GOV'T CODE §§ 791.011; 791.026; 2054.0525; 2156.181; 2157.001, .006, .068.
TEX. LOCAL GOV'T CODE §§ 271.083; 271.102; 271.103.

SECTION 4 - BUSINESS AND FINANCE PRACTICES

4.1 BUDGET

Purpose

This policy defines requirements for annual budgeting and long-term financial planning requirements for the Brazos River Authority. The purpose of budgeting and financial planning is to provide for the current and future needs of the Brazos River Authority, while providing a mechanism for planning and controlling costs. It is the intent of the Board of Directors to maintain a high level of financial stability and not to compromise long-term financial integrity to achieve short-term benefits.

Generally

The Brazos River Authority will adopt an annual operating plan (“AOP”) prior to the start of each fiscal year. The AOP will authorize expenditures and direct objectives for the fiscal year. (TEX. WATER CODE §§ 49.057(b), 49.199(a)(6)(A); 30 TEX. ADMIN. CODE § 293.97(b).)

The Brazos River Authority will adopt a multi-year capital improvement plan (“CIP”) prior to the start of each fiscal year. The CIP will authorize expenditures and direct objectives for the fiscal year. The CIP will authorize expenditures by project and may span several fiscal years

The General Manager/Chief Executive Officer shall prepare and present a recommended AOP and CIP that meet the overall objectives and direction of the Board of Directors and standards for budgeting as established by state, federal, and/or industry requirements. A long-term financial forecast will be prepared and presented as part of the budget adoption and review process that takes into account all operating and capital requirements outlined in the AOP and CIP.

Adoption of the AOP and CIP shall authorize the General Manager/Chief Executive Officer to make expenditures for staffing, equipment, goods, and/or services and outlined therein and as authorized and/or restricted by Board Policy #2.01.

The Board of Directors may amend the AOP as needed to accommodate the needs of the Brazos River Authority Basin. The General Manager/Chief Executive Officer is authorized to transfer budgeted amounts among accounts and departments within major operating divisions, except as restricted by contractual agreements or as prohibited by law. Changes, transfers, or amendments that increase the total appropriated funds for a major division or capital project must be approved by the Board of Directors.

The Brazos River Authority shall give its wholesale potable water and wastewater services customers the opportunity to review and comment on the provisions contained in the annual budget that apply to these services before the budget is adopted. (TEX.

WATER CODE § 49.200; 30 TEX. ADMIN. CODE § 292.11(a).)

Authority for Policy 4.1

TEX. WATER CODE §§ 49.057(b), 49.199(a)(6)(A), 49.200.
30 TEX. ADMIN. CODE §§ 292.11(a), 293.97(b).

4.2 INVESTMENTS AND FISCAL MANAGEMENT

Generally

It is the policy of the Brazos River Authority, giving due regard to the safety and risk of investment, that all available funds shall be invested in conformance with state and federal law and applicable bond resolution requirements as well as the policies and investment strategy adopted by the Board of Directors. (TEX. WATER CODE §§ 49.157(a), 49.199(a)(3); TEX. GOV'T CODE §§ 2256.001-.055, 2257.001-.083.)

Primary Objectives

Effective cash management is recognized as essential to good fiscal management. Aggressive cash management and effective investment strategy development will be pursued to take advantage of interest earnings as viable and material revenue to all Brazos River Authority funds. The Brazos River Authority's portfolio shall be designed and managed in a manner responsive to the public trust and consistent with the provisions of this policy. Investments shall be made with the following primary objectives:

- (1) preservation of capital;
- (2) safety of Brazos River Authority funds;
- (3) maintenance of sufficient liquidity;
- (4) maximization of return within acceptable risk constraints;
- (5) diversification of investments; and
- (6) exemplary investment management. (TEX. GOV'T CODE §§ 2256.005(b)(2) & (3).)

Scope of Policy

This policy applies to all of the investment activities of the Brazos River Authority, excluding the Retirement Trust for Employees of Brazos River Authority and the Brazos River Authority 401(a) Employer Matching Contribution Plan non-vested funds. The goal of this policy is to establish guidelines for (1) the investment of Brazos River Authority funds, and for (2) the review of those investments. Bond funds, as defined by the Internal Revenue Service, shall be managed under the provisions of this policy as well as the provisions of any applicable state or federal law or governing resolution. (TEX. GOV'T CODE §§ 2256.004, 2257.003, 2257.081(a), 2257.082; 30 TEX. ADMIN. CODE § 292.13(3).)

Investment Strategy

In conjunction with the annual review of this policy, the Board of Directors shall adopt a separate written investment strategy for each of the funds or group of funds under its control. The investment strategy must describe the investment objectives for each particular fund according to the following priorities:

- (1) investment suitability;
- (2) preservation and safety of principal;
- (3) liquidity;
- (4) marketability prior to maturity of each investment;
- (5) diversification; and
- (6) yield. (TEX. GOV'T CODE § 2256.005(d).)

Review and Amendment

A detailed formal, written policy and investment strategy that meets the objectives and scope defined herein and the requirements of the *Public Funds Investment Act*, shall be reviewed and adopted annually by the Administration, Audit, Banking and Finance Committee and by the Board of Directors. Amendments to this policy and/or to the investment strategy must be approved by the Audit, Banking and Finance Committee and by the Board of Directors. The Board of Directors shall adopt a written resolution stating that it has reviewed this policy and the investment strategy. The resolution shall record any changes made either to this policy or to the investment strategy. (TEX. GOV'T CODE § 2256.001-.055.)

Authority for Policy 4.2

TEX. GOV'T CODE §§ 2256.001-.055, 2257.001-.083.
TEX. WATER CODE §§ 49.156-.1571, 49.199(a)(3).
30 TEX. ADMIN. CODE § 292.13(3).

4.3 FINANCIAL AUDIT

Generally

A Comprehensive Annual Financial Report that complies with the Government Finance Officers Association of the United States and Canada Certificate requirements will be prepared and submitted to the Board of Directors.

An independent audit of Brazos River Authority financial statements and accounts will be conducted annually. The audit will be in accordance with generally accepted auditing standards and meet other applicable state and federal auditing standards as may apply to the Brazos River Authority and its funds.

The independent auditor will be selected by the Board of Directors, with the advice and recommendations of the General Manager/Chief Executive Officer and the Chief Financial Officer. The selected independent auditors will function in cooperation with, but be independent of Brazos River Authority's management.

The Brazos River Authority will conduct a comprehensive request for proposal process to evaluate independent financial auditors and services at least every five years. The evaluation process will be in accordance with state law for procurement of professional services.

The independent auditor will meet with the Board's Audit Committee at least once each year to discuss and report audit results and other related matters.

The independence of the auditor, both in appearance and in fact, is to be maintained within federal, state and industry guidelines. The independent auditor may be engaged to perform other audit and consulting services only if the Board of Directors specifically finds that the independence of the auditors is not compromised by the engagement.

The Board of Directors shall have the Brazos River Authority's fiscal accounts and records audited annually at the Brazos River Authority's expense. (TEX. WATER CODE § 49.191(a); see *also* SPEC. DIST. CODE § 8502.005.)

The audit shall be performed by a certified public accountant or public accountant holding a permit from the Texas State Board of Public Accountancy. (TEX. WATER CODE § 49.191(c).)

The audit shall be completed within 120 days after the close of the Brazos River Authority's fiscal year. (TEX. WATER CODE § 49.191(d).)

The Brazos River Authority may change its fiscal year at any time; provided, however, it may not be changed more than once in any twenty- four-month period. After any change in the fiscal year, the Brazos River Authority shall notify the Texas Commission on Environmental Quality of such change within thirty days after adoption by the board. (TEX.

WATER CODE § 49.158.)

Except as otherwise provided by the accounting and auditing manuals adopted by the Texas Commission on Environmental Quality, the audit shall be performed according to the generally accepted auditing standards adopted by the American Institute of Certified Public Accountants. (TEX. WATER CODE § 49.192.)

The audit shall comply with Texas Water Code Section 49.199(a)(6)(C), which requires uniform reporting requirements that use “Audits of State and Local Government Units” as a guide on audit working papers and that use “Governmental Accounting and Financial Reporting Standards.” (TEX. WATER CODE § 49.199(a)(6)(C).)

In conjunction with its annual financial audit, the Brazos River Authority shall perform a compliance audit of management controls on investments and adherence to Board Policy #4.02, Investments and Fiscal Management. (TEX. GOV'T CODE § 2256.005(m).)

Purpose of Audit

The Audit will be conducted in accordance with auditing standards generally accepted in the United States of America (GAAS); *Government Auditing Standards* issued by the Comptroller General of the United States (GAS); the provisions of the Single Audit Act; Subpart F of Title 2 U.S. CFR Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*; the U.S. Office of Management and Budget's Compliance Supplement; and guidance provided in the audit guide titled *Government Auditing Standards and Circular A-133 Audits* issued by the American Institute of Certified Public Accountants. Those standards, circulars, supplements, and guides require that the audit be planned and performed to obtain reasonable assurance about whether the financial statements are free from material misstatement. An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

Selection of Financial Auditor

The Brazos River Authority shall procure financial auditor services on the basis of demonstrated competence and qualifications to perform the services for a fair and reasonable price. As part of the selection process, the Brazos River Authority shall send requests for proposals to at least three pre-approved auditors for new projects expected to exceed \$25,000. (TEX. GOV'T CODE §§ 2254.001-.006; TEX. WATER CODE § 49.192; 30 TEX. ADMIN. CODE § 292.13(4))

The independence of the auditor, both in appearance and in fact, is to be maintained

within federal, state, and industry guidelines.

Filing of Audit Reports

After the Board of Directors has approved the audit, it shall submit a copy of the report to the Texas Commission on Environmental Quality for filing within 135 days after the close of the fiscal year. If the board refuses to approve the annual audit report, it shall submit a copy of the report to the Commission for filing within 135 days after the close of the fiscal year, accompanied by a statement from the board explaining the reasons for its failure to approve the report. The Brazos River Authority shall simultaneously file with the Commission an annual filing affidavit stating that copies of the annual audit report have been properly filed. The affidavit shall be in the format prescribed by the Texas Commission on Environmental Quality. A copy of the audit report shall also be filed in the Brazos River Authority's office. (TEX. WATER CODE § 49.194.)

To the extent that the Brazos River Authority fails to comply with the filing requirements, it may be subject to a civil penalty of up to \$100 per day for each day that it willfully continues to violate the requirements after receipt of written notice of violation from the Texas Commission on Environmental Quality by certified mail, return receipt requested. The state may sue to recover the penalty. (TEX. WATER CODE § 49.003.)

Review of Audit Report by Texas Commission on Environmental Quality

The Texas Commission on Environmental Quality may review the Brazos River Authority's annual audit report. If the Commission has any objections to or recommendations concerning the report, it shall notify the Brazos River Authority auditor and Board of Directors in order that the report be corrected. (TEX. WATER CODE § 49.195.)

Fiscal Records

The Brazos River Authority's fiscal records shall be prepared on a timely basis and maintained in an orderly fashion in accordance with generally accepted accounting principles. The records shall be available for public inspection during regular business hours. The fiscal records may be removed from the Brazos River Authority's office for the purposes of recording its fiscal affairs and preparing an audit, during which time the records are under the control of the Brazos River Authority's auditor. (TEX. WATER CODE § 49.196; 30 TEX. ADMIN. CODE § 293.95(a).)

Submittal of Annual Fiscal Report

The Brazos River Authority is required to submit an annual report of financial records to the comptroller of public accounts pursuant to Texas Local Government Code Section 140.008. Section 140.008(g) provides that the Brazos River Authority satisfies this requirement if it either 1) submits its annual financial audit report conducted under Texas Water Code Section 49.194 to the comptroller of public accounts; or 2) takes action to

ensure that these financial documents are made available at a regular office of the BRA for inspection by any person and posted continuously for public viewing on the BRA's internet website. Accordingly, the Brazos River Authority shall submit its annual financial audit report to the comptroller of public accounts as provided in Texas Local Government Code Section 140.008(g). (TEX. LOCAL GOVERNMENT CODE § 140.008(h); TEX. WATER CODE § 49.194.)

Audit Committee

The Brazos River Authority shall have an audit committee of the Board of Directors. (TEX. WATER CODE § 49.199(a)(6)(B).)

Authority for Policy 4.3

SPEC. DIST. CODE § 8502.005

TEX. GOV'T CODE §§ 2254.001-.006, 2256.005(m).

TEX. LOCAL GOVERNMENT CODE §§ 140.008(g), (h).

TEX. WATER CODE §§ 49.003, 49.158, 49.191, 49.192, 49.194-.196, 49.199(a)(6)(C).

30 TEX. ADMIN. CODE §§ 292.13(4), 293.95(a).

4.4 INDUSTRIAL DEVELOPMENT BONDS AND POLLUTION CONTROL BONDS

The Brazos River Authority shall properly disclose the existence of any industrial development corporations with which it is associated. (TEX. WATER CODE § 49.199(a)(5); 30 TEX. ADMIN. CODE § 292.13(5).)

The Brazos River Authority shall comply with the memorandum issued by the State Auditor on October 7, 1988 relating to the disclosure of industrial development and pollution control bonds. (TEX. WATER CODE § 49.199(a)(5); 30 TEX. ADMIN. CODE § 292.13(5).)

Authority for Policy 4.4

TEX. WATER CODE § 49.199(a)(5).
30 TEX. ADMIN. CODE § 292.13(5).

4.5 CAPITAL IMPROVEMENT PLAN

Purpose

The goal of the Capital Improvement Plan (CIP) is to maintain the Brazos River Authority's physical infrastructure at a level adequate to protect the Brazos River Authority's capital investment, minimize future maintenance and replacement costs, and provide expansion to meet the long-term needs of the basin.

Generally

The Brazos River Authority will adopt and update a multi-year plan for capital infrastructure maintenance and expansion as part of the Annual Operating Plan (AOP) process. The CIP will identify estimated costs, timelines, and funding sources for applicable projects.

Capital infrastructure includes dam and gate infrastructure, water and wastewater treatment facilities, transmission pipelines, intake structures, office and administrative facilities, and the professional services required to acquire, design, construct or rehabilitate the aforementioned. Capital infrastructure does not include items determined to be operating capital.

The Board of Directors may amend the CIP as needed to accommodate the needs of the Brazos River Authority Basin.

The Brazos River Authority will maintain a scheduled level of maintenance and replacement for its operating capital. Operating capital items include, but are not limited to, fleet, information technology hardware and software, communications equipment and software, and heavy machinery.

4.6 CONTINGENCY RESERVES

Maintaining financial integrity is critical to accomplishing the mission of the Authority and establishing reserve funds will maintain the Authority's financial integrity while serving the long-term interests of its customers. It is prudent to establish both Operating and Non-Operating Reserve Funds. The Operating and Non-Operating Reserve Funds should be funded through deposits of Net Revenue to the Water Supply System.

Operating and Non-operating Reserves are created to meet different needs, each with a distinct set of characteristics as to utilization. The Brazos River Authority has created five (5) Reserve Funds:

- (1) Working Capital Fund;
- (2) Repair and Replacement Fund;
- (3) Contingency Reserve Fund;
- (4) Self Insurance Fund; and
- (5) Rates Stabilization Reserve Fund.

The Working Capital Fund is only used to cover operations and maintenance cash flow needs created by the timing difference between the Authority's billing cycle and receipt of payments. Due to the contractual nature of the Authority's Water Supply System income stream and the nature of the Authority's expenditures, Working Capital needs are reasonably predictable and should be no less than 90 days of annual Water Supply System operation and maintenance expense. The Board of Directors will establish the annual budgeted Operating Reserve Working Capital Fund at a target level of not less than 90 days of budgeted Water Supply System operation and maintenance expense for that fiscal year.

The Repair and Replacement Fund is required by the Authority's Bond Covenants and will be only used for the purpose of making repairs (including emergency repairs) to the System of an extraordinary nature required by normal and customary wear and use, and for providing replacements as called for in the Bond Covenants. A Repair and Replacement Fund avoids the necessity of issuing debt for eligible expenses in addition to outstanding debt issued previously for the original acquisition or construction of a facility. The covenants for the Authority's outstanding Water Supply System Revenue Bonds establish a Repair and Replacement Fund to be maintained at a minimum level in the amount of \$200,000.00 (Two Hundred Thousand Dollars) or such increased amount, which may be established from time to time by the Board of Directors following review of the System at five year intervals by the Brazos River Authority. The first five year interval began with the issuance of the Authority's Water Supply System Revenue Bonds, Series 2001A and Series 2001B (dated May 1, 2001). Emergency Repairs are defined as any unexpected or unbudgeted repair, which, if not affected immediately, will adversely affect

the operations of a facility. The General Manager/CEO may approve expenditures from the Repair and Replacement Fund up to the \$500,000 spending limit established in the Authority's General Operating Procedures, Section 2.01, for Emergency Repairs without prior approval of the Board of Directors. Such disbursements will be reported to the Board at their next regularly scheduled meeting. All other expenditures from the Repair and Replacement Fund should be authorized by the Board beforehand.

A Contingency Reserve Fund is necessary to only be used to cover unanticipated or unbudgeted operation and maintenance expenses, and/or Board of Director discretionary expenditures. A Contingency Reserve Fund will permit flexibility in expenditure decisions which may arise outside of the normal and customary budget cycle. Maintaining a Contingency Reserve Fund will avoid the negative financial impact that unanticipated events can have on Working Capital and Bond Coverage targets. The Board of Directors has established that a Contingency Reserve Fund with a target level of not less than 10% of the annual amount budgeted for Water Supply System operations and maintenance expense should be maintained. All expenditures from the Contingency Reserve Fund should be approved by the Board of Directors beforehand.

A Self Insurance Reserve Fund can only be used to pre-fund insurance deductibles and unanticipated or uninsured losses for general liability, property, casualty, workers' compensation and other risk expenses. As the number of facilities owned by the Authority increases, the incidence of insurance requiring deductibles, the lack of coverage over certain limits, and other non-insured risks will increase. A Self Insurance Reserve Fund allows flexibility in pricing insurance coverage by examining variances in assumed risk versus premium quotes. The Self Insurance Reserve Fund target level should be based upon an actuarial analysis of potential exposures from unfunded liabilities. All expenses incurred for deductibles, coinsurance or uninsured claims and/or losses will be paid directly from this fund.

A Rates Stabilization Reserve Fund is needed to only address fluctuations in revenue requirements that will occur year-to-year based on significant increases in capital needs, among other things, and whether Working Capital Reserve Targets and Coverage Targets are maintained. Pre-funding significant capital improvements through a Rates Stabilization Reserve Fund can minimize long-term rate impacts and developing a Rates Stabilization Reserve Fund in anticipation of fluctuations in revenue requirements will moderate the need for significant rate changes. The Rates Stabilization Reserve Fund will be replenished only after all other Operating and Non-Operating Reserves have been either funded, or have met their annual replenishment target. The Rates Stabilization Reserve Fund can also be used as a source of funding to address cash flow needs for major projects that are anticipated to be ultimately financed through the issuance of bonds or some other form of indebtedness. When the Rates Stabilization Reserve Fund is used for cash flow purposes, a Reimbursement Resolution will be executed by the General Manager/CEO in order to preserve the ability to issue Bonds in the future to replenish the balance of the Rates Stabilization Reserve Fund that has been depleted due to cash flows.

At no time shall any Operating or Non-Operating Reserve be used to make or pay any Debt Service on any outstanding or future bonds issued by the Authority which have a pledge of revenues derived through the operation of the Authority's Water Supply System. Debt Service payments shall only be made from those sources of funds specifically set aside and accounted for separately for the purpose of making Debt Service payments from the Authority's Water Supply System.

If at any time any of the Reserves are depleted to a level that is less than the target levels prescribed, the Board of Directors will promptly implement a plan, to be recommended by the General Manager/CEO which could include rate increases, cost reductions, or any other means deemed appropriate to achieve sufficient Net Revenue to replenish the reserves to the prescribed target levels within no less than 36 months from the end of the fiscal year in which such depletions occurred.

4.7 DEBT

Purpose

Debt financing may be used when non-continuous capital improvements are desired, and future citizens/customers will receive a benefit from the improvement. The Board of Directors intends that all debt financing maintain a high level of financial stability and not compromise long-term financial integrity to achieve short-term benefits.

Generally

The issuance of debt requires an affirmative vote of the Board of Directors. The General Manager/Chief Executive Officer is authorized to approve resolutions expressing official intent to reimburse costs of projects from debt financing that meet state and federal requirements.

The Brazos River Authority will ensure that the debt is soundly financed by:

- (1) conservatively projecting the revenue sources that will be utilized to pay the debt;
- (2) financing the improvement(s) over a period not greater than the useful life of the improvements; and
- (3) determining that the cost benefit of the improvement including interest costs is positive.

The Brazos River Authority will not issue debt for working capital items.

Debt reserves will be established to protect bondholders from payment default. Adequate bond reserves are essential in maintaining good bond ratings and the marketability of bonds. Debt reserves, through cash or surety bonds, will be established by bond resolution.

For debt to be paid from water supply system revenues, the Brazos River Authority will maintain debt service coverage ratio of 1.10 with a target of 1.30. The debt coverage ratio will be calculated and reviewed as part of the annual budget process. (TEX. GOV'T CODE §§ 1371.001-.106.)

Authority for Policy 4.7

TEX. GOV'T CODE §§ 1371.001-.106.

SECTION 5 - RECORD MANAGEMENT AND OPEN GOVERNMENT

5.1 REPORTING TO THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY AND/OR PUBLIC UTILITY COMMISSION

The Brazos River Authority shall submit the documents and reports itemized below to the Executive Director of the Texas Commission on Environmental Quality and/or Public Utility Commission as appropriate. The list is not exclusive:

- (1) a written notification of the name, mailing address, and date of expiration of term of office of any board member within thirty days after the date of appointment; (30 TEX. ADMIN. CODE § 293.91(a)(3).)
- (2) a certified copy of the audit report within fifteen days after the date of completion of any audit of the affairs of the Brazos River Authority, other than the annual audit required by § 49.191 of the *Texas Water Code*; (TEX. WATER CODE § 49.191; 30 TEX. ADMIN. CODE § 293.91(a)(4).)
- (3) an annual audit report as required by special act of the legislature and by title 30, § 293.94(c) of the *Texas Administrative Code* relating to annual financial reporting requirements; (SPEC. DIST. CODE § 8502.005; 30 TEX. ADMIN. CODE §§ 293.91(a)(5), 293.94.)
- (4) an annual filing affidavit, as required by title 30, § 293.94(g) of the *Texas Administrative Code* relating to annual financial reporting requirements and by § 49.194(d) of the *Texas Water Code* certifying that the annual audit report has been filed; (TEX. WATER CODE § 49.194(d); 30 TEX. ADMIN. CODE §§ 293.91(a)(6), 293.94.)
- (5) an independent management audit every five years unless the Brazos River Authority has established an internal audit office that reports to the Board of Directors; (30 TEX. ADMIN. CODE § 292.13(6)(A).)
- (6) submittals of drought contingency and water conservation plans relating to requirements outlined within 30 TEX. ADMIN. CODE § 288.22, 288.30, 288.4, and 288.5;
- (7) a copy of the Brazos River Authority's administrative policies and any subsequent amendments thereto; and (30 TEX. ADMIN. CODE § 292.12(a).)
- (8) reports required as part of the TCEQ Brazos Watermaster program; (30 TEX. ADMIN. CODE § 304)
- (9) to the extent the Brazos River Authority is providing a retail public utility with

a wholesale water supply, a certified copy of any wholesale water supply contract with a retail public utility within thirty days after the date of the execution of the contract, as well as documentation of the amount of water being supplied, term of the contract, consideration being given for the water, purpose of use, location of use, source of supply, point of delivery, limitations on the reuse of water, a disclosure of any affiliated interest between the parties to the contract, and any other condition or agreement relating to the contract. (TEX. WATER CODE § 13.144.)

- (10) an annual inventory of all dams operated by the BRA, including the location of the dam, under whose jurisdiction the dam operates, a required maintenance schedule for the dam, costs of the operation and maintenance of the dam, and the method of finance for the operation and maintenance costs of the dam (TEX. WATER CODE §12.053.).
- (11) any other documents or reports as may be required by statutes, rules, or regulations.

Authority for Policy 5.1

SPEC. DIST. CODE § 8502.005.

TEX. WATER CODE §§ 12.053, 13.144, 49.191, 49.194(d).

30 TEX. ADMIN. CODE §§ 288.22, .30, .4, and .5,
292.13(6)(A), 293.91, 293.94., 304.

5.2 RECORD MANAGEMENT

Generally

The Brazos River Authority must preserve its records according to the provisions of the *Local Government Records Act*. (TEX. WATER CODE § 49.065(c); TEX. LOCAL GOV'T CODE §§ 201.001-205.009.)

The Secretary shall require that proper provision be made for the custody of the records of the Brazos River Authority. (Brazos River Authority Bylaws § 3.04.)

Brazos River Authority records are the property of the Brazos River Authority and are subject to the *Public Information Act*. (TEX. WATER CODE § 49.065(b); see TEX. LOCAL GOV'T CODE § 201.005.)

Records Management Program

The Board of Directors must, by order, establish a records management program to be administered by a Records Management Officer. The order must set forth the methods and procedures by which the Brazos River Authority shall manage and preserve its records. It must also require the review or approval, as the board considers necessary, of a records control schedule or amended records control schedule by the officers of the Brazos River Authority. The order must be filed with the Texas State Library and Archives Commission. If the order is later amended or revised, a copy of the new order must also be filed with the Texas State Library and Archives Commission within thirty days after the date of its adoption. (TEX. LOCAL GOV'T CODE §§ 203.026, 203.041(e).)

Retention Periods

The Brazos River Authority shall retain each record on its records retention schedule *at least* as long as the retention period prescribed by state and federal law, regulation, rule of court, permits, and Local Schedule GR. (TEX. LOCAL GOV'T CODE § 203.042(b); 13 TEX. ADMIN. CODE § 7.125(b)(1);.)

Authority for Policy 5.2

TEX. LOCAL GOV'T CODE §§ 201.001-205.009.

TEX. WATER CODE § 49.065.

13 TEX. ADMIN. CODE § 7.125(b)(1).

Brazos River Authority Bylaws § 3.04.

5.3 OPEN RECORDS

Purpose

The purpose of this policy is to ensure that the public has an opportunity to understand issues facing the Brazos River Authority and has appropriate access to information and documents held by the Brazos River Authority.

Generally

Brazos River Authority records are subject to the *Public Information Act*, and at a minimum, those records to which the public has access shall be made available to the public during the normal business hours of the Brazos River Authority. (TEX. WATER CODE § 49.065(b); TEX. GOV'T CODE §§ 552.001-.353, 552.021.)

Public access to records of the Brazos River Authority will be in compliance with the provisions of, Brazos River Authority Bylaws, the *Public Information Act*, (TEX. GOV'T CODE § 552.262; 1 TEX. ADMIN. CODE CHAPTER 70.)

Authority for Policy 5.3

TEX. GOV'T CODE §§ 552.001-.353.

TEX. WATER CODE § 49.065(b).

1 TEX. ADMIN. CODE CHAPTER 70.

5.4 OPEN MEETINGS

Purpose

The purpose of this policy is to ensure that the public has an opportunity to understand the issues facing the Brazos River Authority and has appropriate access to the meetings of the committees and the Board of Directors of the Brazos River Authority.

Generally

The Brazos River Authority is subject to the provisions of and shall comply with the *Open Meetings Act*. Accordingly, its meetings, except for executive sessions expressly authorized by statute, shall be open to the public, and the public shall receive proper notice of the time, place, and subject matter of the meetings. (TEX. GOV'T CODE § 551.001-.146; TEX. WATER CODE § 49.064.)

Consent Agendas

Upon a majority vote of a committee to recommend a resolution to the Board of Directors, the item shall be placed on the consent agenda for the next board meeting. Any director may withdraw an item from the consent agenda at their discretion, either at the Board meeting, or prior to the Board meeting by notifying the GM. Any items withdrawn become the next items discussed by the Board in the order by which they are removed from the consent agenda.

Authority for Policy 5.4

TEX. GOV'T CODE §§ 551.001-.146.
TEX. WATER CODE §§ 49.064.

5.5 Employee Cybersecurity Training

Purpose

The purpose of this policy is to ensure that BRA employees receive statutory cybersecurity training.

Training Requirements

At least once each year, the BRA shall identify BRA employees and members of the Board of Directors who have access to a BRA computer system or database and use the computer or database to perform at least 25 percent of their required duties. The BRA shall require those employees and Directors to complete a cybersecurity training program certified under Texas Government Code Section 2054.519 or offered under Section 2054.519(f).

The Board of Directors of the BRA may select the most appropriate cybersecurity training program certified under Section 2054.519 or offered under Section 2054.519(f) for employees of the BRA to complete. The Board of Directors shall:

- (1) verify and report on the completion of a cybersecurity training program by employees of the BRA to the Texas Department of Information Resources; and
- (2) require periodic audits to ensure compliance with this section. (TEX. GOV'T CODE §§ 2054.519 and .5191.)

Authority for Policy 5.5

TEX. GOV'T CODE §§ 2054.519 and .5191.

5.6 Security Incidents

Purpose

The purpose of this policy is to ensure the proper notification is provided to the state officials following the occurrence of a security incident.

Reporting Requirements

In the event that a breach or suspected breach of system security, as defined by Section 521.053 of the Business & Commerce Code, and the introduction of ransomware, as defined by Section 33.023 of the Penal Code, the BRA shall:

- (1) Comply with the notification requirements of Section 521.053 of the Business & Commerce Code to the same extent as a person who conducts business in the State of Texas,
- (2) No later than 48 hours after discovery of the security incident, notify:
 - (a) The Texas Department of Information Resources, including the chief information security officer; or
 - (b) If the security incident involves election data, the secretary of state; and
- (3) Comply with all Department of Information Resources rules relating to reporting security incidents as required by Chapter 2054 of the Texas Government Code (TEX. GOV'T CODE § 2054.603).

Authority for Policy 5.6

TEX. GOV'T CODE § 2054.603

SECTION 6 - CONSERVING AND DEVELOPING NATURAL RESOURCES

6.1 PURPOSES, POWERS, AND DUTIES

Purposes

The Brazos River Authority will establish itself as a leader in the management of its water resources. In managing its water resources, the Brazos River Authority will fulfill its goals of making smart business decisions, anticipating needs, and positioning itself for the future. This may entail the construction of reservoirs, water treatment facilities, or wastewater treatment facilities; the development of programs to monitor and maintain the quality of its water resources; and the consideration of and support for regional planning alternatives and activities.

This policy establishes the guidelines for providing water for municipal, industrial, and agricultural users.

Generally, the Brazos River Authority shall conserve and develop the natural resources of this state by controlling, storing, preserving, and distributing, to all useful purposes, the storm and floodwaters of the Brazos River and its tributary streams and by discovering, developing, and producing groundwater in the Brazos River Basin for the use of its customers. (TEX. SPEC. DIST. CODE § 8502.001(c), (d).)

Specifically, the Brazos River Authority may provide for:

- (1) the control and coordination of the regulation of the waters and watershed of the Brazos River and its tributary streams as a unit;
- (2) the preservation of the equitable rights of the people of the different sections of the watershed area in the beneficial use of storm waters, floodwaters, and unappropriated flow waters of the Brazos River and its tributary streams;
- (3) the storage, control, and conservation of storm waters, floodwaters, and unappropriated flow waters of the Brazos River and its tributaries and the prevention of the escape of any of such waters without the maximum of public service;
- (4) the prevention of devastation of lands from recurrent overflows, and the protection of life and property in the watershed area from uncontrolled floodwaters;
- (5) the conservation of waters essential for the domestic uses of the people of the watershed of the Brazos River and its tributaries, including all necessary water supplies for municipalities;

- (6) the irrigation of lands in the watershed of the Brazos River and its tributary streams where irrigation is required for agricultural purposes or may be deemed helpful to more profitable agricultural production;
- (7) the equitable distribution of storm waters, floodwaters, and unappropriated flow waters to the regional potential requirements for all uses;
- (8) primary regard to be given to the necessary and potential needs for water, by or within the areas constituting the watershed of the Brazos River and its tributary streams;
- (9) the better encouragement and development of drainage systems and provisions (a) for drainage of lands in the valleys of the Brazos River and its tributary streams needing drainage for profitable agricultural production, and (b) for drainage of other lands in the watershed area requiring drainage for the most advantageous use;
- (10) the conservation of all soils against destructive erosion, thereby preventing the increased flood menace incident thereto;
- (11) the control and employment of floodwaters, storm waters, and unappropriated flow waters in the development of commercial and industrial enterprises in all sections of the watershed area;
- (12) the control, storage, and employment of floodwaters, storm waters, and unappropriated flow waters in the development and distribution of hydroelectric power, where use may be economically coordinated with other and superior uses and subordinated to the uses declared by law to be superior;
- (13) the development and employment of groundwater for use for domestic, municipal, irrigation, commercial, and industrial purposes; however, when producing groundwater, the authority is subject to all laws, regulations, and rules relating to groundwater, including the rules of a groundwater conservation district and the Central Carrizo-Wilcox Coordinating Council; and
- (14) the utilization of controlled and conserved floodwaters, storm waters, and unappropriated flow waters in the performance of all useful services as contemplated and authorized by the provisions of the *Texas Constitution* and the public policy therein declared. (TEX. SPEC. DIST. CODE § 8502.004(a)-(l), (n).)

A Watermaster has been appointed for the portion of the Brazos Basin from Possum Kingdom downstream. The Brazos River Authority is the owner of various water rights, all of which are in the jurisdiction of the Watermaster. (TEX. WATER CODE § 11.326)

The duties of the Watermaster, among others, are to divide water in accordance with adjudicated water rights, regulate reservoirs and diversion works in time of water shortage, prevent the waste of water, and regulate the distribution of water. (TEX. WATER CODE § 11.327)

Powers and Duties, Generally

The Brazos River Authority shall have the functions, powers, authority, rights, and duties that will permit accomplishment of the purposes for which it was created or any purposes authorized by the Texas Constitution or other law. (TEX. WATER CODE § 49.211(a).)

Without way of limitation, the powers of the Brazos River Authority include:

- (1) the authority to carry out any activities and acquire, purchase, construct, own, operate, maintain, repair, improve, or extend and may lease or sell, on terms and conditions, including rentals or sale prices, on which the parties agree, all works, improvements, facilities, plants, buildings, structures, equipment, and appliances, and all real and personal property, or any interest in real or personal property, related to the works, improvements, facilities, plants, buildings, structures, equipment, and appliances, that are incident to or necessary in carrying out or performing any power or function of the authority. (TEX. SPEC. DIST. CODE § 8502.012(f).)
- (2) the authority to purchase, construct, acquire, own, operate, maintain, repair, improve, or extend inside and outside its boundaries any and all land, works, improvements, facilities, plants, equipment, and appliances necessary to accomplish the purposes of its creation or any purposes authorized by law; (TEX. WATER CODE § 49.211(b).)
- (3) the authority to acquire land, an interest in land, materials, waste grounds, easements, rights-of-way, equipment, contract or permit rights or interests, including a certificate of convenience and necessity, contractual rights to use capacity in facilities and to acquire facilities and other property, real or personal, considered necessary for the purpose of accomplishing any one or more of the Brazos River Authority's purposes as provided by law; (TEX. WATER CODE § 49.218(a).)
- (4) the authority to construct, acquire, equip, operate, and acquire storage rights at, and operate dams and reservoirs that, in the opinion of the Board of Directors are useful in carrying out the purposes of the Brazos River Authority, regardless of whether any such dam is designed to serve a single purpose or multiple purposes; (TEX. SPEC. DIST. CODE § 8502.006(a).)

- (5) the authority to provide water supply lines and water purification and pumping facilities; (TEX. SPEC. DIST. CODE § 8502.006(b).)
- (6) the authority to act jointly with any other person or entity, private or public, whether within the State of Texas or the United States, to exercise its powers and duties or to accomplish any purpose or function allowed by law; (TEX. WATER CODE §49.227.);
- (7) The Board of Directors may make all necessary rules for the government and control of the Brazos River Authority not inconsistent with the constitution and laws of the state. (TEX. SPEC. DIST. CODE § 8502.016.)

Notwithstanding the provisions above, the Brazos River Authority shall not have the power to regulate the groundwater of other landowners; neither shall it be allowed to transport or assist in the transport of groundwater pumped in the basin outside of the Brazos River Basin. (TEX. SPEC. DIST. CODE § 8502.004(m), (o).)

Authority to Contract

The Brazos River Authority and all persons may enter into contracts with each other, in any manner and on terms to which the parties agree, with respect to any power, function, facility, or service that the Brazos River Authority is authorized by law to provide or finance. (TEX. SPEC. DIST. CODE § 8502.012(c).)

The Brazos River Authority may execute contracts with municipalities in the state substantially in the manner prescribed by Section 552.020, Local Government Code, for districts organized or created under Section 59, Article XVI, Texas Constitution, and may execute water supply contracts with other users of water. (TEX. SPEC. DIST. CODE § 8502.006(c).)

The Brazos River Authority may enter into contracts, which may be of unlimited duration, with a person or any public or private entities on the terms and conditions that it may consider desirable, fair, and advantageous for:

- (1) the purchase or sale of water;
- (2) the collection, transportation, treatment, and disposal of its domestic, industrial, and communal wastes or the collection, transportation, treatment, and disposal of domestic, industrial, and communal wastes of other persons;
- (3) the gathering, diverting, and control of local storm water, or other local harmful excesses of water;
- (4) the continuing and orderly development of the land and property within the

boundaries of the Brazos River Authority through the purchase, construction, or installation of works, improvements, facilities, plants, equipment, and appliances that the Brazos River Authority may otherwise be empowered and authorized to do or perform so that, to the greatest extent reasonably possible, considering sound engineering and economic practices, all of the land and property may be placed in a position to ultimately receive the services of the works, improvements, plants, facilities, equipment, and appliances;

- (5) the maintenance and operation of any works, improvements, facilities, plants, equipment, and appliances of the Brazos River Authority or of another person or public or private entity;
- (6) the collection, treatment, and disposal of municipal solid wastes; and
- (7) the exercise of any other rights, powers, and duties granted to the Brazos River Authority. (TEX. WATER CODE §§ 49.213(c).)

The Brazos River Authority may purchase, acquire, sell, transfer, lease, or otherwise exchange water or water rights under an agreement between the Brazos River Authority and a person or entity that contains terms that are considered advantageous to the Brazos River Authority, and employ agents, consultants, brokers, professionals, or other persons that the board determines are necessary or appropriate to conduct such a transaction. (TEX. WATER CODE § 49.2261.)

The Board of Directors may negotiate and contract with the federal government or with any of its agencies for grants, loans, and advancements from the United States for the furtherance of any purpose of the Brazos River Authority. The Brazos River Authority may receive and accept grants, loans, or allotments from the United States and others for furtherance of its purposes. An opinion from the attorney general as to whether a grant, loan, or allotment has been received by the Brazos River Authority from the United States or others shall be authority for the action of any person charged with any duty contingent on such grant, loan, or allotment. (TEX. SPEC. DIST. CODE § 8502.015.)

Payment of Contract Fees to the Brazos River Authority

A public agency is authorized to set, charge, and collect fees, rates, charges, rentals, and other amounts for a service or facility provided by a utility operated by it or provided pursuant to or in connection with any contract with the Brazos River Authority, from the inhabitants of the Brazos River Authority or from any users or beneficiaries of the utility, service, or facility, including: water charges; sewage charges; solid waste disposal system fees and charges, including garbage collection or handling fees; and other fees or charges. A public agency may use and pledge such amounts to make payments to the Brazos River Authority required under a contract with the Brazos River Authority and may covenant to do so in amounts sufficient to make all or any part of the payments to the Brazos River Authority when due. The payments shall, if the parties agree in the contract,

constitute an expense of operation of any facility or utility operated by the public agency. (TEX. SPEC. DIST. CODE § 8502.012(d), (e).)

Payment of Contract Fees by the Brazos River Authority

The Brazos River Authority is authorized to use and pledge any available revenues for and in the payment of amounts due under a contract as an additional source of payment of the contracts and may covenant with respect to available revenues to assure the availability of these revenues when required. (TEX. SPEC. DIST. CODE § 8502.012(c).)

“Revenues” does not mean or include revenues from ad valorem taxes levied and collected by the Brazos River Authority or the proceeds from the sale or refunding of bonds of the Brazos River Authority that are to be wholly or partially paid from ad valorem taxes levied and collected by the Brazos River Authority unless the use or pledge of the tax revenues or bond proceeds is approved by the qualified voters of the Brazos River Authority at an election called for the purpose of levying taxes or issuing or refunding bonds, or both, for the purpose of using or pledging their revenues or proceeds under contracts entered into under this provision. (TEX. SPEC. DIST. CODE § 8502.012(c).)

The Brazos River Authority is authorized to issue bonds with respect to the acquisition, purchase, construction, maintenance, repair, improvement, and extension of works, improvements, facilities, plants, buildings, structures, appliances, and property for the purpose of exercising any of its powers and functions. The Brazos River Authority is further authorized to issue revenue bonds to pay for the costs of feasibility studies for its proposed projects, including engineering, planning and design, and environmental studies. The Brazos River Authority is authorized to include in any revenue bond issue the funds to operate and maintain for a period not to exceed two years after completion of the facilities acquired or constructed through the revenue bond issue. If any bonds issued by the Brazos River Authority recite that they are secured by a pledge of payments under any contract, a copy of the contract and the proceedings relating to the contract may be submitted to the attorney general along with the bonds, and if the attorney general finds that the bonds have been authorized and the contract or contracts have been made and entered into in accordance with law, the attorney general shall approve the bonds and the contract or contracts, and after the approval, the bonds and the contract or contracts shall be incontestable in any court or other forum for any reason and shall be valid and binding in accordance with its or their terms and provisions for all purposes. The provisions of Chapters 618, 1201, 1204, 1207, and 1371, Government Code, are applicable to bonds issued by the Brazos River Authority. (TEX. SPEC. DIST. CODE § 8502.012(g)-(j).)

Dam Safety

The BRA will notify local emergency operation centers in downstream communities when spillway releases at BRA dams are made to regulate flood waters, according to the Texas Commission on Environmental Quality’s (“TCEQ”) emergency action plan guidelines. (TEX. WATER CODE § 12.052(a-1).)

The BRA will comply with dam operation and maintenance requirements established by TCEQ rule.

Public Engagement

The BRA will provide information to the public about plans for future water supply projects and will solicit feedback from the public in the decision-making process. BRA's public engagement process may include the use of one or more of the following: advisory committees, community forums, town hall meetings or open houses, newspaper advertisements, dedicated webpages, online feedback forms, and other strategies, as appropriate, in addition to any applicable regulatory agency required public process. The scope and details of BRA's public engagement process for any proposed project will depend on the size and nature of the proposed project. For any new water supply project that is expected to create 10,000 acre-feet of water or more per year, staff will, at a minimum:

- (1) Meet with stakeholder groups and, as appropriate, individuals to provide information about the proposed project, answer questions and solicit input.
- (2) Create a dedicated webpage designed to educate the public about the proposed project and to solicit input from stakeholders and other interested participants. The webpage will provide information relevant to the proposed project, including meeting presentations, participant comments and BRA's responses, and appropriate technical information.
- (3) Provide periodic progress reports to the Board in public meetings, including reports on feedback and input received from the public.

Nothing in this policy shall be construed as requiring the disclosure of information that is protected under Texas open government laws.

Authority for Policy 6.1

TEX. WATER CODE §§ 11.326; 11.327; 12.052(a-1); 49.211; 49.213; 49.218; 49.2261; 49.227.

TEX. SPEC. DIST. CODE §§ 8502.001; .004; .006; .012; .015; and .016.

6.2 Ownership and Operation of Water and Wastewater Treatment Facilities

Purposes

In support of its role in the management and development of water resources and the protection and conservation of natural resources, the Brazos River Authority may own and operate water and wastewater treatment facilities.

In owning and operating water and wastewater treatment facilities, the Brazos River Authority shall be guided by the needs of its customers and its commitment to stewardship of water resources.

In owning and operating water and wastewater treatment facilities, the Brazos River Authority maintain its goals of high water quality standards, service to its customers, and compliance with all statutory and regulatory requirements.

Generally

The Brazos River Authority shall comply with the provisions of the *Regional Waste Disposal Act*. (TEX. WATER CODE §§ 30.001-.106.)

The Brazos River Authority may acquire, construct, improve, enlarge, extend, repair, operate, and maintain one or more disposal systems. (TEX. WATER CODE § 30.021.)

The Brazos River Authority may contract with any person to purchase or sell by installments over such term as considered desirable any waste, collection, transportation, treatment, or disposal facilities or systems. (TEX. WATER CODE § 30.022.)

The Brazos River Authority may lease to or from any person for such term and on such conditions as may be considered desirable any waste collection, transportation, treatment, or disposal facilities or systems. (TEX. WATER CODE § 30.023.)

The Brazos River Authority may make operating agreements with any person for such terms and on such conditions as may be considered desirable for the Brazos River Authority's operation of the person's waste collection, transportation, treatment, or disposal facilities or systems. (TEX. WATER CODE § 30.024.)

The Brazos River Authority may make contracts with any person including any public agency located inside or outside the boundaries of the Brazos River Authority, under which it will collect, transport, treat, or dispose of waste for the person. (TEX. WATER CODE § 30.025.)

The Brazos River Authority may make contracts authorized by the *Regional Waste Disposal Act* with any person, including any public agency situated wholly or partly inside its boundaries and any public agency situated wholly or partly inside the Brazos River basin and any public agency situated wholly or partly inside the coastal basins adjoining

its boundaries, but the Brazos River Authority may not make contracts to serve a public agency situated wholly inside the boundaries of another river authority or to serve facilities of a person situated wholly within the boundaries of another river authority, except with the consent of the other river authority. (TEX. WATER CODE § 30.026.)

A public agency may make contracts with the Brazos River Authority under which the Brazos River Authority will make a disposal system available to the public agency and will furnish waste collection, transportation, treatment, and disposal services to the public agency, group of public agencies, or other persons through the Brazos River Authority's disposal system. (TEX. WATER CODE § 30.027.)

A contract or group of contracts may provide for the Brazos River Authority to render services concurrently to more than one person through constructing and operating a disposal system and may provide that the cost of these services be allocated among the persons as provided in the contract or group of contracts. (TEX. WATER CODE § 30.032.)

Contracts With Public Agencies

Notwithstanding any other provision of the *Regional Waste Disposal Act* or of any other law to the contrary, the Brazos River Authority may use the proceeds of bonds issued for the purpose of constructing a waste disposal system or systems, and payable wholly or in part from ad valorem taxes, for the purchase of capacity in, or a right to have the wastes within the boundaries of the Brazos River Authority treated in, a waste collection, treatment, or disposal system and facilities owned or to be owned exclusively or in part by another public agency, and the Brazos River Authority may issue bonds payable wholly or in part from ad valorem taxes specifically for such purpose if a majority of the resident electors within the boundaries of the Brazos River Authority have authorized the Board of Directors to issue bonds for that purpose or for the purpose of constructing a waste disposal system or systems. The bonds shall be issued in accordance with the provisions of, and shall be subject to the same terms and conditions of, the laws authorizing the Brazos River Authority to issue bonds for the purpose of constructing waste collection, treatment, and disposal systems, except as otherwise provided in this provision. (TEX. WATER CODE § 30.031(c);

Acquisition of Property to Accomplish Purposes of the *Regional Waste Disposal Act*

To accomplish the purposes of the *Regional Waste Disposal Act*, the Brazos River Authority may acquire by purchase, lease, gift, or in any other manner all or any interest in property inside or outside its boundaries and may own, maintain, use, and operate it. (TEX. WATER CODE § 30.033(a).)

To accomplish the purposes of the *Regional Waste Disposal Act*, the Brazos River Authority may also exercise the power of eminent domain to acquire all or any interest in property inside or outside its boundaries. The power shall be exercised according to the laws applicable or available to the Brazos River Authority. (TEX. WATER CODE §

30.033(b).)

If the Brazos River Authority makes necessary the relocating, raising, rerouting, changing the grade of, or altering the construction of any highway, railroad, electric transmission line, pipeline, or telephone or telegraph properties or facilities in the exercise of powers granted under the *Regional Waste Disposal Act*, it shall pay all of the actual cost of the relocating, raising, rerouting, changing in grade, or altering of construction and shall pay all of the actual cost of providing comparable replacement of facilities without enhancement, less the net salvage value of the facilities. (TEX. WATER CODE § 30.034.)

Elections

No election is required for the exercise of any power under the *Regional Waste Disposal Act* except for the tax levy as provided above under “Public Agency Contracts.” (TEX. WATER CODE § 30.035.)

Revenue Bonds

In order to acquire, construct, improve, enlarge, extend, or repair disposal systems, the Brazos River Authority may issue bonds secured by a pledge of all or part of the revenue from any contract entered into under the provisions of the *Regional Waste Disposal Act* and/or from other income of the Brazos River Authority. (TEX. WATER CODE § 30.051.)

The Board of Directors shall prescribe the form, denomination, and rate of interest for the bonds. (TEX. WATER CODE § 30.052.)

The Brazos River Authority may refund any bonds issued under the provisions of the *Regional Waste Disposal Act* on the terms and conditions and at the rate of interest the Board of Directors prescribes. (TEX. WATER CODE § 30.053.)

The Brazos River Authority may sell bonds issued under the provisions of the *Regional Waste Disposal Act* at public or private sale at the price or prices and on the terms determined by the Board of Directors, or it may exchange the bonds for property or any interest in property of any kind considered necessary or convenient to the purposes authorized in the *Regional Waste Disposal Act*. (TEX. WATER CODE § 30.054.)

Pending the issuance of definitive bonds, the Brazos River Authority may issue negotiable interim bonds or obligations eligible for exchange or substitution by use of definitive bonds. (TEX. WATER CODE § 30.055.)

After issuance of the bonds is authorized, the bonds and the record relating to their issuance may be submitted to the attorney general for examination. When the bonds recite that they are secured by a pledge of the proceeds from a contract between the Brazos River Authority and a public agency, a copy of the contract and the proceedings of the public agency authorizing the contract may also be submitted to the attorney general. If the attorney general finds that the bonds are authorized and that the contract

is made in accordance with the constitution and laws of this state, he shall approve the bonds and the contract. (TEX. WATER CODE § 30.056.)

After the bonds have been approved by the attorney general, they shall be registered by the state comptroller. (TEX. WATER CODE § 30.057.)

Instead of or in addition to obtaining the approval of the attorney general, the Brazos River Authority may have the bonds validated by suit in the district court as provided in chapter 1205 of the *Texas Government Code*. The Board of Directors may wait until after termination of the validation suit to fix the interest rate and sale price of the bonds. If the proposed bonds recite that they are secured by the proceeds of a contract between the Brazos River Authority and a public agency, the petition shall so allege, and the notice of the suit shall mention this allegation and shall specify the public agency's funds or revenues from which the contract payments are to be made. (TEX. WATER CODE § 30.058.)

After the bonds are approved by the attorney general and registered with the comptroller, the bonds and the contract are incontestable. (TEX. WATER CODE § 30.059.)

Bonds issued under the provisions of the *Regional Waste Disposal Act* are:

- (1) negotiable instruments;
- (2) investment securities governed by chapter 8 of the *Uniform Commercial Code*;
- (3) legal and authorized investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, fiduciaries, and trustees, and for the sinking funds of cities, towns, villages, school districts, and other political corporations or subdivisions of the state; and
- (4) eligible to secure deposits of any public funds of the state or any political subdivision of the state and are lawful and sufficient security for the deposits to the extent of their value when accompanied by unmatured coupons attached to the bonds. (TEX. WATER CODE §§ 30.060-.063.)

The Brazos River Authority may set aside out of the proceeds from the sale of bonds (1) interest to accrue on the bonds and administrative expenses to the estimated date when the disposal system will become revenue producing, and (2) reserve funds created by the resolution authorizing the bonds. The Brazos River Authority, however, is authorized to include in any revenue bond issue the funds to operate and maintain only for a period not to exceed two years after completion of the facilities acquired or constructed through the revenue bond issue. (TEX. WATER CODE § 30.064.)

Pending their use, proceeds from the sale of bonds may be invested in securities or time

deposits as specified in the resolution authorizing the issuance of the bonds or the trust indenture securing the bonds. The earnings on these investments shall be applied as provided in the resolution or trust indenture. (TEX. WATER CODE § 30.065.)

While any bonds are outstanding, the Board of Directors shall fix, maintain, and collect for services furnished or made available by the disposal system rates and charges adequate to:

- (1) pay maintenance and operating costs of and expenses allocable to the disposal system;
- (2) pay the principal of and interest on the bonds; and
- (3) provide and maintain the funds created by the resolution authorizing the bonds. (TEX. WATER CODE § 30.066.)

Authority for Policy 6.2

TEX. WATER CODE §§ 30.001-.106.

6.3 PROPERTY RIGHTS

Purpose

The purpose of this policy is to ensure the protection of private property rights in the course of Brazos River Authority business. The activities of the Brazos River Authority may affect the manner in which people use their private property and may require that the Brazos River Authority use or acquire private property for the best interest of the general public.

Acquisition of Property, Generally

The Brazos River Authority is authorized to acquire by purchase, lease, gift, or any other manner and to maintain, use, and operate property of any kind, real, personal, or mixed, or any interest in property, within or without the boundaries of the Brazos River Authority, necessary or convenient to the exercise of the power, rights, privileges, and functions conferred upon the Brazos River Authority by law. (TEX. SPEC. DIST. CODE § 8502.014(a).)

The Brazos River Authority may acquire, by purchase, condemnation, or otherwise, any property the board determines necessary to make effectual and practicable the construction and operation of all works, improvements, and services that are planned ultimately to be provided by the authority to accomplish any of the purposes for which the Brazos River Authority was created. The acquisition or condemnation may be either of the fee simple title or of a lesser title or an easement only, within the discretion of the board; provided, however, that a person may not be deprived of any defense available under the general law of eminent domain; and provided, further, that the Brazos River Authority may not acquire or operate a steam generating plant for the production and sale of electric energy and, except for the purpose of acquiring the necessary area below or above the anticipated high-water line of a reservoir, may not condemn any property of a rural electrification cooperative or other corporations engaged in the generation or sale of electric energy to the public. (TEX. SPEC. DIST. CODE § 8502.014(b).)

The Brazos River Authority may acquire an interest in land, materials, waste grounds, easements, rights-of-way, equipment, contract or permit rights or interests, including a certificate of convenience and necessity, contractual rights to use capacity in facilities and to acquire facilities and other property, real or personal, considered necessary for the purpose of accomplishing any one or more of the Brazos River Authority's purposes. The Brazos River Authority may utilize proceeds from the sale and issuance of its bonds, notes, or other obligations to acquire such items. The Brazos River Authority shall have the right to acquire property by gift, grant, or purchase, and the right to acquire property shall include property considered necessary for the construction, improvement, extension, enlargement, operation, or maintenance of the plants, works, improvements, facilities, equipment, or appliances of a district or a water supply corporation. (TEX. WATER CODE § 49.218 (a), (b).)

With regard to the real property or interest in real property that the Brazos River Authority acquires, it may acquire either the fee simple title to or an easement on the land, or it may acquire the title to or an easement on property other than land held in fee. (TEX. WATER CODE § 49.218(c).)

The Brazos River Authority may require a service applicant, as a condition of service, to grant a permanent recorded easement dedicated to the Brazos River Authority that will provide a reasonable right of access and use to allow the Brazos River Authority to construct, install, maintain, replace, upgrade, inspect, and test any facilities necessary to serve that applicant as well as the Brazos River Authority's purposes in providing system-wide service. The Brazos River Authority may not require an applicant to provide an easement for a service line for the sole benefit of another applicant. (TEX. WATER CODE § 49.218(d), (e).)

As a condition of service to a new subdivision, the Brazos River Authority may require a developer to provide permanent recorded easements to and throughout the subdivision sufficient to construct, install, maintain, replace, upgrade, inspect, and test any facilities necessary to serve the subdivision's anticipated service demands on full occupancy. (TEX. WATER CODE § 49.218(f).)

The Brazos River Authority may lease property from others for its use on such terms and conditions as the Board of Directors may determine to be advantageous. (TEX. WATER CODE § 49.218(g).)

Property that has been acquired by the Brazos River Authority in accordance with applicable law and that is owned by the Brazos River Authority is not subject to assessments, charges, fees, or dues imposed by a nonprofit corporation under chapter 204 of the *Texas Property Code*. (TEX. WATER CODE § 49.218(h).)

Acquisition of Existing Facilities

The Brazos River Authority may acquire by agreement all or any part of existing water, sanitary sewer, or drainage systems of any water supply corporation, including works, improvements, facilities, plants, equipment, appliances, contract rights, and other assets and rights that are completed, partially completed, or under construction, and in connection therewith the Brazos River Authority may assume all or any part of the contracts, indebtedness, or obligations of the corporation related to said systems, including any contracts, indebtedness, or obligations related to or payable from the revenues of said systems, and may perform all or any part of the obligations of said corporation in the same manner and to the same extent that any other purchaser or assignee could be bound on any such contracts, indebtedness, or obligations. (TEX. WATER CODE § 49.219.)

Acquisition Through Eminent Domain

The Brazos River Authority is authorized to acquire property of any kind, real, personal,

or mixed, or any interest in property by condemnation, within or outside its boundaries, other than property or an interest in property outside the boundaries of the Brazos River Authority owned by any body politic, that is necessary or convenient to the exercise of the power, rights, privileges, and functions conferred upon the Brazos River Authority by law. The Brazos River Authority may accomplish condemnation in the manner provided by general law with respect to condemnation or, at the option of the Brazos River Authority, in the manner provided by statutes relative to condemnation by districts organized under general law under Section 59, Article XVI, Texas Constitution. (TEX. SPEC. DIST. CODE § 8502.014(c);

The Brazos River Authority may acquire by condemnation any land, easements, or other property inside or outside the Brazos River Authority boundaries necessary for water, sanitary sewer, storm drainage, or flood drainage or control purposes or for any other of its projects or purposes, and may elect to condemn either the fee simple title or a lesser property interest. The right of eminent domain shall be exercised in the manner provided in Chapter 21, Property Code, except that the Brazos River Authority shall not be required to give bond for appeal or bond for costs in any condemnation suit or other suit to which it is a party and shall not be required to deposit more than the amount of any award in any suit. (TEX. WATER CODE § 49.222(a), (b).)

The power of eminent domain may not be used for the condemnation of land for the purpose of acquiring rights to underground water or of water or water rights. (TEX. WATER CODE § 49.222(c).)

In the event the Brazos River Authority, in the exercise of the power of eminent domain, the power of relocation, or any other similar power, makes necessary the relocation, raising, lowering, rerouting, change in grade of or alteration in construction of any highway, road, bridge, railroad, electric transmission line, telegraph, telephone properties, facilities, or pipelines, all such necessary relocations, raising, lowering, rerouting, or change in grade or alteration of construction shall be accomplished at the sole expense of the Brazos River Authority. Such relocation shall be accomplished in a timely manner so that the project of the Brazos River Authority is not delayed. "Sole expense" means the actual cost of the relocation, raising, lowering, rerouting, or change in grade or alteration of construction and providing comparable replacement without enhancing the facilities after deducting from it the net salvage value derived from the old facility. (TEX. WATER CODE §§ 49.223.)

Because the use of land for the construction of Brazos River Authority dams and creation of lakes and reservoirs for the purpose of conservation and development of the natural resources of this state has been declared to be superior to all other uses, the Brazos River Authority has the power of eminent domain to acquire land, improvements, and other property owned and held for cemeteries or burial places necessary for the construction of a dam or that lies inside the area to be covered by the lake or reservoir or within three hundred feet of the high water line of the lake or reservoir. The procedure for such condemnation must comply with the provisions of § 49.224 of the Texas Water Code and with the provisions of chapter 21 of the Texas Property Code. (TEX. WATER CODE

§ 49.224.)

Before the Brazos River Authority initiates a condemnation proceeding by filing a petition under Section 21.012, Property Code, the Brazos River Authority must:

- (1) authorize the initiation of the condemnation proceeding at a public meeting by a record vote; and
- (2) include in the notice for the public meeting as required by Government Code, Subchapter C, Chapter 551, in addition to other information as required by that subchapter, the consideration of the use of eminent domain to condemn property as an agenda item. (TEX. GOVERNMENT CODE § 2206.053(a).)

A single ordinance, resolution, or order may be adopted for all units of property to be condemned if:

- (1) the motion required below indicates that the first record vote applies to all units of property to be condemned; and
- (2) the minutes of the governmental entity reflect that the first vote applies to all of those units. (TEX. GOVERNMENT CODE § 2206.053(b).)

If more than one member of the Brazos River Authority Board of Directors objects to adopting a single ordinance, resolution, or order by a record vote for all units of property for which condemnation proceedings are to be initiated, a separate record vote must be taken for each unit of property. (TEX. GOVERNMENT CODE § 2206.053(c).)

If two or more units of real property are owned by the same person, the Brazos River Authority may treat those units of property as one unit of property. (TEX. GOVERNMENT CODE § 2206.053(d).)

The motion to adopt an ordinance, resolution, or order authorizing the initiation of condemnation proceedings under Chapter 21, Property Code, must be made in a form substantially similar to the following: "I move that the Brazos River Authority authorize the use of the power of eminent domain to acquire (describe the property) for (describe the public use)." The description of the property is sufficient if the description of the location of and interest in the property that the Brazos River Authority seeks to acquire is substantially similar to the description that is or could properly be used in a petition to condemn the property under Section 21.012, Property Code. (TEX. GOVERNMENT CODE § 2206.053(e).)

If a project for water supply, wastewater, flood control, or drainage projects will require the Brazos River Authority to acquire multiple tracts or units of property to construct facilities connecting one location to another location, the Board of Directors may adopt a single ordinance, resolution, or order by a record vote that delegates the authority to initiate condemnation proceedings to the General Manager/Chief Executive Officer. An

ordinance, resolution, or order so adopted, is not required to identify specific properties that the Brazos River Authority will acquire. The ordinance, resolution, or order must identify the general area to be covered by the project or the general route that will be used by the Brazos River Authority for the project in a way that provides property owners in and around the area or along the route reasonable notice that the owners' properties may be subject to condemnation proceedings during the planning or construction of the project. (TEX. GOVERNMENT CODE § 2206.053(f), (g).)

Not later than February 1 of each year, the Brazos River Authority shall submit to the comptroller of public accounts an annual report containing records and other information specified by law for the purpose of providing the comptroller with information to maintain its eminent domain database. The report shall be submitted in a form and manner prescribed by the comptroller of public accounts. In addition to the report, the Brazos River Authority shall report to the comptroller any changes to the Brazos River Authority's eminent domain authority information not later than the 90th day after the date on which the change occurred. (TEX. GOVERNMENT CODE § 2206.154(a), (c).)

Actual Progress Requirement

Upon successful condemnation of property for public use, the Brazos River Authority shall make actual progress towards the public use for which the property was condemned within ten years of the condemnation. Actual progress shall mean the completion of three or more of the following actions:

- (1) the performance of a significant amount of labor to develop the property or other property acquired for the same public use project for which the condemned property was acquired;
- (2) the provision of a significant amount of materials to develop the property or the property acquired for the same public use project for which the condemned property was acquired;
- (3) the hiring of or contracting with and the performance of a significant amount of work by an architect, engineer, or surveyor to prepare a plan, plat, or easement that includes the property or other property acquired for the same public use project for which the condemned property was acquired;
- (4) application for state or federal funds to develop the property or other property acquired for the same public use project for which the condemned property was acquired; or
- (5) application for a state or federal permit or certificate to develop the property or other property acquired for the same public use project for which the condemned property was acquired. (TEX. PROPERTY CODE § 21.101(b))

Notwithstanding the foregoing, if the Brazos River Authority is implementing a project included in the state water plan adopted by the Texas Water Development Board, Brazos River Authority may establish actual progress by:

- (1) the completion of one action described above; and

- (2) the adoption by a majority of the Brazos River Authority Board of Directors at a public hearing of a development plan for a public use project that indicates that the Brazos River Authority will not complete more than one action described above before the 10th anniversary of the date of acquisition of the property. (TEX. PROPERTY CODE § 21.101(b-1))

Right to Use Real Property

The Brazos River Authority is given rights-of-way within, along, under, and across all public, state, county, city, town, or village roads, highways, and rights-of-way and other public rights-of-way without the requirement for surety bond or security; provided, however, that the entity having jurisdiction over such roads, highways, and rights-of-way may require indemnification. (TEX. WATER CODE § 49.220.)

The Brazos River Authority shall not proceed with any action to change, alter, or damage a portion of the state highway system without having first obtained the written consent of the Texas Department of Transportation, and the placement of any facility of the Brazos River Authority within state highway right-of-way shall be subject to department regulation. (TEX. WATER CODE § 49.220.)

The directors, engineers, attorneys, agents, operators, and employees of the Brazos River Authority may go on any land to inspect, make surveys, or perform tests to determine the condition, value, and usability of the property, with reference to the proposed location of works, improvements, plants, facilities, equipment, or appliances. The cost of restoration shall be borne by the Brazos River Authority. (TEX. WATER CODE § 49.221(a).)

Brazos River Authority employees and agents are entitled to enter any public or private property within the boundaries of the Brazos River Authority or adjacent to any reservoir or other property owned by the Brazos River Authority at any reasonable time for the purpose of inspecting and investigating conditions relating to the quality of water in the state or the compliance with any rule, regulation, permit, or other order of the Brazos River Authority. Brazos River Authority employees or agents acting under this authority who enter private property shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection and shall notify any occupant or management of their presence and shall exhibit proper credentials. (TEX. WATER CODE § 49.221(b).)

In the prosecution of the plans for which the Brazos River Authority has been created for the storing, controlling, conserving, and distributing for useful purposes of the storm waters, floodwaters, and unappropriated flow waters of the Brazos River watershed and developed groundwater from the Brazos River basin for the use of its customers, the authority may use the bed and banks of the Brazos River and its tributary streams for any and all purposes necessary to the accomplishment of its plans and purposes. (TEX. SPEC. DIST. CODE § 8502.017)

Leases

A lease between the BRA and another person regarding public property shall contain lease terms requiring the person to:

- (1) include in each contract for the construction, alteration, or repair of an improvement to the leased property a condition that the contractor:
 - (a) execute a payment bond that conforms to Subchapter I, Chapter 53, Property Code; and
 - (b) execute a performance bond in an amount equal to the amount of the contract and conditioned on the faithful performance of the contractor's work in accordance with the plans, specifications, and contract documents; and
- (2) provide to the BRA a notice of commencement, consistent with TEX. GOV'T CODE § 2252.909(c), at least 90 days before the date the construction, alteration, or repair of any improvement to the leased property begins. (TEX. GOV'T CODE § 2252.909)

Disposition of Property

The sale, release, or other disposition of property of any kind, real, personal, or mixed, or any interest in property, by the Brazos River Authority or through any court proceedings or otherwise is not authorized; provided, however, the Brazos River Authority may sell for cash any of its property of any kind, real, personal, or mixed, or any interest in property if the Board of Directors by affirmative vote of eleven of its members shall have determined that the property or interest is not necessary to the business of the Brazos River Authority and shall have approved the terms of any such sale. The intent of the Texas Legislature is that except by sale as authorized above, Brazos River Authority property or interest shall never come into the ownership or control, directly or indirectly, of any person, firm, or corporation other than a public authority created under the laws of the State of Texas. All property of the Brazos River Authority shall be at all times exempted from forced sale, and the sale of any of the property of the Brazos River Authority under judgment rendered in any suit is prohibited and forbidden. (TEX. SPEC. DIST. CODE § 8502.013(b), (c).)

Any personal property valued at more than \$300 or any land or interest in land owned by the Brazos River Authority which is found by the Board of Directors to be surplus and is not needed by the Brazos River Authority may be sold under order of the Board of Directors either by public or private sale, or the land, interest in land, or personal property may be exchanged for other land, interest in land, or personal property needed by the Brazos River Authority. Land, interest in land, or personal property must be exchanged for like fair market value, which value may be determined by the Brazos River Authority. In connection with the sale of surplus land, the Board of Directors, at its discretion, may impose restrictions on the development and use of the land. (TEX. WATER CODE §

49.226(a).)

Notwithstanding the foregoing, any property dedicated to or acquired by the Brazos River Authority without expending Brazos River Authority funds may be abandoned or released to the original grantor, the grantor's heirs, assigns, executors, or successors upon terms and conditions deemed necessary or advantageous to the Brazos River Authority and without receiving compensation for such abandonment or release. Brazos River Authority property may also be abandoned, released, exchanged, or transferred to another district, municipality, county, countywide agency, or authority upon terms and conditions deemed necessary or advantageous to the Brazos River Authority. Narrow strips of property resulting from boundary or surveying conflicts or similar causes, or from insubstantial encroachments by abutting property owners, or property of larger configuration that has been subject to encroachments by abutting property owners for more than 25 years may be abandoned, released, exchanged, or transferred to such abutting owners upon terms and conditions deemed necessary or advantageous to the Brazos River Authority. (TEX. WATER CODE § 49.226(b).)

Before a public sale of real property, the Brazos River Authority shall give notice of the intent to sell by publishing notice once a week for two consecutive weeks in one or more newspapers with general circulation in the Brazos River Authority. (TEX. WATER CODE § 49.226(c).)

If the Brazos River Authority has outstanding bonds secured by a pledge of tax revenues, the proceeds of the sale of property originally acquired with bond proceeds shall be:

- (1) applied to retire outstanding bonds of the Brazos River Authority; or
- (2) held and treated as surplus bond proceeds and spent only as provided by the rules of the commission relating to surplus bond proceeds. (TEX. WATER CODE § 49.226(d).)

If the Brazos River Authority does not have any outstanding bonds, the proceeds derived from the sale of real or personal property may be used for any lawful purpose. (TEX. WATER CODE § 49.226(e).)

The Brazos River Authority shall not be authorized to mortgage or otherwise encumber any property of any kind, real, personal, or mixed, or any interest in property or to acquire any property or interest subject to a mortgage or conditional sale. The Brazos River Authority, however, shall not be prevented from the pledging of revenues as authorized by law. (TEX. SPEC. DIST. CODE § 8502.013(a).)

The Brazos River Authority may lease any of its real property to any person. The lease may contain the terms and provisions that the Board of Directors determines to be advantageous to the Brazos River Authority. (TEX. WATER CODE § 49.225.)

Temporary Buyer Tags for Vehicles.

The BRA may issue one temporary buyer's tag for a vehicle sold or otherwise disposed of by the BRA. A governmental agency that issues a temporary buyer's tag under this subsection:

- (1) is subject to the provisions of Transportation Code, Sections 503.0631 and 503.067 applicable to a dealer; and
- (2) is not required to charge the registration fee under Transportation Code, Section 503.063(g). (TEX. TRANS. CODE § 503.063)

Authority for Policy 6.3

TEX. GOVERNMENT CODE §§ 2252.909, 2206.053(a)-(g); .154(a) and (c).)

TEX. WATER CODE §§ 49.218-.226.

TEX. PROPERTY CODE § 21.101(b); (b-1)

TEX. SPEC. DIST. CODE §§ 8502.013; .014; .017.

TEX. TRANS. CODE § 503.063

6.4 ENVIRONMENTAL LEADERSHIP

Purpose

The purpose of this policy is to ensure leadership in maintaining and improving water quality throughout the Brazos River Basin and environmental excellence throughout the Brazos River Authority Operations. Accordingly, this policy directs the Brazos River Authority to execute its responsibilities, perform its activities, and promote collaborative efforts in a manner that promotes the future benefit and enjoyment of the Brazos River watershed for generations to come.

Generally

The Brazos River Authority will maintain a basinwide watershed monitoring program designed to identify significant long-term water quality trends, to characterize watershed conditions, to support the permitting process, and to be used in the classification of waters.

As part of its planning process for the watershed monitoring program, the Brazos River Authority will also engage basin stakeholders annually to receive input and inform them about water quality activities in the basin. The Brazos River Authority shall also coordinate its watershed monitoring efforts and cooperate with other public planning agencies having significant interests in any segment of the river basin.

The Brazos River Authority will identify water quality issues and impacts throughout the Brazos River watershed and will work with appropriate entities, within our legislatively mandated authority, to solve problems that are identified.

The Brazos River Authority will strive to implement high water quality protection standards and practices for its facilities and projects and, at a minimum, will maintain and comply with state and federal water quality standards. At facilities BRA operates but does not own, BRA will recommend high water quality protection standards and practices and propose projects to owners that will maintain and comply with state and federal water quality standards.

The Brazos River Authority staff will participate in activities and events and will serve on committees that facilitate the protection, improvement, and good stewardship of watersheds throughout the State of Texas.

6.5 WATER POLICY

Purpose

This policy supports the Brazos River Authority's mission to develop, manage, and protect water resources in the Brazos River basin.

Water Resource Development and Acquisition

The Brazos River Authority will strive to acquire and develop water resources to meet the needs of the Brazos River basin, while encouraging proper planning and conservation. To accomplish this objective, the Brazos River Authority may purchase, acquire, sell, transfer, lease, or otherwise exchange water or water rights under an agreement with a person or entity that contains terms that are considered advantageous to the Brazos River Authority and that are consistent with its mission. (TEX. SPEC. DIST. CODE §§ 8502.004 and 8502.017; TEX. WATER CODE §§ 49.211, 49.218, and 49.2261.)

Water Sales

The Brazos River Authority has developed water resources to provide water for the beneficial use of its customers. In order to provide equity and consistency in contracting, the Brazos River Authority will contract for the sale of raw water utilizing standard forms for water supply agreements, which shall be adopted and approved by the Brazos River Authority Board of Directors. In addition, all water rates and fees shall be set, from time to time, by the Board of Directors of the Brazos River Authority. (TEX. SPEC. DIST. CODE § 8502.006; TEX. WATER CODE § 49.213(c)(1).)

When entering into new long-term contracts for the sale of raw water or amending existing long-term raw water contracts to provide additional raw water, the Brazos River Authority will limit the amount of water provided under such new contracts or the amount of additional water provided under such amendments to the uncommitted firm supply available from the Brazos River Authority, with such uncommitted firm supply to be determined by the Brazos River Authority in its sole discretion.

In order to achieve equitable pricing among the Brazos River Authority's customers and efficiency in supplying water to those customers, all customers, as a condition of modifying, amending, and/or assigning their contracts or the terms thereof, shall convert all contracts to the standard contractual form in effect at the time of the request, subject to any and all State and Federal mandates. However, the GM/CEO may authorize temporary resales of water for periods up to ten years, including any amendments necessary to accomplish the temporary assignment or resale, without requiring the contractual conversion. If a customer continually requests temporary resales of water, the GM/CEO will determine whether the temporary resales of water are justified or whether the customer is attempting to circumvent the contractual conversion requirement prior to authorizing additional temporary resales of water. If the GM/CEO determines the customer is attempting the latter, the customer will be required to convert their contract

to the standard contractual form in effect prior to authorizing any additional temporary resales of water.

Selling Preferences for the Standard Long-term Contract Form

In selling water, the Brazos River Authority shall give preference to the following uses in the order named:

- (1) domestic and municipal uses, including water for sustaining human life and the life of domestic animals, it being the public policy of the state and for the benefit of the greatest number of people that in the appropriation of water as herein defined, the appropriation of water for domestic and municipal uses shall be and remain superior to the rights of the state to appropriate the same for all other purposes;
- (2) agricultural uses and industrial uses, which means processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, including the development of power by means other than hydroelectric;
- (3) mining and recovery of minerals;
- (4) hydroelectric power;
- (5) navigation;
- (6) recreation and pleasure; and
- (7) other beneficial uses. (TEX. WATER CODE § 11.024.)

The Brazos River Authority may, in its sole discretion, also consider the following in making its long-term contracting decisions:

- 1) The ability of the Brazos River system to reliably and efficiently supply the contract request given existing contracts that are in place and other requests being evaluated;
- 2) The water needs of the customer reflected in the current State Water Plan; and
- 3) Other factors including, but not limited to: the immediacy of the customer's need for water; the magnitude of the customer's request; the customer's water conservation efforts; health, safety, and environmental issues (such as contamination of existing sources); and customer's compliance with rules, regulations, and/or contractual provisions.

Conservation and Drought Contingency

In order to manage, protect, and prolong the beneficial use of water resources in the Brazos basin, the Brazos River Authority will maintain Water Conservation and Drought Contingency Plans in accordance with State requirements and its water rights. BRA customers will be required to comply with these plans. (TEX. WATER CODE §§ 11.1271 and 11.1272.)

Assignment and Resale of Brazos River Authority Water

In an effort to better manage the waters in the Brazos basin, the Brazos River Authority will not allow the assignment of a water contract, except as further set forth herein; however, if a customer determines that they no longer need all or a portion of the water they have under contract, such customer may return such water to the Brazos River Authority. If the customer elects to return any such water, their water contract will be terminated or amended to reflect the reduced amount.

The assignment of a contract for Brazos River Authority water by a customer to a third party is prohibited; provided, however, the Brazos River Authority may allow a customer to permanently assign its entire water contract to a third party in the event of the following: 1) name changes, restructuring, mergers, acquisitions, assignments, or other transfers of a business, organization or entity; 2) acquisition, transfer of an interest in the contract through inheritance, change in marital status, or interfamily transfer; 3) the customer has sold the real property underlying the water contract and the new owner desires to continue use of the water; 4) a court order necessitating the assignment of the water contract has been issued; or 5) the customer has a pre-existing contractual right to assignment. Such assignments will only be approved if the diversion location and use remain consistent with the spirit and intent of the original contract.

In the event a customer has contracted for more water than they are currently using and does not wish to return the excess water to the Brazos River Authority, the customer may elect to resell the water on a temporary basis to a third party. Third party resales will only be permitted if: 1) the customer has obtained the prior written approval of the Brazos River Authority; 2) the temporary resale is for a period no longer than ten years; 3) the customer, third party, and Brazos River Authority execute a tripartite agreement, on a Brazos River Authority form, establishing the terms and conditions of the resale; and 4) the customer shall remain responsible for tendering payment to the Brazos River Authority and agrees to monitor the third party's performance, ensuring compliance with all terms of the customer's water contract with the Brazos River Authority. The Brazos River Authority may terminate a third party resale at any time and will not allow customers to resell water if, in the sole discretion of the Brazos River Authority, the Brazos River Authority determines it is in its best interest to terminate the agreement. Circumstances that may lead to termination include, but are not limited to: contractual noncompliance, environmental concerns, and violations of federal, state, or local laws, regulations, ordinances or other requirements. Secondary resales are prohibited. The Brazos River

Authority reserves the right to prohibit or minimize resales to third parties during times of drought.

Contract Terms, Renewals, and Extensions

The maximum term for a new long-term raw water supply contract will be thirty years; provided, however, the length of the term for all new long-term contracts will be rounded down to the closest year ending in zero or five. Contract renewals and extensions will also be similarly limited unless an existing contract provides otherwise. Renewals and extensions are at the sole discretion of the Brazos River Authority and will not be considered until one year prior to expiration of an existing contract. (TEX. WATER CODE § 49.213(c)(1).)

Authority for Policy 6.5

TEX. SPEC. DIST. CODE § 8502.004, 8502.006; 8502.017

TEX. WATER CODE §§ 11.024, 11.1271, 11.1272, 49.211, 49.218, 49.213(c)(1), 49.2261.

6.6 PRICING

Purpose

The purpose of this policy is to establish the pricing policy of the Brazos River Authority for the water and services provided by the Brazos River Authority.

Pricing, Generally

The Brazos River Authority shall establish rates for the sale of water and services that are fair, reasonable, and nondiscriminatory. (TEX. WATER CODE §§ 13.001(c), 13.043(j), 13.182, 13.186(a); *see also* TEX. WATER CODE §§ 11.036, 11.038.)

Rate-Setting Criteria

In setting rates, the Brazos River Authority shall consider, but not be limited to, the following criteria:

- (1) Payment of all Operating and Maintenance Expenses;
- (2) Production of Net Revenues at least 1.30 times the Maximum Annual Debt Service Requirements of outstanding Bonds; and
- (3) Payment of all other obligations of the System; including the Debt Service Requirements for the year for which rates are being set.

Water Sales Contracts

All future water sale contracts shall contain conditions requiring such conservation and water quality measures that may, in the opinion of the Brazos River Authority, be feasible, economical, and appropriate. The Brazos River Authority shall not supply or commit to supply any water to any other party except pursuant to a written contract. All contracts and resolutions along with associated rates will be considered to be for firm uninterruptible water unless the contract specifically provides that such commitment is subject to interruption or curtailment.

Responsibility of General Manager/Chief Executive Officer

It shall be the responsibility of the General Manager/Chief Executive Officer to see that all rates and rate changes are presented to the Board of Directors for approval and that all customers are afforded an opportunity to comment on such actions prior to the Board's approval.

Requirement to Publish Rules and Regulations

The Brazos River Authority shall make and publish reasonable rules and regulations relating to:

- (1) the method by which it will supply water;
- (2) the use and distribution of the water; and
- (3) the procedure for applying for the water and for paying for it. (TEX. WATER CODE § 11.037(a).)

Rights of Owners of Land Adjoining Water Source

A person who owns or holds a possessory interest in land adjoining or contiguous to a canal, ditch, flume, lateral, dam, reservoir, or lake (“water source”) constructed and maintained under the provisions of chapter 11 of the *Texas Water Code* (pertaining to water rights) and who has secured a right to the use of water in the water source is entitled to be supplied from the water source with water for agricultural uses, mining, milling, manufacturing, development of power, and stock raising, in accordance with the terms of the person’s contract. (TEX. WATER CODE § 11.038(a).)

To the extent that the Brazos River Authority owns or controls the water in the water source, and the Brazos River Authority and the person owning or holding a possessory interest in the land adjoining or contiguous to the water source cannot agree on a price for a permanent water right or for the use of enough water for irrigation of the person’s land or for agricultural uses, mining, milling, manufacturing, development of power, or stock raising, then the Brazos River Authority, if it has not contracted to others, shall furnish the water necessary for these purposes at reasonable and nondiscriminatory prices. (TEX. WATER CODE § 11.038(b).)

Standby Fees

The Brazos River Authority, to the extent it provides or proposes to provide retail potable water, wastewater, or drainage services, may, with approval of the Texas Commission on Environmental Quality, adopt and levy standby fees. A standby fee means a charge, other than a tax, imposed on undeveloped property for the availability of water, wastewater, or drainage facilities and services. A standby fee does not mean an impact fee, tap fee, or a connection fee. (TEX. WATER CODE § 49.231; 30 TEX. ADMIN. CODE § 293.141.)

If the Brazos River Authority imposes standby fees, it must do so in compliance with the provisions of § 49.231 of the *Texas Water Code* and chapter 293, subchapter m, of title 30 of the *Texas Administrative Code*. (TEX. WATER CODE § 49.231; 30 TEX. ADMIN. CODE §§ 293.141-.150.)

Impact Fees

The Brazos River Authority may make application to the Texas Commission on Environmental Quality for approval of the assessment of impact fees. An Impact fee is a charge or assessment imposed by the Brazos River Authority against new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to such new development. An impact fee is also a charge or fee by the Brazos River Authority for construction, installation, or inspection of a tap or connection to Brazos River Authority water, wastewater, or drainage facilities, including all necessary service lines and meters, or for wholesale facilities that serve such water, sanitary sewer, or drainage facilities, that:

- (1) does not exceed three times the actual and reasonable costs to the Brazos River Authority for such tap or connection; or
- (2) if made to a nontaxable entity for retail or wholesale service, does not exceed the actual costs to the Brazos River Authority for such work and for all facilities that are necessary to provide Brazos River Authority services to such entity and that are financed or are to be financed in whole or in part by tax-supported or revenue bonds of the Brazos River Authority, shall not be deemed to be an impact fee. (30 TEX. ADMIN. CODE §§ 293.171(1), 293.172.)

If the Brazos River Authority assesses impact fees, it must do so in compliance with the provisions of Chapter 395 of the Local Government Code and Chapter 293, subchapter n, of title 30 of the *Texas Administrative Code*. (Tex. Local Gov't Code Chapter 395; Tex. Water Code § 49.212(d); 30 TEX. ADMIN. CODE §§ 293.171-.176.)

Authority for Policy 6.6

TEX. LOCAL GOV'T CODE CHAPTER 395.

TEX. WATER CODE §§ 11.036, 11.037, 11.038, 13.001(c), 13.043(j), 13.182, 13.186(a), 49.212(d), 49.231.

30 TEX. ADMIN. CODE §§ 293.141-.150, 293.171-.176.

6.7 WATER CONSERVATION AND DROUGHT CONTINGENCY

Purpose

Water Conservation Plan

Water conservation planning allows the BRA to convey to its water customers the benefits of water conservation.

As a wholesale and agricultural irrigation water supplier, the Brazos River Authority (BRA) is required to adopt a Water Conservation Plan in conformance with the rules governing Water Conservation Plans for Wholesale Water Providers and Water Conservation Plans for Agricultural Use. These rules are set forth by the Texas Administrative Code, Title 30, Chapter 288, Subchapter A, Rule 288.5 and 288.4, respectively. (30 TEX. ADMIN. CODE § 288.4 and .5).)

Drought Contingency Plan

The BRA provides contracts to customers for water supply. In periods of dry weather conditions, reductions in ability to supply water or other reasons, BRA may require water customers to initiate temporary water use restrictions. The purpose of the Drought Contingency Plan is to prolong available water supply during drought periods or other water supply shortages.

As a wholesale water supplier, the Brazos River Authority (BRA) is required to adopt a Drought Contingency Plan (Plan) in conformance with the rules governing drought contingency plans for wholesale water providers set forth by the Texas Commission on Environmental Quality (TCEQ) in *Texas Administrative Code* Title 30, Part 1, Rule §288.22, *Drought Contingency Plans for Wholesale Water Suppliers*. (30 TEX. ADMIN. CODE § 288.22).)

Definitions

“Conservation” means the development of water resources and those practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses. (TEX. WATER CODE § 11.002(8); 30 TEX. ADMIN. CODE § 288.1(4).)

Drought contingency plan” means a strategy or combination of strategies for temporary supply and demand management responses to temporary and potentially recurring water supply shortages and other water supply emergencies. (30 TEX. ADMIN. CODE § 288.1(6).)

“Water conservation plan” means a strategy or combination of strategies for reducing the volume of water withdrawn from a water supply source, for reducing the loss or waste of

water, for maintaining or improving the efficiency in the use of water, for increasing the recycling and reuse of water, and for preventing the pollution of water. (30 TEX. ADMIN. CODE § 288.1(24).)

Water Conservation and Drought Contingency Plan Required

The Brazos River Authority shall have a water conservation plan and a drought contingency plan. The water conservation plan and drought contingency plan may be in separate documents, or they may be combined with each other and/or with other water management documents. (TEX. WATER CODE §§ 11.1271, 11.1272; 30 TEX. ADMIN. CODE §§ 288.1(6) & (24).)

Public Input

The Brazos River Authority shall provide an opportunity for public input during preparation of its drought contingency plan prior to submitting the plan to the Texas Commission on Environmental Quality. (TEX. WATER CODE §§ 11.1271, 11.1272.)

Required Submittals

The Brazos River Authority shall comply with the submittal guidelines and requirements governing water conservation and drought contingency plans as set forth by the Texas Commission on Environmental Quality in sections 295.9 and 288 of title 30 of the *Texas Administrative Code*.

Distribution of Water During Shortage

The provisions below do not preclude the Brazos River Authority from supplying water to a person who has a prior vested right to the water under the laws of this state. (TEX. WATER CODE § 11.039(c).)

Water Supply Not Covered by Plan

If a shortage of water in a water supply not covered by a water conservation and drought contingency plan results from drought, accident, or other cause, the Brazos River Authority shall divide the water to be distributed among all customers pro rata, according to the amount each may be entitled to, so that preference is given to not one, and everyone suffers alike. (TEX. WATER CODE § 11.039(a).)

Water Supply Covered by Plan

If a shortage of water in a water supply covered by a water conservation and drought contingency plan results from drought, accident, or other cause, the Brazos River Authority shall divide the water to be distributed among all customers pro rata, according to:

- (1) the amount of water to which each customer may be entitled; or
- (2) the amount of water to which each customer may be entitled, less the amount of water the customer would have saved if the customer had operated its water system in compliance with the water conservation and drought contingency plan. (TEX. WATER CODE § 11.039(b).)

Authority for Policy 6.7

TEX. WATER CODE §§ 11.002(8), 11.039, 11.1271, 11.1272.
30 TEX. ADMIN. CODE §§ 288.1, .4, .5, .22., 288.30, 295.9.

6.8 Recording and Reporting of Utility Consumption

The Brazos River Authority shall record in an electronic repository the Brazos River Authority's metered amount of electricity, water, or natural gas consumed for which it is responsible to pay and the aggregate costs for those utility services. This information shall be reported on the Brazos River Authority's website. (TEX. GOV'T CODE § 2265.001.)

Authority for Policy 6.8

TEX. GOV'T CODE § 2265.001

6.9 Energy Efficiency Program

At least once every five years the Brazos River Authority shall evaluate electricity consumption, establish goals to reduce electricity consumption, and identify and implement cost-effective energy efficiency measures to reduce electricity consumption. (TEX. HEALTH & SAFETY CODE § 388.05(h).)

Authority for Policy 6.9

TEX. HEALTH & SAFETY CODE § 388.05(h)

6.10 REGIONAL PLANNING

Regional Water Plans in Cooperation with the Texas Water Development Board

In cooperation with the Texas Water Development Board, the Brazos River Authority shall play an active role in regional water planning groups as authorized by the Texas Legislature. In doing so, the Brazos River Authority shall work toward the orderly development, management, and conservation of water resources and the preparation for and response to drought conditions in order that sufficient water will be available at a reasonable cost to ensure public health, safety, and welfare and further economic development and to protect the agricultural and natural resources of its region. (TEX. WATER CODE §§ 16.051, 16.053; *see also* 31 TEX. ADMIN. CODE §§ 357.1-.15.)

Regional Plans as Authorized by the *Regional Waste Disposal Act*

As authorized under the provisions of the *Regional Waste Disposal Act*, the Brazos River Authority may prepare regional plans for water quality management, control, and abatement of pollution in any segment of its river basin and adjoining coastal basins which:

- (1) are consistent with any applicable water quality standards established under current law within the river basin;
- (2) recommend disposal systems which will provide the most effective and economical means of collection, storage, treatment, and purification of waste, and means to encourage rural, municipal, and industrial use of the works and systems; and
- (3) recommend maintenance and improvement of water quality standards within the river basin and methods of adequately financing the facilities necessary to implement the plan. (TEX. WATER CODE § 30.101.)

The Brazos River Authority may also undertake any other action authorized under the provisions of the *Regional Waste Disposal Act* (TEX. WATER CODE § 30.102- .106.)

Authority for Policy 6.10

TEX. WATER CODE §§ 16.051, 16.053, 30.101-.106.
31 TEX. ADMIN. CODE §§ 357.1-.15.

6.11 OIL AND GAS DEVELOPMENT POLICY FOR LEASING OF BRAZOS RIVER AUTHORITY PROPERTY

Purpose

As the Brazos River Authority continues to maximize its resources to better meet the water needs of the State of Texas, it would be reasonable to offer for lease the Brazos River Authority's unleased oil and gas interests for the purpose of generating additional revenue. Subchapter A of Chapter 71 of the Texas Natural Resources Code authorizes the leasing of lands of political subdivisions for mineral development and prescribes certain procedures to be followed in making such leases. The leasing of Brazos River Authority property for oil and gas development purposes will be accomplished in accordance with law and in a manner considered to serve the best interests of the people of Texas. The following procedures, which are similar to the Texas General Land Office, will be used in developing and processing oil and gas leases. (TEX. NAT. RES. CODE §§71.001-71.010.)

Applicability

This policy applies to all leases of Authority-owned lands or mineral rights for oil and gas development purposes.

Lease of Authority-Owned Lands or Mineral Rights for Oil and Gas Development Purposes

Upon receipt by the Authority of any request to lease Authority owned lands or mineral interests for oil and gas development, the General Manager/CEO will advise the Board. The Board may appoint a Committee to consider the lease. If a Committee is appointed, the Committee will follow the process set forth herein to consider the lease; if a Committee is not appointed, the Board will follow this process. The Committee will act for the Board in determining whether or not to advertise bids for an oil and gas lease. If the Committee considers it desirable to lease the land or mineral interest, it will designate the Board meeting at which bids will be considered, will specify bid requirements and the terms and conditions to be included in the lease (which terms and conditions will include at least a one-eighth royalty and a primary term no longer than ten years) and will authorize and direct the General Manager/CEO to take the necessary actions as summarized below.

- (1) Upon direction by the Committee, the General Manager/CEO will cause notice of the Authority's intention to lease the land or mineral rights specified by the Committee to be published in the manner required by statute; the first publication to be no less than three weeks in advance of the date of the meeting of the Authority's Board which the Committee designates as the meeting at which the Board will consider award of a lease in response to the bids. Such notice shall be published once a week for a period of three consecutive weeks in a newspaper published and having general circulation in the county where the land is located. The notice must describe the

property to be leased and designate the time and place where the Authority will receive and consider bids and meet all other statutory requirements.

- (2) In addition, the General Manager/CEO will cause to be prepared a “Bid Proposal” and “Instructions to Bidders” for use in the bidding process which shall meet all existing statutory requisites.
- (3) The Committee will meet in advance of the Board meeting at which award of a lease will be considered, and will open and review the bids received and develop recommendations for consideration by the Board with regard to award of a lease.
- (4) At the Board meeting, the Board will consider the recommendations of the Committee and will either reject all bids (which it is authorized by the statute to do) or make award to the bidder it determines to be the highest and best bidder. If award is made, the Board will authorize immediate execution of the lease agreement on behalf of the Authority. If all bids are rejected, the Board should determine whether or not to re-advertise for bids and instruct the Committee accordingly.

Authority for Policy 6.11

TEX. NAT. RES. CODE §§71.001-71.010.