

# Chapter 83. Travis County Road District Policy and Procedures<sup>1</sup>

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*Subchapter A. Introductory and General Provisions*

**83.001 Declaration of Purpose**

It is the purpose of this Policy to specify the general policies and procedures of Travis County relating to Road Districts, and replace any pre-existing rules or policies.

**83.002 Definitions**

In this Policy, the following definitions apply:

- (1) "Affected City" means an incorporated city or town that contains, or whose extraterritorial jurisdiction contains, territory that is included in a Proposed Road District;
- (2) "Applicant" means a Person applying for the creation of a Road District under this Policy;
- (3) "Application" means an application for the creation of a Road District under this Policy;
- (4) "Appraised Value" has the meaning defined for that term in Section 1.04 of the Texas Property Tax Code;
- (5) "Area Transportation Plan" means the most recent version of the Transportation Plan of the Austin Metropolitan Area adopted by the County;

- (6) "Average District Appraisal" means the number obtained by dividing the aggregate appraised value of all taxable real property in a Proposed Road District by the total acreage in such district;
- (7) "Bond Issuance Costs" means the costs incident to the issuance of Road District bonds, including, but not limited to the fees and expenses of bond counsel, any bond purchaser, underwriter, or placement agent and its counsel, any party, counsel or consultant rendering services in connection with the issuance of the Bonds, paying agent/registrar fees and printing expenses, as allowed by law and approved by the District;
- (8) "Bonds" means Road District Bonds, including any form of indebtedness a Road District may lawfully incur;
- (9) "Commissioners Court" means the Commissioners Court of the County;
- (10) "County" means the County of Travis, Texas;
- (11) "County Attorney" means the County Attorney of the County or his designated representative;
- (12) "County Risk Manager" means the employee designated by the Commissioners Court to advise County departments and employees regarding the assessment and management of the County's exposure to risk;
- (13) "County Financial Advisor" means the financial advisor retained by the County;
- (14) "County Reviewing Authority" means, all of the following: the Director, the County Attorney, the County tax assessor-collector, and the supervisor of each other County office, department, or division designated by the Commissioners Court, or their respective designated representative;
- (15) "Director" means the Director to the Public Improvements and Transportation Department or her designated representative;
- (16) "District Commissioner" means each County commissioner in whose precinct a Road District or Proposed Road District is wholly or partially situated;
- (17) "Estimate" means an assessment of present conditions or a forecast or projection of anticipated future events or conditions, based upon reasonable assumptions;
- (18) "Estimated Value of Right-of-Way" means with respect to the right-of-way required for the improvements in any Proposed Road District, the product obtained by multiplying the Average District Appraisal by the total acreage required for such right-of-way and multiplying that product by two, plus an amount equal to the estimated cost of affected improvements upon tracts of land needed for the right-of-way.

- (19) "Improvements" means the roads and other facilities authorized by the County Road and Bridge Act (TEX. REV. CIV. STAT. ANN. Article 6702-1, Vernons Supp. 1988) to be financed with Road District Bonds;
- (20) "Policy" means the Travis County Road District Policy and Procedure as amended by the Commissioners Court.
- (21) "Prescribed Debt Limit" means the limit on the amount of Road District bonds prescribed by Section 4.04 of this Policy;
- (22) "Professional Service Agreement" means an agreement entered into pursuant to Section 3.03 of this Policy;
- (23) "Proposed Bonds" means the Road District Bonds proposed to be issued to finance the Improvements specified in the Unified Report;
- (24) "Proposed Improvements" means the Improvements specified in the Unified Report that are proposed to be financed by Road District Bonds;
- (25) "Proposed Road District" means the Road District specified in an application that is proposed for creation by the County;
- (26) "Proposed Roads" means the roads specified in the Unified Report that are Proposed Improvements;
- (27) "Right-of-Way Easement Acquisition Documents" means, collectively, the right-of-way easements, right-of-way letters of credit, and Right-of-Way Title Deeds;
- (28) "Right-of-Way Easement" means any easement for right-of-way included in an application pursuant to Section 2.27 of this Policy;
- (29) "Right-of-Way Letter of Credit" means any letter of credit, meeting County fiscal standards, securing the acquisition of right-of-way included in an application pursuant to Section 2.27 of this Policy;
- (30) "Right-of-Way Title Deed" means any title deed to right-of-way included in an application pursuant to Section 2.27 of this Policy;
- (31) "Road District" means a Road District created pursuant to the County Road and Bridge Act, Article 6702-1 V.A.T.S.;
- (32) "Road District Bonds" means Bonds authorized to be issued by a Road District under the County Road and Bridge Act, TEX. REV. CIV. STAT. ANN. Article 6702-1 (Vernons Supp. 1988)
- (33) "Road District Operations Agreement" means an agreement with a Road District entered into pursuant to this Policy;
- (34) "Taxable Value" means the total amount of value for which the tax rate would be applied for tax billing purposes by the taxing entity.
- (35) "Unified Report" means the report on an application required under Section 2.57 of this Policy;

- (36) "P.I.T.D." means the Public Improvements and Transportation of the County.

**83.003 Number and Gender Preferences**

Whenever the context requires, references in this Policy to the singular include the plural and vice versa, and works denoting gender include the masculine, feminine, and neuter genders.

**83.004 Timeliness of Actions**

When this Policy requires the delivery, submission, or filing of an Application, notice, or other document within a specified period or before a specified deadline, the delivery, submission, or filing is timely, except as otherwise provided by this Policy, if the document is actually received by the appropriate Person within the period or before the deadline.

**83.005 Delivering and Submitting Documents**

- (a) When this Policy requires the delivery, submission, or filing of an Application, notice, or other document with a specified Person, a delivery, submission, or filing with an employee of the Person at the Person's usual place for conducting official business constitutes delivery, submission, or filing (as applicable) with the Person.
- (b) The Person to whom this Policy requires a delivery, submission, or filing to be made, may accept the document at a place other than the Person's usual place of conducting business.
- (c) Except as otherwise provided by this Policy, a delivery, submission, or filing of a document under this Policy may be made by personal delivery, mail, or any other method of transmission.

**83.006 County Not Responsible for Costs**

The County assumed no responsibility to pay or reimburse an Applicant, or any other Person for any costs incurred by such Person in connection with the Application, creation, or operation of a Road District or with the issuance of Road District Bonds. These costs are payable only from the proceeds of a Road District bond issue, as provided in Part IV of this Policy.

**83.007 Affirmative Action**

An applicant should attempt to employ minority business persons and women to assist in the preparation of the Application.

**83.008 Control Over Road Districts**

The Commissioners Court is the governing body of each County Road District and shall control the activities and operation of each County Road District.

*Subchapter B. Road District Creation Procedure*

**SUBPART A. SUBMISSION OF APPLICATION**

**83.009 Application Required**

- (a) The County shall not consider the creation of a Proposed Road District unless a complete Application is submitted in accordance with this Policy.
- (b) The Applicant shall be a Person who owns property in the Proposed Road District, or the Person's authorized agent, and desires to finance improvements through the creation of the Road District.

**83.010 Notice of Intent to Submit Application; Resubmission Conference**

- (a) An Applicant shall deliver written notice of his intent to submit an application to PITD at least 45 days before the date of submission of the Application. The applicant shall include a \$2,000.00 (two thousand dollar and no/100) presubmission fee with the notice. The notice shall contain:
  - (1) the name, address, and telephone number of the Applicant;
  - (2) a map of the boundaries of the Proposed Road District;
  - (3) a general description of the Proposed Improvements; locations for placement of the Proposed Improvements within the Proposed Road District, and a general estimate of the costs;
  - (4) a general description of the plan of development and responsible parties for such development, if applicable;
  - (5) the aggregate amount of a proposed bond issue; and
  - (6) the number of owners of property in the Proposed Road District; and
  - (7) the name, address and telephone number of all consultants and professionals the Applicant intends to engage and has engaged in connection with the preparation of the notice and Application.
- (b) Upon receipt of the notice, the Director shall schedule a presubmission conference with the Applicant, the County Judge, the District Commissioner, and the County Financial Advisor to occur within ten days after the date of receipt of the notice, to discuss the application process and to identify any potential problems and issues concerning the Proposed Road District.
- (c) Following the submission conference with the Applicant, the Director will confer with the Applicant as necessary concerning the proposed Application

and will coordinate discussions between the Applicant and the County Reviewing Authority and the County Financial Advisor.

- (d) The Director and County Financial Advisor shall each submit a written report to the Commissioners Court, within ten working days after the presubmission conference, regarding the proposed Application, the presubmission conference, and any subsequent discussions with the Applicant.

**83.011 Notice of Application to Property Owners and Lienholders**

- (a) At least 14 days before submitting an Application, the Applicant shall cause written notice, in form and content satisfactory to the County Attorney, of the Application to be delivered in accordance with subsection "c" below to each record owner and lienholder of real property in the Proposed Road District.
- (b) The notice shall contain:
  - (1) the name of the Proposed Road District;
  - (2) a statement that the addressee of the notice owns or holds a lien (as applicable) on real property in the Proposed Road District;
  - (3) a brief description of Proposed Improvements;
  - (4) a statement informing the addressee that the Proposed Improvements will be financed with Bonds issued by the Proposed Road District, and that the Bonds will be payable from taxes assessed against the real property in the district, and stating for the addressee the expected total bond authorization sought by the applicant, the total cost of Proposed Improvements, the expected date of the election on the Proposed Bonds and the expected date of issuance of the Proposed Bonds, and the expected tax rate necessary to pay such Bonds; and
  - (5) a statement informing the addressee of the expected date of submission of the Application for the creation of the Proposed Road District.
- (c) The notice required by this section delivered by first class United States mail, certified mail, return receipt requested, is considered timely if deposited in the mail, postage prepaid and properly addressed, before the deadline specified by Subsection (a) of this section.
- (d) The Applicant shall submit an affidavit upon filing an Application, stating that it has provided all owners and lienholders of real property within the Proposed Road District with notice in accordance with this section, and shall attach to the affidavit the receipts returned from the notices mailed as exhibits.
- (e) Although all property owners and lienholders must receive notice pursuant to this Section 2.03, the Commissioners Court may, in the exercise of its discretion, create the proposed district without consent of all property owners within the proposed district.

**83.012 Application Fee**

- (a) The fee an Applicant will pay for submitting an Application is \$15,000.00
- (b) The fee will be allocated as follows:
  - (1) \$10,000.00 to defray the cost of review of the application by the County Attorney and PITD;
  - (2) \$2,500.00 to defray the cost of review of the application by the County Financial Advisor; and
  - (3) \$2,500.00 as the Commissioners Court may designate to defray other administrative costs.
- (c) Any fees and expenses the County incurs in excess of amounts provided in Subsection (b) will be reimbursed by the Applicant in due course as provided in Section 2.05.
- (d) The Application fee must be paid by certified or cashier's check, payable to Travis County, Texas, at the time of submission of the Application.
- (e) The Application fee is reimbursable to the extent permitted by law, from the proceeds of a proposed bond issue, if issued.

**83.013 Reimbursement of Costs By Applicant**

- (a) Applicant must agree in writing to reimburse the County for all costs incurred by County and the County's consultants and professionals, as a consequence of the Application, the creation of the district and the offering, sale and issuance of Bonds, in excess of such costs that are not covered by the Application fee required in Section 2.04.
- (b) The reimbursement agreement required by this section shall be in form and content acceptable to by the County Attorney.

**83.014 Submissions, Acceptance and Filing of Application**

- (a) The Applicant shall submit 20 copies of the Application to the PITD.
- (b) PITD shall not accept an Application tendered for submission unless the Application;
  - (1) contains the information required in 2.22-2.27 of the Policy.
  - (2) is accompanied by the Application fee in the amount and in the form of payment required by Section 2.04 of this Policy;
  - (3) is accompanied by the affidavit required by Section 2.27 of this Policy; and
  - (4) is accompanied by the reimbursement agreement required by Section 2.05 of this Policy.

- (c) The Applicant shall schedule a meeting with the Director to present the Application for acceptance by PITD. If an Application is determined to be incomplete, the Director shall deliver a notice to the Applicant outlining the deficiencies in such Application. The Director shall not accept an Application until the Applicant remedies all deficiencies outlined in the notice.
- (d) Upon acceptance of an Application, the Director:
  - (1) shall file a copy of the Application with the County Clerk. The copy shall be retained by the County Clerk as a permanent record; and
  - (2) shall immediately deliver the Application fee to the County Treasurer for deposit in a current restricted account established for the Proposed Road District.

**83.014 Improper Representations by Applicant**

Neither an Applicant nor the Applicant's representative(s) shall make any representation, directly or indirectly, to any lender, contractor, or any other Person engaging in or contemplating a business relationship with the Applicant:

- (1) before the Proposed Road District has been created, that suggests the Commissioners Court has agreed or in any way committed to approve the Application or create the Proposed Road District; or
- (2) concerning any matter in connection with the Application that is contrary to the information contained in the Application.

## *Subpart B. Contents Of Application*

### **83.015 Requirements for Complete Application**

To be complete, an Application must contain the components required under Sections 2.22 through 2.27 of this Policy, be accompanied by a cover letter assessing the adequacy of the Proposed Road District by addressing each of the criteria listed in Section 2.71, and must be in form and content acceptable to the Director.

### **83.016 Summary of Basic Information**

An Application shall contain a summary of basic information concerning the Proposed Road District, as follows:

- (1) the proposed name of the Road District;
- (2) the name, address, and telephone number of:
  - (A) the Applicant;
  - (B) the Person acting as the Applicant's agent (if any) in the application process;
  - (C) each consultant or professional engaged, or proposed to be engaged, by the Applicant in connection with the creation of the Proposed Road District.
  - (D) a general, narrative description of the Proposed Road District, of the proposed improvements therein, and of the financing for the Proposed Improvements, including the following:
    - (i) the total area and net taxable are of the Proposed Road District in acres;
    - (ii) the names, acreage owned and number of owners of real property in the Proposed Road District;
    - (iii) the names and addresses of all registered voters of the Proposed Road District;
    - (iv) the benefit the Proposed Improvements would provide the Proposed Road District, and the County;
- (4) if the Applicant proposes that the Proposed Road District purchase partially or totally complete Improvements with the proceeds of a Road District bond issue, a statement of such intent.

### **83.017 Creation Engineering Report**

An Application shall contain a creation engineering report, prepared by a registered professional engineer, who has affixed his seal to the report, which contains the following;

- (1) a map showing the location of the Proposed Improvements in relation to the Area Transportation Plan and showing the existing roads and mass transit network in the Proposed Road District up to a distance of two miles from the district boundary line of the Proposed Road District (measured along an imaginary straight line perpendicular to the boundary line);
- (2) a site location map of the Proposed Road District;
- (3) a topographical map of the Proposed Road District, with scale no less than one inch for every 400 feet with contour intervals not to exceed 10 feet, showing the following:
  - (A) the boundaries of the Proposed Road District and the boundaries of each other taxing unit that intersect or coincide with the boundaries of the district;
  - (B) the name of each owner of real property in the Proposed Road District, the boundaries and area of the property owned by such owner;
  - (C) the existing:
    - (i) arterial roads;
    - (ii) collector roads; and
    - (iii) bridges, major drainage facilities, and other structures
    - (iv) an identification of the existing and approved real estate developments that might be affected by the Proposed Improvements;
    - (v) the location of the 100-year flood plain and watershed boundaries;
    - (vi) three locations within the Proposed Road District most likely to provide notice to residents of the Proposed Road District if a notice were posted.
- (4) a preliminary Estimate (showing the assumptions upon which the Estimate is based) of the acquisition cost of the right-of-way for the Proposed Improvements, itemized, for both in the following categories: drainage facilities, bridges, roads, utility relocation, and miscellaneous features;
- (5) an on-the-ground metes and bounds description of the territory proposed to be contained within the Proposed Road District, accompanied by closure sheets, prepared by a registered professional surveyor, with seal impressed thereon; on
- (6) environmental considerations regarding the construction, maintenance and operation of Proposed Road District improvements, and the studies upon which the considerations were based.

### **83.018 Market Study**

The Applicant shall submit a market study which projects probable value of the land within the Proposed Road District for the succeeding twenty-five year period. The study shall be conducted and prepared by a professional firm recognized in the field of real property appraisal, market analysis, and demographics. The study shall consider all factors affecting the potential value of the land within the district including, but not limited to: the plan of development, restrictive ordinances, competitive forces and regional peculiarities.

### **83.019 Development Plan and Applicant/Developer Qualifications**

The Applicant shall furnish:

- (1) a copy of maps, plats, and other visual and written materials which will display the preliminary plan of development for properties within the Proposed Road District which is expected to produce the anticipated Taxable Value. Such preliminary development plan shall be in sufficient detail to enable the County Renewing Authorities to relate it to the other elements of the Application;
- (2) a resume for all persons responsible for carrying out the development plan including information as to the experience of such Persons in connection with development work of similar scope of complexity; and
- (3) information on the financial ability of such persons to carry forward the plan of development and to pay the taxes expected to be levied on the properties such persons may own within the Proposed Road District.

### **83.020 Notice to Future Property Owners**

- (a) An application shall contain the following documents to provide for notice to future owners of real property within the Proposed Road District: An agreement executed by all property owners in the Proposed Road District, in the form and content acceptable to the County Attorney, stating that the property is located within a Road District.
- (b) The notice required by Subsection (a)(2) of this Section shall be held in escrow by the County Attorney, until the Proposed Road District is created. If such district is created, the County Attorney, at the Applicant's expense, shall record such notice in the deed records of the County.
- (c) The day an Applicant files an Application with PITD, he shall place an advertisement in a newspaper of general circulation in the area where the District is proposed notifying the general public of the filing of the Application. The wording of the advertisement should be in form and content acceptable to the County Attorney.
- (d) Each landowner in a Proposed Road District shall submit an affidavit stating he will provide, within any contract, notice of the Proposed Road District to any party he enters into negotiations with for the sale of the property within

the Proposed Road District. The notice shall be in form and content acceptable to the County Attorney.

**83.021 Miscellaneous Application Components**

An Application shall contain the following:

- (a) a petition for the creation of the Proposed Road District, addressed to the Commissioners Court and is signed by all persons owning real property in the proposed district who are requesting its creation. The petition must contain, for each signing property owner, the owner's name (in printed or typed form), residence address and the amount of acreage owned;
- (b) a certification form the central appraisal district of both the Appraised Value and the Taxable Value of all real property in the Proposed Road District;
- (c) a list furnished by a title insurance company of the names of all the records owners and lienholders of the real property in the Proposed Road District;
- (d) a brief narrative stating the reasons for creating the Proposed Road District and showing that the Proposed Improvements are feasible and will benefit all the taxable real property in the Proposed Road District;
- (e) a letter of credit, except as provided by Subsection (a) of this section, in form and content acceptable to the County Attorney, to secure the acquisition of right-of-way in the Proposed Road District, in an amount equal to the Estimated Value of Right-of-Way.
  - (1) The Right-of-Way Letter of Credit is not required to cover the Estimated Value of Right-of-Way of the right-of-way that is to be donated for the Proposed Improvements to the extent that the Application included, in form and content acceptable to the County Attorney:
    - (A) title deeds to the donated right-of-way; or
    - (B) blanket easements for right-of-way to be more accurately defined upon
    - (C) completion of engineering design of the Improvements
  - (2) The Right-of-Way Acquisition Documents shall be held in escrow by the County, in the custody of the County Attorney, pending disposition as provided in Part III of this Policy Statement.
  - (3) If an Application is withdrawn or the Proposed Road District is not created, the Right-of-Way Acquisition Documents shall be returned to the Applicant.
  - (4) Any combination of the above Right-of-Way Acquisition Documents acceptable to the County Attorney shall be acceptable to fulfill the requirement of Subsection (a).

- (f) a statement by the Applicant, in the form and content acceptable to the County Attorney that the Applicant will comply with this Policy;
- (g) a sworn affidavit stating that the Applicant has complied with the requirements of Section 2.03; and
- (h) any other item specifically required by the Director and the County Attorney.

*Subpart C. Review of Application Prior To Commissioners Court Consideration*

**83.022 Distribution of Application**

Upon acceptance of the submission of an Application, the Director shall distribute one copy (except as otherwise indicated below) of the Application to each of the following Persons and retain any remaining copies:

- (1) County Judge;
- (2) each County Commissioner;
- (3) County Attorney;
- (4) County Tax Assessor-Collector;
- (5) County Auditor;
- (6) County Financial Advisor;
- (7) Study Coordinator of the Austin Transportation Policy Advisory Committee
- (8) District Engineer of the Texas State Department of Highways and Public Transportation;
- (9) City Manager of each Affected City (3 copies); and
- (10) Study Coordinator of the Austin Transportation Policy Advisory Committee
- (11) General Manager of the Lower Colorado River Authority.

**83.023 Report of County Financial Advisor on Application**

Upon receipt of an Application from the Director, the County Financial Advisor shall review the Application and furnish a written report on it to the Commissioners Court which shall include the following:

- (1) a feasible plan of financing;
- (2) the impact of the plan of financing upon the credit of the County and its credit rating and upon any present or future bond issues anticipated by the County;
- (3) the effect of the Proposed Road District debt and tax rate on individual taxpayers within the Proposed Road District when added in conjunction with tax levies by other overlapping jurisdictions; and

- (4) a statement that, in the opinion of the County Financial Advisor, the Proposed Road District, if created and financed as proposed, will be financially viable and is not expected to affect adversely either the general credit of the County or the ability of the County to proceed with its overall operation in a financially sound and timely manner.
- (5) The report of the County Financial Advisor shall be delivered to PITD not later than the 15th working day after the date of the County Financial Advisor received the Application.

**83.024 Reports of County Reviewing Authority on Application**

- (a) Upon receipt of an Application, each member of the County Reviewing Authority shall review the Application and prepare a written report on the Application addressed to the Commissioners Court.
- (b) The report may comment on such matters as the member considers appropriate and shall comment on any matter specifically requested by the Commissioners Court or the Director
- (c) The County Tax Assessor-Collector's report shall include one analysis showing any property, within the County owed by the Applicant or its principals, which may show a record of being delinquent in property tax payment.
- (d) The report of the Director shall contain a recommendation on whether the County should create the Proposed Road District, specifying any conditions to such recommendation.
- (e) Each member of the County Reviewing Authority (other than the Director) shall deliver its report to PITD not later than the 15th working day after the date the authority received the Application.

**83.025 Participation by Affected Cities, State Authorities, and Austin Transportation Policy Advisory Committee**

- (a) The city manager of any Affected City, the Texas State Department of Highways and Public Transportation District Engineer (with jurisdiction in the County) and the Study Coordinator of the Austin Transportation Policy Advisory Committee may each submit a report on an Application to the Director.
- (b) Each city manager's report, the District Engineer's report and the Study Coordinator's report shall be addressed to the Commissioners Court and may cover any matter regarding the Application that the City Manager, District Engineer, or Study Coordinator, respectively, considers appropriate.
- (c) The Director shall include each city manager's, the District Engineer's, and Study Coordinator's report in the Unified Report if those reports are received by PITD in time to be so included. Otherwise, the Director shall deliver,

promptly upon receipt, a copy of each city manager's district engineer's, or study coordinator's report to the County judge, each County Commissioner, the County Clerk, the County Financial Advisor and the County Attorney.

**83.026 Consultation on Application**

The District Commissioner, the Director, the other County Reviewing Authorities and the County Financial Advisor shall advise and consult with each other and the Applicant, as appropriate, in an effort to identify and correct any deficiencies in an Application.

**83.027 Unified Report on Application**

- (a) The Director shall compile or reference and attach the County Reviewing Authorities' respective reports on an Application into a single, Unified Report addressed to the Commissioners Court, providing an analysis of the reports received and the comments of the Director.
- (b) Each County Reviewing Authority shall make such revisions in its report as are necessary to finalize the Unified Report for timely submission to the Commissioners Court.
- (c) The Director shall deliver a copy of the Unified Report to the County judge, each County commissioner, the County Attorney and the Applicant, not later than the 10th working day after the date that PITD receives the last report from a County Director shall forward to the Commissioners Court any late filed reports by County Reviewing Authorities.

**83.028 Coordination by PITD**

The Director shall coordinate the activities of the County Reviewing Authorities under this Subpart C in an effort to achieve the timely delivery of the Unified Report to the Commissioners Court.

**83.029 Revision of Application Prior to Commissioners Court Consideration**

- (a) After an Application has been submitted, the Applicant may revise the Application, as provided by this section.
- (b) Before an Application may be revised, the form and content of the proposed revision must be approved by the Director (after any consultation with District Commissioner and the other County Reviewing Authorities that the Director considers appropriate), and by the County Financial Advisor.
- (c) After the required approval of a proposed Application revision is obtained, the Applicant shall deliver twenty (20) copies of the revision to PITD and one to the County Clerk. Upon receipt of the copies, the Director shall distribute them to the same Persons as are required by Section 2.51 of this Policy to receive copies of the Application upon its original submission.

- (d) If a proposed Application revision is approved, the County Reviewing Authorities and the County Financial Advisor shall make corresponding revisions to their respective reports and opinions on the application that are necessitated by the revision, and the Director shall do likewise with respect to the Unified Report.

*Subpart D. Creation Of A Road District*

**83.030 Criteria for Road District Creation**

- (a) Upon consideration of an Application, the Commissioners Court, in the exercise of its discretion and in accordance with law, may create the Road District as proposed.
- (b) In determining whether to create a Road District, the Commissioners Court will consider the following criteria:
  - (1) the Proposed roads are highways or arterials designated by the Area Transportation Plan.
  - (2) the Proposed Road District will be able to meet its financial obligations, including the payment of the Proposed Bonds, at a reasonable cost to the affected taxpayers;
  - (3) the plan of financing the Proposed Improvements complies with the Prescribed Debt Limit or with any increase in the Prescribed Debt Limit approved by the Commissioners Court;
  - (4) the County or other affected governmental entity will be able to maintain the Proposed Improvements;
  - (5) opposition to the creation of a Proposed Road District by Persons owning real property within the boundaries of the Proposed Road District;
  - (6) all taxable real property in the Proposed Road District will be benefitted by the Proposed Improvements, if created;
  - (7) all benefitted real property adjacent to the Proposed Improvements is included in the Proposed Road District;
  - (8) the Proposed Improvements will provide an efficient enhancement to the County's road system;
  - (9) the Application complies with this Policy;
  - (10) the extent to which the right-of-way for the Proposed Improvements is to be donated for that purpose;
  - (11) anticipated environmental impact;
  - (12) relative need for the Proposed Improvements in relation to their cost;

- (13) priority of the Proposed Improvements in relation to other roads proposed or scheduled for improvement within the County;
- (14) a road district is the most appropriate method of financing for part or all of the Proposed Improvements; and

**83.031 Commissioners Court Work Session on Application**

- (a) Upon receipt of a Unified Report, the County Judge will place the Application referenced in the Unified Report on the agenda for a work session of the Commissioners Court. The County Judge may place a notice of the work session in a newspaper of circulation within area where the Proposed Road District will be located.
- (b) The Applicant shall brief the Commissioners Court on the Application in work session. The Director shall then brief the Commissioners Court on the Unified Report. If requested, the County Reviewing Authorities and County Financial Advisor shall comment on the Application in work session.
- (c) The Commissioners Court cannot take actions on the creation of a Proposed Road District in work session.

**83.032 Modification of Application and Reports Following Work Session**

- (a) After the Commissioners Court completes its review of an Application in work session, the Applicant shall modify the Application as requested by the Commissioners Court. The County Reviewing Authorities and the County Financial Advisor shall make corresponding modifications in their respective reports and opinions, if requested by the Commissioners Court. The Director shall also modify the Unified Report to reflect such change.
- (b) If, after the Commissioners Court completes its review of an Application in work session, the Applicant chooses to make substantive modifications to the Application, it must submit the revised Application in accordance with Section 2.06 of this Policy. The County Reviewing Authorities and County Financial Advisor shall make corresponding modifications in their respective reports and opinions. The Director shall modify the Unified Report to reflect such change. Upon receipt of the amended Unified Report, the County Judge will place the Application on the agenda for work session of the Commissioners Court.

**83.033 Action on Application by Commissioners Court**

- (a) After the Commissioners Court completes its review of an application in work session, the County Judge may place the Proposed Road District on the agenda for a Commissioners Court meeting as an action item.
- (b) The Commissioners Court will consider the Application and do one of the following:

- (1) by written order, create the Proposed Road District;
- (2) postpone taking action on the Application;
- (3) Deny the Application; or
- (4) Take no action on the Application.

#### **83.034 Use of Estimated Appraisals to Determine Compliance with Debt Limit**

If the Commissioners Court is considering creation of a Proposed Road District before the time that a periodic reappraisal, for property tax purposes, of property in the Proposed Road District is to occur, and the time of issuance of the Proposed Bonds is expected to occur after the periodic reappraisal is completed, then, in determining whether the plan of financing the Proposed Improvements complies with the Prescribed Debt Limit, the Commissioners Court, in its discretion, may consider a written Estimate, if available, from the central appraisal district, of the Appraised Value and Taxable Value expected to be applicable to the real property in the Proposed Road District at the expected time of issuance of the Proposed Bonds.

#### **83.035 Indemnification Fee**

- (a) Before a Commissioners Court will consider the creation of a Road District, the Applicant shall pay an indemnity fee either in the amount of \$5,000 or in the amount equal to 1/10 of 1 percent of the aggregate principal amount of the Proposed Bonds, whichever is greater.
- (b) The indemnity fee shall be paid by certified or cashier's check, payable to the County.
- (c) The indemnity fee shall be delivered to the County Treasurer who shall deposit it into a current restricted account separate from all other County funds. The moneys on deposit in this account shall be used only for the purpose of indemnifying the County and the members of the Commissioners Court (past and present) for any cost, liability, or damage (including attorneys' fees) arising from or incurred as a result of the creation, operation or administration of any Road District and the offering, sale and issuance of any Road District Bonds.
- (d) The indemnity fee is not reimbursable from County or Road District funds (including the proceeds of any Road District Bonds).

#### **83.036 Indemnification By Applicant**

- (a) In addition to any other indemnification required by this Policy, the Commissioners Court, in its discretion, may condition its creation of a Road District on the Applicant agreeing in writing, to indemnify the County, the Commissioners Court (collectively and individually), all other County officers, all County employees and its employees and agents for any cost, liability, or damage (including attorney's) fees arising from or incurred as a consequence

of the Application, the creation or administration of the Proposed Road District, or the offering, sale, or issuance of the Proposed Bonds.

- (b) The Commissioners Court may require that the indemnification referenced in Subsection (a) of this Section be provided by an insurance provider acceptable to the Commissioners Court. The form and content of the agreement providing insurance shall be acceptable to the County Attorney and the County Risk Manager.

**83.037 Road District Operations Agreement**

- (a) The Commissioners Court may require, as a condition of the creation of a Proposed Road District or of the issuance of Proposed Road Bonds, that an Applicant enter into an agreement with the district, that governs the rights and responsibilities of the parties with respect to any aspect of the Application, creation or operation of a Road District, issuance of Bonds, acquisition or construction of improvements within a Road District, payment of Bond Issuance Costs or other costs and expenses incurred in connection with the creation or operation of a Road District, indemnification or any other matter deemed appropriate by the Commissioners Court.
- (b) The County Attorney shall approve of the form and content of the Road District Operations Agreement prior to its execution.

*Subchapter C. Acquisition and Construction Of Road District Improvements*

**83.038 Payment for Road District Improvements**

The costs of Road District Improvements are payable from the proceeds of Bonds issued to finance such improvements and from no other County source.

**83.039 Conveyance of Right-of-Way**

- (a) The right-of-way for Road District improvements must be conveyed to the County pursuant to agreements, in form and content acceptable to the County Attorney. The conveyance of right-of-way must be accompanied by a title insurance policy covering the property conveyed, that is acceptable to the County Attorney and to the Commissioners Court.
- (b) A conveyance of right-of-way for Road District improvements must be free and clear of any indebtedness.
- (c) Right-of-Way Acquisition Documents may be removed from escrow and recorded at any time after the Road District closes its first issue of Bonds. The County Attorney will provide 30 days notice of his intent to record the grantor's Right-of-Way Easement to allow the grantor, during that 30 day period, to substitute right-of-way deeds. Any Right-of-Way Acquisition Documents no longer required will be returned to the grantors upon completion of the acquisition or conveyance.

**83.040 Professional Service Agreements**

- (a) Upon creation, or as soon thereafter is practicable, the Road District shall enter into Professional Service Agreements with a bond counsel, an underwriter or any other professional or consultant the Commissioners Court deems necessary, for any and all work to be performed on behalf of such district after creation. The Road District will not pay for services or materials provided in connection with the Road District after creation, unless the provider of such services or materials enters into an Agreement with the District.
- (b) It is within the discretion of the Commissioners Court to enter into a Professional Service Agreement with any Person.
- (c) The form and content of a Professional Service Agreement shall be acceptable to the County Attorney.

**83.041 General Supervision by PITD**

Except as otherwise provided in a Professional Service Agreement, the acquisition and construction of Road District Improvements are under the general supervision of the County Engineer.

**83.042 Inspecting and Testing by PITD**

- (a) PITD may inspect the site of Road District Improvements at such intervals as the Director considers appropriate for proper supervision of the acquisition and construction of the Improvements.
- (b) PITD may conduct such tests with respect to construction methods and materials for Road District Improvements as the Director determines appropriate and may review the results of tests conducted by others in connection with the acquisition or construction of Road District Improvements.

**83.043 Non-Compliance With Plans and Specifications**

- (a) If the Director determines that Road District Improvements have not been acquired or constructed in compliance with their plans and specifications, the Director shall deliver notice of the noncompliance to the District Commissioner and the Person responsible for the noncompliance.
- (b) If noncompliance with Road District improvement plans and specifications is not corrected, or, if the Director determines that it is unlikely to be corrected within a reasonable time, the Director shall advise the commissioners Court of the noncompliance. The Commissioners Court may request the County Attorney to take appropriate legal action or may take any other action that the court determines appropriate to resolve the matter.

**83.044 Quality Control Consultant**

- (a) A Road District may retain a quality control consultant who is qualified in the field of construction quality control inspection and testing. The scope of services to be performed by the quality control consultant shall be subject to the approval of the Director, consistent with this section.
- (b) The scope of services to be performed by a quality control consultant shall require quality control testing of materials and installations that meets the minimum requirements for sampling and testing as detailed in the Construction Manual of the Texas State Department of Highways and Public Transportation.
- (c) The Quality Control Consultant shall employ one or more resident construction inspectors whose qualifications are acceptable to PITD.
- (d) The fees of a quality control consultant shall be paid from the proceeds of the Bonds issued to finance the Improvements inspected and tested.

**83.045 PITD'S Fee**

- (a) The Road District shall pay a fee for PITD's services rendered in connection with the acquisition and construction of Road District improvements, in an amount equal to one-half of one percent of the aggregate principal amount of the Bonds issued to finance the Improvements and is in addition to the fee received pursuant to Section 2.04 of this policy. In any event, such fee shall be reasonable in relation to the work performed by PITD. The Director may waive any portion of the fee determined to be unreasonable.
- (b) Except as provided by Subsection (c) of this section, the PITD's fee is payable from the proceeds of the Bonds issued to finance the Improvements with respect to which of PITD's services are rendered.
- (c) If the acquisition or construction of Road District improvements begins before the Bonds financing those improvements are issued, an Estimate of the PITD's fee, as determined by the Director, must be paid, upon the Director's request, before the Improvements. The amount paid as the estimated fee shall be adjusted if the Bonds are issued in a aggregate principal amount different from that upon which the estimated fee was based, by either a reimbursement from the County of overpayment or a payment as applicable, at the time the Bonds are issued.

**83.046 County Attorney's Fee**

- (a) The Road District shall pay fees for the County Attorney's services rendered in connection with the acquisition and construction of Road District improvements and review of bond offering documents, at an hourly billing rate. The County Attorney shall keep careful records of time required to perform services for the Road District pursuant to this policy. He shall charge an hourly fee comparable to those fees charged by private counsel of similar

expertise, in addition to the fee received pursuant to Section 2.04 of this policy. In any event, such fee shall be reasonable in relation to the work performed by the County Attorney.

- (b) The County Attorney's fee is payable from the proceeds of the Bonds issued to finance the improvements with respect to which of the County Attorney's services are rendered.

#### *Subchapter D. Road District Bonds*

##### **83.047 Bond Election**

The Commissioners Court may order a bond election pursuant to the requirements of the County Road and Bridge Act, TEX. REV. CIV. STAT. ANN. Article 6702-1 (Vernon Supp. 1988) upon a uniform election date.

##### **83.048 Request For Bond Issuance**

- (a) Thirty (30) days after holding a successful bond election, any landowner in the Road District may submit a formal request to the District Commissioner requesting a bond issuance. The District Commissioner shall request a work session for the Road District and request the attendance of the County Financial Advisor, the County Attorney, the Director, and any other advisor he determines necessary.
- (b) If the Commissioners Court determines a bond issuance to be practicable, they may retain the services of an underwriter or instruct the County Financial Officer to begin preparation of offering documents.

##### **83.049 Review and Advice of County Attorney**

- (a) For each issue of Road District Bonds, the County Attorney shall review the order calling the election, the order authorizing the sale and issuance of Bonds, any bond offering document, closing documents, and all other documents executed or delivered in connection with the issuance of the Bonds before such documents are executed or delivered. A copy of each forementioned documents shall be delivered to the Count Attorney not later than the 14th day before the date scheduled for execution or delivery, as applicable.
- (b) The County Attorney shall advise the Commissioners Court on matters in connection with the issuance of Road District Bonds as requested by the Commissioners Court including: choice of Bond Counsel, price to be negotiated for the services, and the scope of the review necessary.

**83.050 Review and Opinion of County Financial Advisor**

- (a) Prior to each sale of the District's Bonds or notes, the County Financial Advisor shall review information pertaining thereto and furnish the Commissioners Court with his opinion regarding advisability of such sale. The information to be reviewed and used as a basis for such bond counsel, opinion may be that provided by managing underwriters, market research analysts, engineers and other consultants retained by the Road District.
- (b) Topics addressed by the County Financial Advisor's opinion regarding each such bond issue should include:
  - (1) the financial feasibility of the proposed issue in terms of the current market for such securities and the plan financing proposed at the time of creation or subsequent plans of financing adopted by the district;
  - (2) the impact of the proposed bond issue and the plan of financing of which it is a part upon the credit of the County and its credit rating and upon pending or future bond issues which may be needed by the County;
  - (3) the effect of the proposed district debt and tax rate for individual taxpayers within the Road District in addition to tax levies by other overlapping jurisdictions; and
  - (4) a method of selling such Bonds which will enable the Road District to secure needed funds at favorable interest rates for minimal costs and result in reasonably tax rates.
- (c) Within 15 working days after the County Financial Advisor secures all needed information from the district's consultants, he shall render his written opinion to the commissioners Court based on such findings on the following:
  - (1) that the proposed bond issue can or cannot be sold in a manner consistent with the district's current plan of financing;
  - (2) that the proposed bond issue will or will not adversely affect the County's credit or credit rating; and
  - (3) that the proposed bond issue will or will not adversely affect the County's ability to conduct its overall operations in a financially sound and timely way.
  - (4) any other matters which the County Financial Advisor deems important.

**83.051 Limit Placed on Amount of Bonds**

Due to restrictions placed on unlimited tax debt of counties by Texas Constitution Article III, Section 52, the Court shall not issue District Bonds which would cause the aggregate principal amount of Road Bonds outstanding for the County Road District, at any time, to exceed 20 percent the Taxable Value of the real property in such Road District.

### **83.052 Payment for Bond Issuance Costs**

- (a) Bond Issuance Costs are payable by a Road District from the proceeds of the Bonds of such issue and from no other County source.
- (b) The Road District shall pay the costs of issuance associated with a Road District as soon as practicable after the issuance of the Bonds.

### **83.053 Opinions of Counsel**

As a condition to the issuance of Road District Bonds, the Commissioners Court, on the advice of the County Attorney, may require such opinions, addressed to the Commissioners Court, from bond counsel, purchaser's, underwriter's, or placement agent's counsel, developer's counsel, or counsel to any other person involved in the issuance of the Bonds as the Commissioners Court considers necessary or appropriate for the proper issuance of the Bonds.

### **83.054 Bond Offering Documents**

- (a) At the time any bond issue for the Road District is proposed, the official statement or limited offering memorandum, and other disclosure document covering such sale shall be prepared by the managing underwriter for the district under the guidance of an subject to approval by the County Financial Advisor. Such guidance and approval shall be in addition to other reviews and approvals specified in these rules. The County District in scheduling such bond sales and, subject to the orders of the Commissioners Court, shall represent the Road District in all negotiations with underwriters participating in negotiated sales of the district's securities.
- (b) Before Road District Bonds are issued, the Commissioners Court may require the purchaser, underwriter, or placement agent, as applicable, to deliver a certificate, or counsel for that party to deliver an opinion, in either case acceptable to the Commissioners Court to the effect that the offering document, or such portions thereof as the Commissioners Court may specify does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements contained therein, in light of the circumstances under which made, not misleading.
- (c) A disclosure document for Road District Bonds shall contain statements (in each case acceptable to the County Financial Advisor) to the effect that:
  - (1) the Bonds are not obligations of the County, the State of Texas, nor any political subdivision except the Road District and that neither the faith and credit nor the taxing power of the county, the State of Texas, nor any political subdivision except the Road District is pledged for the payment of the Bonds; and
  - (2) neither the County nor the Road District makes any representation regarding the market value of the property in the Road District or

regarding the ability of any taxpayer to pay taxes assessed against the taxpayer.

- (d) A disclosure document shall contain, in addition to any material required by this section, such statements and disclaimers with respect to the responsibility of the Road District for information contained in the document as the Commissioners Court, on the advice of the County Attorney, may require.

**83.055 Amount, Terms, and Method of Sale of Bonds**

The principal amount and terms of Road District Bonds and the method of their sale (whether competitively bid public offering, negotiated sale, or otherwise) shall be as approved by the Commissioners Court.

**83.056 Indemnification by Underwriter or Placement Agent**

- (a) In addition to any other indemnification required by this Policy, as a condition for the issuance of Road District Bonds, the Commissioners Court may require the underwriter or placement agent for the Bonds to agree in writing to indemnify the County, the Road District, the Commissioners Court (collectively and individually), all other County and Road District officers, and all other County and Road District employees and agents for such cost, liability, or damage (including attorney's fees) as the Commissioners Court may specify in connection with the placement, offer for sale, or the sale of the Bonds, as the case may be.
- (b) The form and content of an indemnification agreement under this section shall be as acceptable to the County Attorney.

**83.057 Reimbursement of Creation Costs and Expenses from Bond Proceeds**

- (a) All payments made by the Applicant to the County under Section 2.04 and Section 2.05 shall be reimbursed by the district from bond proceeds as soon as practicable after Bonds are issued and delivered.
- (b) All costs and expenses the Applicant incurs with respect to the preparation, submission, and court-directed amendments to the Application or any costs related thereto, to the date of creation, shall be reimbursed from bond proceeds to a maximum amount of \$45,000.00 providing:
  - (1) such costs and expenses were required to be incurred under the provisions of this Policy;
  - (2) such costs and expenses are reasonable for the services performed and materials provided;
  - (3) such costs and expenses have been paid by the Person requesting reimbursement as evidenced by a detailed statement of the services

and materials provided and cancelled checks for the payment of such statements; and

- (4) such costs and expenses of Applicant's attorneys fees are reasonable; however, in no event, shall such costs and expenses represent amounts:
  - (A) paid by Applicant which were incurred for work performed solely in representing the interests of the Applicant;
  - (B) paid by Applicant pursuant to a contract with fees calculated to be a percentage of the bond proceeds; or
  - (C) paid by Applicant to represent the Applicant's interests in lobbying or persuading members of the Commissioners Court or a member of the County Reviewing Authority to waive or alter any requirements under this Policy; and
- (5) such costs and expenses are approved by the Commissioners Court.

(c) An Applicant may petition the Commissioners Court to consider expenses above the \$45,000.00 maximum amount, provided the Commissioners Court has previously authorized such expense to be incurred and the expense meets the criteria otherwise required within this section.

(d) Three copies of all requests for reimbursement under (b) above will be submitted to the Director who will distribute one copy to the County Auditor and one copy to the County Attorney. Requests for reimbursement of attorney's fees should be accompanied by an invoice to Applicant reflecting the hourly amounts billed and the type of work performed on each specific date when service was performed. The Director shall review each request and, after consultation with the County Attorney and the County Auditor, shall report to the Commissioners Court on whether the request complies with this section and whether the request for reimbursement should be approved by the Commissioners Court.

### **83.058 District Purchase of Existing Improvements**

The Road District may, in its discretion, purchase existing improvements or work product with bond proceeds only if:

- (a) the cost of such improvements or work product is reasonable;
- (b) the purchase of such improvements or work product is approved by the Commissioners Court and in accordance with applicable law.

*Subchapter E. Miscellaneous Provisions*

**83.059 Discretion of Commissioners Court**

- (a) The Commissioners Court, to the extent permitted by law, shall have sole discretion over the actions of all Road Districts created under this Policy including the discretion to call bond elections and to issue Bonds of a Road District. The Commissioners Court also may provide in any order it adopts in relation to a Road District, that any future action of the court shall be considered upon the occurrence of such events as the court may deem appropriate.
- (b) Any decision made by the Director pursuant to this Policy is subject to review by the Commissioners Court.

**83.060 Effective Date of Policy Statement; Applicability to Pending Applications**

- (a) The effective date of this Policy shall be as specified in the action of the Commissioners Court adopting this Policy.
- (b) This Policy is applicable to any Application that is pending or any Road District awaiting Bond Election or Issuance on the effective date of this Policy.

**83.061 Road District Review**

A Road District which has been created and has not held a bond election within one year, or which has held a bond election and has not issued Bonds within one year, shall be assessed by the Commissioners Court as soon thereafter as practical to determine whether the Road District should be abolished. The Applicant will be notified of a Public Hearing so he may appear to address the criteria in Section 2.71 of this Policy. Should the Commissioners Court determine the Road District should no longer exist, it shall abolish the Road District pursuant to state statute. Should the Commissioners Court determine the Road District shall continue, the Review shall occur each year thereafter until bonds are issued.

**83.062 Amendment of Policy**

- (a) The Commissioners Court, in its discretion, may amend any provision of this Policy after a public hearing on the proposed amendment. A public hearing is not required in case of emergency or grave public necessity.
- (b) The effective date of an amendment to this Policy shall be as specified in the action of the Commissioners Court adopting such amendment. Unless otherwise stated in such action, the amendment is applicable to any Application pending on the effective date of such amendment.

**83.063 Waiver of Policy**

The Commissioners Court, in its discretion, may, on the vote of three (3) members, waive the applicability of any provision of this Policy after the waiver is submitted by the affected person in written form and is discussed at a public hearing. The Commissioners Court may waive the requirement of a public hearing only in the case of an emergency or grave public necessity.